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PORTION 141 (A PORTION OF PORTION 133) OF THE FARM HANGKLIP NO. 559, DIVISION CALEDON: APPLICATION FOR REMOVAL AND AMENDMENT OF RESTRICTIVE TITLE DEED CONDITIONS, CONSENT USE AND DEPARTURE: PLANNING PARTNERS ON BEHALF OF FREE LIFE TRUST

KHANG 141/559 (3762/2021)

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2 March 2022**

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1. EXECUTIVE SUMMARY

An application has been received from Planning Partners on behalf of Free Life Trust on Portion 141 (a Portion of Portion 133) of the Farm Hangklip No. 559 in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the following:

- ❖ **Removal and Amendment of Restrictive Title Deed Conditions** in terms of Section 16.(2)(f) of the By-Law for the removal of restrictive title deed conditions with reference to Clauses C.1., C.2., C.3., C.4., C.5., C.6., C.7., C.8., C.9., C.10., C.11. and C.12. as contained in Title Deed T8920/2005, as well as the amendment of a restrictive title condition with reference to Clause C.13. as contained in Title Deed T8920/2005.

The restrictive title deed conditions read as follows:

C. SUBJECT FURTHER to the conditions contained in Deed of Transfer No. T23788/1964 imposed by Hangklip Beach Estates Limited for its sole benefit as owner of the remaining extent of the Farm "Hangklip" measuring as such 1466/0427 Hectares and held by it under Certificate of Consolidation Title No. T3720 dated 17 April 1937, provided always however that if in the said Company's opinion it is expedient the Company may suspend or relax restrictions contained in any of such conditions and then subject to such conditions as the Company may impose:-

1. *The owner of this Lot shall without compensation be obliged to allow electricity and water mains to be conveyed across this Lot if deemed necessary by Hangklip Beach Estates Limited and in such manner and position, as may, from time to time be reasonably required. This shall include the right of access to the Lot at any reasonable time in order to construct, maintain, alter, remove or inspect any manhole, channel, conduct, or other works pertaining thereto.*
2. *All buildings and other constructional works commenced shall be completed within a reasonable time and if not so completed shall be demolished.*
3. *No wood or iron buildings or works of any description shall be erected without the consent in writing of the Hangklip Beach Estates Limited and if required the consent of the Local Authority.*
4. *No building shall be erected within 25,19 metres of any road or within 6,30 metres of any other boundary of the land.*

5. *All buildings and other constructional works including fences and garden or other gates shall be of good design and sound construction.*
 6. *No noxious trade or activity shall be carried on the said land.*
 7. *The purchaser shall not have the right to make or cause to be made upon the said land for any purpose other than for use in his own buildings and/or bricks, tiles or earthenware pipes or other articles of such nature nor shall he have the right to dig or quarry any earth, gravel, lime or stone thereon other than for use in his buildings and/or works on the said land.*
 8. *No debris, scrap, or other unsightly material shall be deposited on the said land.*
 9.
 10. *Access to public roads shall be limited to such points on the said boundary as may be approved by the Provincial or Divisional Council through its responsible Officers or by any other competent authority. It shall be the duty of the purchaser to obtain approval of points of access.*
 11. *No sewage shall be disposed of otherwise than by means of a properly constructed septic tank. No pit or bucket latrine will be permitted.*
 12. *The said land may be used for agriculture and the breeding or keeping of domestic animals, poultry and/or bees provided that no goats or pigs may be kept.*
 13. *No shop, public garages or filling stations, business premises, canteens, bioscopes, factory, or industrial buildings shall be erected on the land nor shall any such business or public entertainment be conducted on the land.*
- ❖ **Consent Use** in terms of Section 16.(2)(o) of the By-Law for an Agricultural Industry to accommodate a distillery, tasting room and a farm shop/stall.
 - ❖ **Departure** in terms of Section 16.(2)(b) of the By-Law to relax the street building line from 30m to ± 23,2m to accommodate the proposed application.

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

An application was submitted on 23 January 2018 and withdrawn on 24 June 2020, which is permitted in terms of Section 45.(1) of the then Overstrand Municipality By-Law on Municipal Land Use Planning. The application was subsequently amended in August 2020. The reasons for the withdrawal were to refine and supplement the written motivation for the application and to investigate aspects relating the restrictive Title Deed conditions.

A new application was subsequently submitted during April 2021.

4. SUMMARY OF APPLICANT'S MOTIVATION

LOCALITY

The property is located between the towns of Rooi Els and Pringle Bay. The boundary of the Kogelberg Nature Reserve lies to east of the property. The property is part of an area consisting of nature reserves, farms and towns located within the Kogelberg Biosphere Reserve.

The property is one of a number of small holdings bounded by the Atlantic Ocean to the west, foothills of the Kogelberg Mountains to the east and bracketed by Pringle Bay to the south and Rooi Els to the north. The R44, which is a provincial tarred road, provides the primary vehicular route between Pringle Bay and Rooi Els.

Noteworthy that at one time access up the coast was via Porter Drive, designated as a provincial road. The Provincial Road Authority deproclaimed Porter Drive in favour of the R44. There are people that misunderstood that Porter Drive was closed as a public road, which is not the case. The deproclamation meant that the status of Porter Drive changed from a Provincial Road to Local Authority Road, which the Surveyor General confirmed that this road remains a public road. (See Annexure M.)

LAND USE

Porter Drive is a gravel road gated at the Pringle Bay and Rooi Els sides. The installation of the gates is to prevent poachers from easily accessing the sea from this route. However, residents of the holdings, bird watchers, hikers and cyclist use this road. The developed small holdings consist of eight (8) dwellings and associated outbuildings. The application property dates back to 1964 when the house was built and in 1987 the stable was built as per approved building plan.

The present owners established a vegetable garden, an orchard and keep a few farm animals on the property.

EXISTING ZONING

The application property is zoned Agriculture, which allows for land uses of a commercial nature if considered appropriate to the site and context. The proposed micro-distillery and farm shop/stall are such appropriate enterprises.

The property's zoning of Agriculture is different to the surrounding portions of land which are either Rural Zone 2: Conservation Usage or Undetermined. This clearly distinguished the application property from its neighbours in terms of potential development since the Agricultural Zone has more opportunities with a range of permitted and consent uses.

KOGELBERG BIOSPHERE

The property is located within the Kogelberg Biosphere. According to information released on its website, biosphere reserves are "*new concept reserves - no fences to keep people out and nature in. It is the commitment of local communities, farmers, conservation agencies and local government that protects the magnificent landscapes and unique biodiversity*". It is significant that the Biosphere includes a

number of towns including Rooi Els, Pringle Bay and Kleinmond. The Biosphere is different to a conventional nature reserve where the nature conservation predominates, and human activities are minimised. By contrast the Biosphere Reserve includes within its area a significant permanent and non-permanent population, together with a wide range of economic activities including deciduous fruit farming, wine production, flower production, fruit processing, commercial pine plantations, tourism and even urban development.

The Kogelberg Biosphere Reserve is managed by a private non-profit company and all stakeholders in the region can become members and have an input into activities of the company.

Economic development is not prohibited within the biosphere reserve, but with an emphasis on sustainable development and respecting the environmental characteristics and ecosystems in the area. The proposed micro distillery and associated activities are consistent with the biosphere principles because, among other factors, the proposal is of a small-scale, recycles an existing building, making use of renewable resources and operates in accordance with sustainable production processes.

The Biosphere has heritage status and consists of three portions namely the Kogelberg Nature Reserve and other formally protected areas, which forms the core of the Biosphere. The core is sensitive, pristine with a high level of biological diversity. Around the core is a buffer zone that includes human activities such as agriculture and other activities. The Biosphere concept accommodates both conservation and development ensuring that sensitive areas and biological diversity are adequately protected, but at the same time allowing human settlement and economic development, particularly in the buffer and transitional areas. No negative impacts on either the nature reserve or the broader biosphere reserve is foreseen.

EXISTING TITLE DEED

Before 1984 most properties were not covered by a zoning scheme, but through township establishment conditions pertaining to use of land, building lines coverage etc. After 1984 zoning schemes became applicable to all properties with the sole purpose to regulate the development of land in terms of use, coverage, building lines etc. This has led to the situation that the development parameters of the zoning scheme differ from the Conditions of Title. In such cases both are applicable until such time it is removed or amended.

Portion 141 is held under Deed of Transfer T8920/2005. The Deed contains a number of restrictive conditions including Condition "C." which lists thirteen (13) limitations and requirements. Of particular relevance to this application are Condition C.4., which relates to the distance of buildings from a road and Condition C.13. which relate to uses.

The existing disused stable building which will accommodate the distillery and associated activities is situated 23,2m from the road edge, while the proposed micro-distillery and farm stall/shop are affected by the title deed restrictions against a "shop" and "business premises".

A Conveyancer Certificate was prepared by Nikki Malan of DHM Attorneys, after extensive research which confirms that Condition C in its entirety was imposed for the sole benefit of the original landowner (developer), being Hangklip Beach Estates

Limited (now Hangklip Beach Properties CC). Although the name has changed, it remains the same company.

The authorised representative of the Hangklip Beach Company, Mrs Elizabeth Wallers, has given written permission to remove Condition C.13. in its entirety except for a portion of Condition C.13. namely that “No public garages or filling stations shall be erected on the land”.

The applicant’s conveyancer applied to the Registrar of Deeds in terms of Section 68 of the Deed Registries Act, 47 of 1937. Provision is made for the cancellation of the registration of a personal servitude in pursuance of an agreement between the owner of the land encumbered and the holder of the servitude pertaining a personal servitude. The Registrar of Deeds rejected the application indicating the Municipality must give its consent and that Section 47 of SPLUMA applies.

Section 47 of SPLUMA refers to restrictive conditions and provides for the removal, amendment or suspension with the approval of the Municipal Tribunal. In contrast the Western Cape Land Use Planning Act 3 of 2014 definition of restrictive condition excludes servitudes creating real or personal rights.

The Planning By-Law does not exclude personal servitudes and is thus necessary to apply for the removal of the restrictive conditions.

National Environmental Management Act (NEMA) applicability:

In January 2018, the Western Cape Government of Environmental Affairs and Development Planning confirmed that...*“the proposed conversion of existing stables and extension thereof will not result in the triggering of any listed activities in terms of NEMA EIA Regulations, 201 (as amended), as the development within the 32m of identified wetlands does not fall within the core area of the Kogelberg Biosphere Reserve and is below the applicable threshold. Environmental authorisation is therefore not required from the Department prior to the development thereof.”*

In 2020 the owner built a concrete dam on a portion of land utilised in the past as a paddock. An application has been submitted in terms of Section 24G of NEMA which relates to a person commencing with a listed activity or specified activity without the necessary permission.

THE PROPOSAL

The picturesque location offers an ideal setting for a bespoke distillery, which will appeal to a small niche market and is to be known as Pringle Rock Distillery (PRD). The distillery will be accommodated in the repurposed stables which will be clad in natural rock, with restored original teak window frames from the Old Cape Town Railway station. PRD intends for their product to be 100% natural.

The farms shop component is a small ancillary activity that will occur inside the distillery building. It will consist of local items and will include items serviced at the tasting, such a chocolate, preserves, nuts, biltong, etc. and brand related apparel such as t-shirts and peak caps.

In addition to producing small batches of high-quality whisky and gin in handcrafted copper pot stills, an authentic experience with tastings and private tours of the distillery will be offered to guests. The tours and tastings will be by appointment only.

The guests will be collected from 16 Central Road in Pringle Bay (Erf 378) and transported in a minibus or safari type vehicle via Porter Drive. The Pringle Bay access will be utilised. Each group will consist of 12 people and take 2-3 hours. Parking of 12 vehicles will be accommodated at Erf 378. The tours by appointment only and parking of private vehicles at the aforementioned erf will ensure privacy of the small holding owners and mitigate possible disturbance of the fauna and flora.

The tasting room will have a typically whisky feel with aged wood, leather, organic and natural materials. The tour will open with a brief history/education of the area. The visitors will proceed to the Still House/Distillery where the copper pots are still kept, and the making process will be explained. Visitors will be able to view the bonded storage area where the barrels are kept. Thereafter they will experience a tasting of 4 to 5 PRD brands. Bottles of whisky and or Gin can be purchased on the way out.

The Tasting Room also has its unique history. Old wooden door frames will be restored. PRD has sourced antique teak window frames dated from the mid 1800's. It also intends to purchase casks from a local cooper. The stable will retain its rustic aesthetic and will be visually unobtrusive. PRD intends to apply for both an "on-site" and "off-site" consumption license. To qualify for an "on-site" license, snacks need to be served, which will be sourced locally and attribute to the local rural economy. An off-site license is required for guests to purchase bottles of whisky and or Gin. Production will occur four (4) days a week with the tours being conducted on weekends. The hours of operation will be between 10:00 and 18:00.

OVERVIEW OF THE DISTILLATION PROCESS

The detail of the process is being discussed on pages 15 and 16 of the motivation report. A shortened version will be dealt with in the discussion thereof.

The ingredients used in the process consist of grain, yeast and water.

The primary steps are:

- ✚ **mashing** - which is the mixing of grain with water;
- ✚ **fermenting** - which is the addition of yeast to the liquid to produce a weak alcohol;
- ✚ **distillation** - which is heating the liquid to a steam;
- ✚ **condensing** it to a concentrated liquid, and
- ✚ **ageing** after the concentrated liquid has been put into oak barrels for a minimum of three years.

The same spirit that is produced in the whisky process, will be produced for gin and will be piped into a ginning still where it will be distilled for a third time. This still will contain a ginning basket that will hold botanicals such as citrus, flora, spice, herbs etc. PRD will use some of the local fynbos, which is cultivated on the subject property in this process. All bottling will take place on the property and will be packed and transported from the farm in a small delivery vehicle. The ginning process takes two weeks.

SPECIFICS ABOUT THE DISTILLERY

The operation will be as follows:

- One spirit run from 330kg of grain barley will produce 250 litres of spirit for barrelling.
- One bakkie load per week. Full production in 8 years' time will progress to three bakkie loads per week.
- At full production, about 1000 litres of whisky and gin will be produced per month.
- The heating system for the stills is a hot water heater running from wood chips. It does not produce steam, but hot water flowing through in heating coils. The wood chips will be sourced from aliens hacked in the environment.

It should be noted that although the property is zoned Agriculture Zone 1 and can be used for cultivation, the owner does not wish to engage in commercial cultivation of grains due to the sensitivity of the site and limited soil potential.

PROJECTED EMPLOYMENT

The staff will consist of a driver, administrative assistant, groundsman and seasonally the PRD may employ part time tour guides and assistants in the tasting room when necessary. The marketing, labelling, and advertising are outsourced. Only the groundsman will reside on the property of the staff component.

SERVICES

⚡ Electricity

The property makes use of solar power. This puts a limitation on the growth of the distillery. The facility will require 10Kw which will require additional solar panels and batteries.

⚡ Water

Approximately 3000 litres of water are required for one spirit run and only ground and surface water will be utilised. The water used during the process is for the closed-circuit cooling system. The water remains in the pipe and does not decrease in quantity if it comes into contact with anything else.

The Breede Gouritz Catchment Management Agency's letter dated 17 September 2018 states as follows: *"the property may qualify to abstract a maximum volume of 400m³ per hectare per annum for irrigation, industrial and or commercial purposes. This equates to 8762,08m³ per annum" e.g., 400m³ x 21,9052ha.*

This is sufficient for the purposes of a micro-distillery.

⚡ Sewerage

A septic tank is used for sewage disposal. It is anticipated that the existing tank will be able to cater for additional personnel and visitors.

⚡ Waste Disposal

A Waste Management Plan has been prepared by the Green Africa Group. (See Annexure P). The Plan is summarised on pages 18 to 20 of the applicant's motivation. The key principle is that an integrated approach to the operation consisting of reduction in volumes of waste as a priority. If reduction is not feasible,

the maximum amount of waste is to be recycled. Waste that cannot be recycled is to be disposed of in the most environmentally responsible manner possible.

The following waste is generated by the distillery process:

➤ **Solid waste**

This consists of grain husks and fibre, rich in flavour, vitamins and other nutrients suitable for human and animal consumption. No more than 300kg waste will be produced per day that will be used on the property and or at local farmers for feed and bakeries.

➤ **Packaging waste**

Packaging material from received goods will be returned to the suppliers. Non-returnable waste will be sorted before disposal or recycling such a plastics and cardboard boxes. No more than 20kg is envisaged.

➤ **Liquid waste**

This waste consists of three components e.g., dead yeast, water and grand sediment. Due to its high nutrient content, it is suitable as a supplement for animal feed. Approximately 100 litres will be produced per week. The relatively small quantities of grey water (1000 litres per week) will be held in a separate holding tank for irrigation purposes.

➤ **Distilled Condensate Waste**

Small amounts of distilled condensate are produced (10 litres per week), high in methanol and ethanol with less than 10% water and can be used as a cleaning solvent directly in the distillery for cleaning and equipment sterilization.

➤ **Low Volatility Organic components**

Limited amounts (10liter) per week are produced and are used in the next spirit run.

➤ **Wastewater**

Reverse Osmosis

About 8% of water used for the dilution and blending of spirits will become wastewater and will be disposed of in the septic tank.

➤ **Cleaning water**

The water used for cleaning, approximately 200 litres per week will be disposed of in the septic tank.

➤ **Other Wastewater**

Urinals, toilets, etc. will be disposed of in the septic tank.

ACCESS AND PARKING

Owners:	Two (2) bays
Staff (3):	Three (3) bays
Deliveries/services:	One (1) bay
Visitors:	Two (2) bays for vans bringing the tourists/visitors from Pringle Bay.

FORWARD PLANNING**🚧 Western Cape Provincial SDF, 2014**

The SDF has 14 policies and 3 are relevant to the application, namely R1, E2 and S1.

Policy R1: Protect Biodiversity and Ecosystem Services

The Western Cape has implemented a system of Critical Biodiversity Areas (CBA) mapping system which delineates the biodiversity network. The aim is to sensitise the public, owners and local authority to the importance of these area. EADP (Environmental) confirmed that no Environmental Authorisation is necessary due to the limited development footprint and low impact operation. The remainder of the property be managed to support indigenous flora and fauna and serve as an ecological corridor for the Kogelberg Biosphere Reserve.

The proposal is consistent with the Policy.

Policy S1: Protect, Manage and Enhance Sense of Place, Cultural and Scenic Landscapes

The aim is to prevent settlement encroachment into agricultural areas, scenic landscapes and biodiversity priority areas, especially between settlements and along coastal edges and river corridors. It promotes smart growth by infill, intensification and redevelopment. The proposed development will not constitute urban sprawl but will make use of the existing building and undertake an activity that is consistent with the rural character of the area which will attribute to the Sense of Place.

The proposed development is consistent with the policy.

Policy E2: Diversify and Strengthening the Rural Economy

The policy aims to incorporate rural considerations into Municipal IDP and SDF's and relates to development outside the urban edge. The policy states that "compatible and sustainable rural activities ... (generate positive socio-economic returns and do not compromise the environment or ability of the municipality to deliver on its mandate) and of appropriate scale and form to accommodate outside the urban edge (except bona vide wilderness areas). There are many examples in the Overberg District of wineries, breweries and distilleries that operate outside the urban edge and play an important role in the local economy.

The proposal is in complete compliance with the policy.

🚧 Overstrand Growth Management Strategy (2010)

The strategy aim does not impact on the proposal and has no significance for the application.

🚧 Overstrand Spatial Development Framework (2020)

The SDF recognises that "a diversity of agricultural, tourism, commercial and industrial activities occur in strategic locations throughout the Overstrand's rural and urban settlements, providing a range of local employment opportunities. The

proposal is in general in accordance with the spirit and intent of the SDF and will in a small way assist with the land use diversification and stimulate appropriate economic activity.

Overstrand Municipality Land Use Scheme

The property is zoned Agricultural Zone 1 and is also situated in the Environmental Overlay Zone, specifically the Coastal Protection Zone. In terms of the Land Use Scheme an agricultural industry includes a distillery. An Agricultural Industry is only permitted as a consent use and has to comply with Section 16.10.2 of the Land Use Scheme. A site development plan was submitted with the application and is compliant.

The farm shop/stall is a consent use referred to as a building, located on a farm where a farmer sells produce to the general public. The application is not a shop in the traditional sense, it will sell mementos of the distillery, local produced produce and preserves and will only be available for sale to the visitors to the distillery.

Environmental Overlay Zone

The property is located in the Coastal Protection Zone, however, do not constitute any of the prohibited activities as per Schedule A, but includes activities only permitted by Council i.e., commercial and construction or placement of any permanent object, building, shelter, pathway or structure as in Schedule B. The requisite consent is applied for in terms of this application.

Deletion and the Amendment of Conditions of Title

In order to facilitate the proposed development, it was initially requested to delete clause C.4. which relates to the street building line, and C.13. that relates to the land use.

Hangklip Beach Company was approached for its consent and during the process it was decided that there was no reason to retain the other conditions except for a portion of clause C.13. namely that *“No public garages or filling stations shall be erected on the land”*. Since Hangklip Beach Company no longer wishes to enforce the other conditions, and the owners of the property have no intention to erect or operate a public garage or filling station, an agreement was reached between the parties.

Application is made to **delete** Conditions C.1., C.2., C.3., C.4., C.5., C.6., C.7., C.8., C.10., C.11., C.12. and to **amend** Condition C.13.

History of Condition C:

On 21 December 1960 Hangklip Beach Company registered a Certificate of Registered Title (No. T20205/1960) to create Portion 133 of the Farm Hangklip No. 559. Portion 133 was subdivided into a number of smallholdings as per SG diagram No. 2974/1960. In 1964 Portions 141 and 142 were sold together and both properties were held by the same Title Deed. Upon inspection of the Title Deeds of the neighbouring properties, it seems that the other subdivided portions of Portion 133 were registered with different conditions, therefore not uniformly created.

Moreover, Condition C is registered in favour of a specific, identifiable entity, namely Hangklip Beach Company which was the transferor and the owner of the Remainder. Significantly to note, that the Condition C was imposed by the Hangklip Beach Company for its sole benefit, in its favour. The right was not reserved in favour of successors in title or in favour of other owners in the sub-divided Portion 133.

If the condition had been reserved for successors in title, or if the words "sole benefit" were omitted from Condition C, then it could have been concluded that a praedial servitude is applicable. This did not occur, and the Conveyancer concluded that a praedial obligation was not intended.

Hangklip Beach Company consented to the title removal of Condition C, except for a portion of Condition C.13.

MOTIVATION FOR DELETION AND AMENDMENT OF RESTRICTIVE CONDITIONS:

Clause No	Subject Matter	General Motivation for Deletion
1.	Gives Hangklip Beach Estates Ltd. (HB) the right to convey electricity and water mains	HB does not intend to convey electricity and water mains across the Lot. HBEL does not intend to enforce this clause.
2.	Relates to completion time for building works	National and Municipal laws now deal with building works. HB does not intend to enforce this clause.
3.	Relates to wood and iron buildings	National and Municipal laws now deal with building works. HB does not intend to enforce this clause.
4.	Relates to building restrictions from any road or boundary.	Municipal laws now deal with building lines. HB does not intend to enforce this clause.
5.	Relates to design and sound construction	National and Municipal laws now deal with building works, including design and construction. HB does not intend to enforce this clause.
6.	Relates to noxious trade or activity	National, Provincial and Municipal laws now deal with noxious activities. HB does not intend to enforce this clause.
7.	Relates to brickmaking, quarrying and other activities	National, Provincial and Municipal laws now deal with the activities. HB does not intend to enforce this clause.
8.	Relates to debris, scrap and unsightly material	National and Municipal laws now deal with such matters. HB does not intend to enforce this clause.
9.	Clause previously deleted	Not applicable
10.	Relates to access to public roads	Provincial and Municipal laws now deal with such access. HB does not intend to enforce this clause.
11.	Relates to sewage disposal	National and Municipal laws now deal with such matters. HB does not intend to enforce this clause.
12.	Relates to the use of land for agriculture	National and Municipal laws now deal with such matters. HB does not intend to enforce this clause.
13.	Restricts a range of uses including public garages or filling stations.	National and Municipal laws now deal with such matters. HB wishes only to restrict public garages or filling stations.

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.

These conditions do not have direct quantifiable financial value for the Hangklip Beach Company. Condition C is in effect “catch all” restrictions that allow Hangklip Beach Company to control the form, extent and scale of development. However, 56 years have passed, and the company no longer has any effective involvement in this area. The proposed distillery, which constitute a business premises is generic and is normally understood to include a multitude of commercial uses. The boutique distillery is an appropriate activity in the rural area, in the same way that wineries and boutique breweries are accepted as part of the rural landscape.

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

There are no longer any personal benefits that accrue to Hangklip Beach Company.

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

The removal of the restrictive condition will enable the applicant to operate a micro distillery.

The social benefit of the restrictive condition remaining in place.

Conditions C.4. and C.13. relate to building placement and land use. There is no social benefit to retain C.4. since the structure has been in existence for many years and the non-compliance with the Clause would have manifested itself by now. The building is set back 23m from the road and therefore has no negative impact on the rural sense of place or road safety.

There is social benefit of retaining C.13. because it will prevent the establishment of a legitimate and desirable small-scale enterprise that fits in well with the rural character. If the condition is retained the benefits to the local economy and employment will not materialised.

The social benefit of the removal of the restrictive condition.

Condition C. was inserted for the sole benefit of the Hangklip Beach Company and not for the benefit of the general public or community. Such private restrictions are no longer appropriate or in the public interest considering there are town planning mechanisms such as zoning schemes and Spatial Development Frameworks.

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.

The rights of Hangklip Beach Company will not be materially affected by the removal of Condition C.

CONSENT USE

Application is submitted in terms of Section 16.(2)(o) of the Planning By-Law 2020 to obtain Consent for the establishment of an “*agricultural industry*” and a “*farm shop/stall*” on Portion 141 of the Farm “Hangklip” No 559 Caledon, as provided for in Section 5.1.1(b) of the Land Use Scheme (2020).

Application is also submitted for Consent to permit “Commercial” activity and “Construction or placement of any permanent object, building, shelter, pathway or structure”, as required by the Environmental Overlay Zone Regulations.

Motivation for the Consent is as follows:

- The property is zoned Agricultural Zone 1 and an agricultural industry and farm shop/stall is permitted in this zone by consent. The definition of Agricultural Industry includes a distillery, and the Land Use Scheme therefore makes provision for distilleries in such a zone.
- The proposed agricultural industry is not a regular industry which is characterised by larger scale, commercial operations with greater power, water, and waste disposal requirements. This is an agricultural industry, run as a small family concern specialising in a high-quality crafted product, making use of sustainable local resources such as solar energy, water from the well, wood from cut alien vegetation and flavouring from fynbos grown on the property. The enterprise will promote tourist-related activities.
- The proposed farm shop/stall is a small-scale ancillary use to the distillery. It will sell produce from the farm and mementos related to the distillery. The number and range of products will be limited, and the target market will be visitors on tour to the distillery. This is therefore not a retail node or magnet and will not attract customers in the way a conventional shop would do.
- An agricultural industry and farm shop/stall are not automatic use rights in the Agricultural Zone 1 in terms of the Land Use Scheme, but it has been established that such uses, including a distillery, could in principle be granted if the scale and operation is appropriate for the site and context. This report has demonstrated that the proposed micro-distillery and ancillary sale of goods is appropriate for the site and context.
- The accommodation of the micro-distillery in the disused stables represents a “recycling” or repurposing of the structure to accommodate a more productive and appropriate use, while still respecting the rural character of the area.
- The micro distillery can be accommodated with minimal improvement to existing utility services and will not impose a burden on the Municipality. The small amount of waste will be disposed of in a sustainable manner and will not require municipal waste removal services.
- Porter Drive is classified as a municipal street or road, which means that all are legally entitled to use it without restriction. Nonetheless, the proponents of the distillery will respect the access control measures that they themselves have been instrumental to put in place. Tour groups will be shuttled to and from the distillery and raw material supplies will only require several deliveries per month with a “bakkie”. This means that the distillery and ancillary uses will have little impact in terms of traffic generation, road operations and road safety.
- The micro-distillery will strengthen, albeit in a small way, the rural economy. In these economically stressed times resulting from recession and the Covid-19 pandemic, individuals need to do all they can to stimulate the economy. All legitimate and desirable commercial activities should be supported and encouraged by the Municipality. In this case the land is a suitably zoned land unit

and there are no reasons to refuse the application. A desirable and appropriate enterprise is proposed which will add to the economic sustainability of the area.

- The small-scale of the micro-distillery and farm shop is appropriate for this relatively secluded area. The enterprise does not require a large staff complement nor land area. It is designed to produce relatively small quantities of premium products and the business model does not require ever increasing volumes to increase profitability. The sustainability of the micro-distillery is linked to the quality of the spirits produced and not the quantity.
- Based on the extensive information provided in this motivation report about the subject property and proposal it is clear this is a desirable and appropriate enterprise to be established on the property, and that granting of Consent is reasonable and desirable.

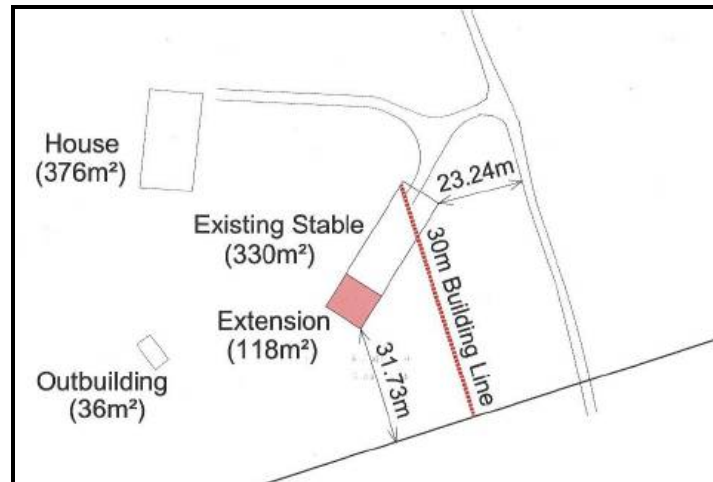
DEPARTURE

Application is submitted in terms of Section 16.(2)(b) of the Planning By-Law 2020 to obtain a regulation departure from Section 5.1.2.(b)(i) of the Land Use Scheme (2020) to reduce the street building from 30m to 23.2m.

Motivation for the reduction of the Porter Drive building line from 30m to 23.2m is as follows:

- The regulation departure does not apply uniformly to the Porter Drive street boundary, but only to a specific portion of the disused stable structure as indicated in the plan overleaf.
- Only a relatively small portion of the existing structure is within the street building line. The remainder of the structure is positioned more than 30m from Porter Drive. Note that the planned extension to the structure is on the ocean side of the structure and unaffected by the street (or common) building line.
- As the footprint of the structure is not built parallel to Porter Drive the impact of the reduced building line is negligible.
- The structure was built in accordance with an approved building plan (refer to **Annexure 6**) and therefore presumably in accordance with the then applicable planning regime. It would be grossly unfair to the current owner if this departure is not approved for an existing structure that was built by a previous owner.
- The distance the structure has been setback from the road edge is more than sufficient to ensure the safety of road users (both vehicles and pedestrians) and continuity of a rural sense of place.
- There is no valid reason to require the landowner to demolish the triangular portion of the building that is situated within the building line.
- The proposed amendments will have no significant impact on the public, adjoining neighbours or the Overstrand Municipality.

Plan showing the required Departure



Planning Principles

➤ Spatial Justice

The application does not relate to the provisioning of housing.

➤ Spatial Sustainability

An existing structure with a minor extension will be utilised by the owner. The re-use of the building with a productive enterprise that is well managed and appropriate is consistent with the principle. No environmental authorisation is required, and the proposal does not result in urban sprawl.

➤ Efficiency

The proposal involves the recycling or repurposing of an existing structure. The use of water from a well, solar energy and wood from alien vegetation, fynbos botanicals grown on-site, and sustainable waste management all contribute to the efficient use of existing resources.

➤ Spatial Resilience

The consent use mechanism provides a degree of flexibility and allows the Municipality to exercise discretion in administering the Land Use Scheme. No significant environmental impact is anticipated due to the small scale of the enterprise.

➤ Good Administration

The application is submitted in terms of the Municipal Planning By-Law 2020.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Government Gazette	Yes	30 April 2021	4 June 2021
Local newspaper	Yes	29 April 2021	4 June 2021
Registered notices	Yes	29 April 2021	4 June 2021

Ward councillor	Yes	29 April 2021	4 June 2021
Total comments	143		
Total letters of support	22		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			Yes
Was the application processed correctly (if no, elaborate below):			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			Yes

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

Name	Date received	Summary of comments
Building Control	29/04/2021	No objection. Any building plan application has to comply with all applicable law.
Tourism Department	30/04/2021	<ul style="list-style-type: none"> ▪ Supports this application for commercial activity. ▪ The area between Rooiels and Pringle Bay is well placed to benefit from tourist activity and the area lacks products such as the one proposed in this application for a micro distillery. ▪ Clarence Drive is a scenic route followed by many visitors and this attraction will add value to our offerings and economy.
Fire Department	29/04/2021	No objection subject to compliance with the provision of SANS 10400-A 2016, 10400-T:2020 and the By-Law relating to Community Fire Safety.
Engineering Services	06/08/2021	See Annexure G.
Environmental Management Services	17/06/2021	See Annexure H.
Waste Management	04/08/2021	See Annexure I.
Cape Nature	01/09/2021	See Annexure J.
Western Cape Government: EADP (Environmental)	22/10/2021	See Annexure K.
Western Cape Government: EADP (Planning)	26/05/2021	See Annexure L.

Western Cape Government: Transport & Public Works (Roads)	18/05/2021	See Annexure M.
Western Cape Government: Agriculture	15/11/2021	See Annexure N.
BGCMA	15/06/2021	See Annexure O.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION, THE APPLICANT'S RESPONSE AND THE MUNICIPAL TOWN PLANNER'S RESPONSE THEREON

OBJECTOR	OBJECTION	RESPONSE
AMENDMENT AND/OR DELETION OF TITLE DEEDS UNDESIRABLE		
1, 2, 3,4, 5, 10, 25, 37, 40, 43, 45, 47, 50, 52, 53, 56, 57, 62, 65, 72, 92, 94, 113, 107, 114, 120, 127, 129, 132, 139, 139, 141, 155, 160, 163, 171, 173, 177, 178, 179, 180	<ul style="list-style-type: none"> • The removal of the conditions of title applied for is not in the public interest because they were specifically included to protect the area between Pringle Bay and Rooi-Els from inappropriate development. • The contention that these conditions were only imposed because at the time no legal mechanisms or zoning schemes existed which regulated development is rejected. • The legal standing of the remaining member of Hangklip Beach Estates (HBE) is contested. • That the conditions to be deleted are only in favour of HBE is disputed. • Reference is made to two judgments, namely <u>Van Rensburg v Naidoo</u> 2011 (4) SA 149 (SCA) and <u>Van Rensburg NO v Equus Training and Consulting CC and Camps Bay Ratepayers</u> ('Equus Training') and an order in <u>Ex Parte GF Kirsten</u> (case no 17268/2008) in support of the contentions made. • The title deed conditions should be in favour of both HBE and the Municipality as is the case with other properties in the area. • The consent of the remaining member of HBE is insufficient to remove and/or amend conditions. This view is supported by the Registrar of Deeds. Only the Municipality can approve the amendment and/or deletion of conditions. • It is unnecessary to amend and/or remove so many of the conditions to permit the establishment and operation 	<ul style="list-style-type: none"> • Before 1984 most properties located in the districts and small villages were not covered by formal zoning schemes. Instead, township conditions of establishment were imposed by the Administrator, the provincial authority responsible for township establishment. These conditions usually included specifications relating to use, building lines, coverage etc., and included as reciprocal title deed conditions on the registration of all erven falling within the township established. In some cases, subdivision of land did not involve a prior township establishment process. Sometimes conditions of subdivision were imposed by the local authorities and included as title deed conditions, while sometimes this did not occur. Sometimes land developers included conditions in the title deed that are private conditions, and not conditions imposed by the authorities. • After 1984 zoning schemes became applicable to all properties in the Western Cape and these zoning schemes included provisions to regulate the development of land in terms of use, height, building lines, coverage etc. This created a situation where some properties are affected by zoning regulations relating to use, building lines, height and coverage, and also by different conditions in the title deed dealing with use, building lines, height and coverage. In such a

	<p>of the proposed Distillery.</p> <ul style="list-style-type: none"> • Only C4 should be removed while C13 should only be amended by the removal of the word “shop”. It is contended that the proposed amendment of C13 is a “red herring”. • The remaining conditions should remain. • Why should C1 be removed? It deals with the water pipeline servicing Rooi-Els. 	<p>situation either sets of conditions apply, until one or other is amended.</p> <ul style="list-style-type: none"> • In order to facilitate the proposed development, it was initially considered necessary to delete one condition of title being clause C(4) which relates to the street building line, and to amend another condition being clause C(13) which relates to land use. These clauses were imposed by and for the benefit of the original landowner (developer), being Hangklip Beach Estates Limited (Hangklip Beach Company). Hangklip Beach Company was approached for its consent to make these deletions / amendments. During this process Hangklip Beach Company decided that there was no reason to retain the other conditions save for a portion of clause C(13), namely that “No public garages or filling stations shall be erected on the land”. Since Hangklip Beach Company no longer wishes to enforce the other conditions, and the owners of the property have no intention to erect or operate a public garage or filling station, an agreement was reached between the parties. The relevant documentation is contained in Annexure 8 of the motivation report. • Like the definition in SPLUMA, the definition of “restrictive condition” in the Planning By-Law does not exclude personal servitudes, which it could have done based on the definition in LUPA, which is the provincial legislation passed in terms of Schedule 1 to SPLUMA. There is a resultant uncertainty in the Western Cape about how to remove or amend title conditions which are “servitudes creating real or personal rights”. To
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		<p>move past this uncertainty, it is considered necessary to apply to the Municipality to amend and delete the relevant restrictive conditions in terms of Section 16(2)(f) of the Planning By-Law and to follow the procedures set out in sections 35 and 36 of the By-Law.</p> <ul style="list-style-type: none"> • Motivation in terms of Section 35(4) of the Planning By-Law was provided for in the application for the deletion and/or amendment of the restrictive conditions of title and it was concluded that the conditions should be deleted and/or amended as proposed. • The following bullet points were provided by our client's legal consultant (Advocate Adele Erasmus): • Caution is to be exercised when referring to the Van Rensburg case for two reasons. • First it dealt with restrictive conditions inserted in title deeds in favour of all erf-holders on the establishment of a township. The preamble to the restrictive conditions states: "C. SUBJECT FURTHER to the following conditions contained in Deed of Transfer ... imposed by the Municipality ... in terms of the provisions of Township Ordinance No 13 of 1927 <u>in favour of itself [the Municipality] and any erf-holder in the Summerstrand Extension Township</u> (and subject to alteration and amendment by the Administrator)." Adv's Erasmus emphasis. • The preamble to the restrictive condition in the title deed for 141/559 (T8920/2005) provides: "C. SUBJECT FURTHER to the conditions contained in Deed of Transfer No T23786/1964 imposed by
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		<p>Hangklip Beach Estates Limited <u>for is (sic) sole benefit as owner of the remaining extent of the Farm "Hangklip"</u> ... and held by it under Certificate of Consolidated Title No. T3720 dated 17 April 1937, provided always however that if in the said Company's opinion it is expedient the Company may suspend or relax restrictions contained in any of such conditions and then subject to such conditions as the Company may impose:" Adv's Erasmus emphasis.</p> <ul style="list-style-type: none"> • The Trust, at substantial cost, instructed Ms Malan, an experienced conveyancer, to make enquiries at the Cape Town Deeds office and conduct an examination of the deeds relating to 141/559. Not because it wanted "to take 'short cuts'" – these derogatory comments are rejected as being unfounded on the objective facts – but to establish the legal status of the restrictive conditions in its title deed. This analysis is contained in Annexure 12 to which all the title deeds in relation to 141/559 are attached. • No matter how many the objectors would want it to be otherwise, the condition speaks for itself. It is a personal servitude enforceable by the HBE. It is not what the SCA in Van Rensburg referred to as a praedial servitude, namely restrictive conditions which are for the benefit of all other erven in a township, unless there are indications to the contrary. • Although the Trust, as they were entitled, obtained the consent from HBE, the Registrar has rejected the consent, saying the Municipality must also give its consent.
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		<ul style="list-style-type: none"> • That he refused the consent is not because it was unlawful but because he believes the provisions of SPLUMA apply. The question of the removal of restrictive conditions registered in favour of a person as opposed to reciprocal title deed holders is a developing area of law within the context of the new planning legislation. The Trust has applied to the Municipality and motivated its application. This will obviate any uncertainty. Accordingly, section 8 of the motivation report contains a detailed motivation in terms of the relevant criteria. • Any negative aspersions cast on the integrity of the Elves' character for obtaining HBE's consent is rejected as unfounded and, in the context of the motivated removal, is irrelevant and should be rejected by the decision-maker. • Caution is to be exercised secondly, because Van Rensburg and the further cases respondent no 178 raises, i.e., Equus Training and Camps Bay Ratepayers dealt with the removal of restrictive conditions under the Removal of Restrictions Act 84 of 1967 which was repealed by s 59 of SPLUMA effective 1 July 2015. • It is contended that the Applicant has not met the onus of proving the desirability of removing the restrictive conditions. The focus on desirability as the sole criterion is misplaced. • Section 2(1)(a) of the Removal Act provided the criteria in the following terms: "Whenever the Administrator ..., is satisfied (a) that it is desirable to do so in the interest of the establishment or development of any township or in the interest of any area, ...or in the public interest". Section
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		<p>2(1)(a) in the terms was not repeated in the legislation with replaced the Removal Act.</p> <ul style="list-style-type: none"> • In circumstances when municipal officials exercise a discretionary power which, depending on its use, could improperly affect rights, it is open to the legislature to structure the exercise of their discretionary power by stipulating the mandatory considerations a decision-maker must consider before deciding. • Section 35(4) of the Planning By-Law provides that legislative guidance by specifically identifying the relevant criteria the Municipality must consider when applying the desirability criterion in section 66(1)(c) of the Planning By-Law. • Whether the application should be refused or granted is a matter for the decision-maker's judgment and discretion having regard to the general criteria in s 66 which in addition to desirability, incorporates amongst other considerations the Municipality's SDF, s 42 of SPLUMA and Chapter VI of LUPA, and the specific criteria in s 35(4), • Decisions about restrictive conditions are now to be taken by the authority responsible for land use management at municipal level. This ensures that such decisions accord with the broader objects of spatial planning and land use management as determined by a municipality. The removal, amendment, or suspension of restrictive conditions must accordingly align with the broader objects and principles set out in the legislation. • Ex Parte Whitfield 2017 (5) SA 161 (EP) held that these statutory mechanisms permit the Municipality
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		<p>to consider the broad set of criteria now provided in the applicable legislation and to decide such application, having full and proper regard to the public interest where the consent of all affected parties cannot be or has not been obtained.</p> <ul style="list-style-type: none">• As to the issue of consent, some of the objectors contend that based on the Order in Ex Parte GF Kirsten and a letter by the Western Cape Government that praedial servitudes can only be removed with the consent of the owners of the dominant tenements in whose favour the restrictive conditions exist.• That is not correct. A distinction needs to be drawn between the two ways in which restrictive conditions can be removed. Either in terms of an order by a court or pursuant to the then applicable Removal of Restrictions Act (decided by Province) or the now applicable provisions in the Planning By-Law (decided by the Municipality). Section 16(2)(f) of the Planning By-Law read with s 35 authorises the bringing of an application and empowers the Municipality to amend, vary or remove restrictive conditions.• Ex Parte Whitfield held that the High Court removes, varies, or suspends a restrictive condition, given the contractual or servitudinal nature of these conditions, a Court cannot do so unless all the parties whose rights and interests are regulated thereby, consent. A Court has no independent or inherent jurisdiction to change the conditions. Its role is merely to serve as a court of enquiry to establish whether all the interested parties have by mutual agreement or unilateral
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		<p>waiver abandoned their rights. If the Court is satisfied that this is so, it issues a declarator which authorises the Registrar of Deeds to affect an appropriate endorsement of the title deeds in accordance with the provisions of the Deeds Registries Act.</p> <ul style="list-style-type: none"> • The Court process is different to the statutory amendment process authorised by SPLUMA, LUPA, and the Planning By-Law. Ex Parte Whitfield held that the statutory and court processes can co-exist. However, in circumstances such as here, where a land use application is required for consents and a departure, to facilitate integrated administrative decision-making in relation to land development there is no reason to engage the courts to have a restrictive condition removed. The Municipality can determine the removal application simultaneously with other land use applications made in respect of the subject property. • What should also not be confused is the giving of consent and the giving of notice. • The order in Ex Parte Kirsten and the Province's letter addresses the requirement that proper notice be given. It is incorrect to say that because notice is required to be given that the consent of everyone to whom notice is given must consent. • Section s 35(3) of the Planning By-Law stipulates how notice is to be given. The Trust has complied with its provisions. As addressed elsewhere, registered notice of the application was given, not only to the owners of the farms immediately surrounding 141/559 but to all the portions of Farm
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		<p>559 as depicted in Figure 1 (in the motivation report) as well as to the ratepayers and other associations. E-mail notification was sent to a much broader audience. The municipal decision-maker must consider whether proper notice has been given as required by s 35(3) of the Planning By-Law and if so, it must consider all objections raised by interested parties.</p> <ul style="list-style-type: none"> • Ex Parte Whitfield held [para 21] that there is no requirement in SPLUMA that parties whose rights are affected by the removal or variation of a restrictive condition must consent to such removal or variation. Consent is not a criterion for the exercise of the discretion granted by the legislation to the municipal decision-maker. Consent of everyone is only required in a court enquiry. • It is accordingly denied that because the immediate neighbour has refused its consent that the Municipality is precluded from approving the application. • It is to be remembered that the removal of a restrictive condition serves merely to remove an impediment to use. It does not confer any use rights upon the owner. Such use rights are conferred by approval of a defined land use pursuant to a land development application made in terms of the relevant legislation. • As to the Trust's motivation, the specific criteria in s 35 are comprehensively addressed at para 8, pp 28 to 33 of the motivation. It is denied that Applicant relies solely on considerations which the Courts have ruled irrelevant because 1) the cases were decided on different legislation, 2) the
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		comment in Van Rensburg was not the basis on which the Court decided the matter, 3) in relation to Equus Training, while it is correct that a zoning scheme as a matter of law does not override restrictive conditions, it is not unlawful to amend them and it is denied that the Applicant's sole motivation is that the conditions have been replaced by the zoning scheme.
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Town Planner's response

The removal of defunct conditions modernises the Title Deed, especially taking into consideration that the conditions is regarded as a personal servitude. In terms of the By-Law as amended, there is not restriction on an applicant to request the removal or amendment of the conditions as long as it complies with Section 35 of the By-Law. Section 35.(1) stipulates *"the Municipality may on application in terms of Section 16(2) by notice in the Provincial Gazette amend, suspend or remove, either permanently or for a period specified in the notice and either unconditionally or subject to any condition so specified, any restrictive condition."*

Section 35.(3) stipulates to whom the notice must be served. The Municipality has distributed the application to all objectors as per the previous application. The Municipality has undertaken in discussion with the objectors of the original application that they will be notified.

Section 35.(4) was extensively dealt with by the applicant and thus complies with the aforementioned.

The applicant motivated the removal of Condition C extensively on pages 30 to 33 of the motivation report. The conditions are outdated and are not to the benefit of the community, thus serve no purpose to be retained. The holder of the rights, Hangklip Beach Company, has given her consent for the application for the removal of restrictive Title Deed conditions.

With reference to the interpretation of the Court cases as indicated by the objectors and applicant, this aspect will be dealt with by Legal Counsel.

THE CURRENT APPLICATION IS NOT “NEW”		
OBJECTOR	OBJECTION	RESPONSE
1,4, 62, 70, 104, 107, 113, 140, 147, 167, 177, 178, 180,	<ul style="list-style-type: none"> • It is disingenuous to state that the previous application was withdrawn when in fact it was rejected as the subject property needed to be rezoned first to permit a Distillery. • The current application is very similar to the previous application, though it is elaborate and cleverly written to obfuscate that the proposal is for a noxious and dangerous industry in a remote and ecologically sensitive area. • The MPT on 31st October 2018 resolved that the previous application be referred back as a legal opinion was awaited. It is presumed that this legal opinion was not favourable and that the Town Planning Branch finalised its recommendation before the legal opinion was requested by the MPT. • As the current application is essentially the same as the previous one, it is not considered to be procedurally fair or transparent and gives rise to fears of collusion between the applicant and town planner (presumably Ms van der Stoep). • What is stated in the application as to why the application was withdrawn is pure obfuscation and the “real” reasons were not disclosed, and that alone should be reason enough for the MPT to refuse this application. 	<ul style="list-style-type: none"> • This is a new application and the process for notification and assessment must start afresh based on the information provided in this report. • The current application does make use of information gained during a previous application process submitted on 23rd January 2018 and subsequently withdrawn on 24th June 2020. • The reasons for the withdrawal were to refine and supplement the written motivation for the application and to undertake further investigations in relation to the restrictive conditions of title. • The current application needs to be considered on its own merits. The contention that the current application is simply a “repackaging” on the previous application is fallacious. • The application provides all the information required for an informed decision to be made. The assertion that the application is attempting to “hide” any aspect of the proposed micro-distillery is rejected. • The application has been submitted in terms of the relevant legislation and publicised in accordance therewith. In no way has the applicant attempted to circumvent any aspect of the application process. • Any untoward relationship between the officials of the municipality and the applicant are also rejected.

Town Planner's response

The previous application was withdrawn on 24 June 2020. Once an application is withdrawn, the file is deemed closed and a new application needs to be submitted and redistributed to the public. The Municipality has given the undertaking in discussions with objectors on the previous application that should a new application be lodged; they will be informed. A new application was lodged which substantially had more information and extent of the conditions to be removed.

It is the prerogative of applicant to withdraw, amend or submit an application and must be dealt with in accordance with the relevant legislation. The general public, whether an objector, applicant or interested party, have access to a municipal official with regard to land use planning applications to be submitted and or that is in process.

ZONING OF SUBJECT PROPERTY DISPUTED & CONSENT USE MECHANISM CONSIDERED INCORRECT		
OBJECTOR	OBJECTION	RESPONSE
1, 2, 3, 4,5, 21, 25, 37, 44, 52, 56, 57, 60, 62, 65, 72, 88, 94, 107, 113, 119, 120, 127, 128, 129, 138, 139, 141, 144, 153, 160, 167,172, 173, 178, 179, 180	<ul style="list-style-type: none"> The subject property's zoning is questioned. Reference is made to the case of HEAG v MEC for Agriculture, Environmental Affairs and Development Planning, Western Cape 2007 (6) SA 65 (C) and an undated email by the Municipality's town planner. It is alleged the Municipality conceded it erred in zoning the Hangklip Farms and smallholdings outside the urban edge of towns as Agricultural Zone 1. Zonings were re-assigned either as Undetermined or Rural Zone 2: Conservation Usage. Before the consent use can be considered, the zoning needs to be confirmed. Agri industry is not a consent use permitted in Undetermined or Rural Zone 2: Conservation Usage zones. The liquor license was refused because the subject property was not zoned correctly. All other smallholdings in the area are zoned Rural Area 2 or Undetermined and therefore it makes no sense for an agri-industry to be situated in this remote area. The 	<ul style="list-style-type: none"> The following 2 bullet points were provided by our client's legal consultant (Advocate Adele Erasmus): The zoning of Agricultural 1 is correct. The Agricultural 1 zoning was confirmed on two occasions after the HEAG case. First when the Municipality gazetted its zoning scheme map pursuant to its Zoning Scheme, June 2013 (Fig 7: para 4.3, p 5 of the motivation report). Secondly, the issue of a zoning certificate to the Trust on 18 October 2017, a copy which accompanies this response in Annexure 4) The consent uses applied for are in accordance with this zoning. Therefore, reference to the subject property being incorrectly zoned or to other zonings that some of the objectors believe the subject property should be zoned as, are based on incorrect assumptions. It is acknowledged that the liquor license was refused, but that was because the necessary land

	<p>current zoning of the subject property is an anomaly.</p> <ul style="list-style-type: none"> • A consent use is not suitable or legally applicable in this instance because the proposed land use does not meet the requirements of the definition of “agricultural industry”. The Distillery does not distil anything produced on or near the property. Based thereon, it is questioned how the Distillery can be considered to be an agricultural industry. Therefore the property should be rezoned rather than applying for consent. • Any mention of fynbos flavouring is sophistry. • It is contended that this component is vague and does not demonstrate compliance with the Municipal Land Use Scheme (2020). The property has never been used for bonafide agriculture. • A permit is required to be issued by CapeNature to harvest Fynbos on the land unit and this is not likely to be given due the presence of many threatened and near threatened species occurring on the property such as Protea compacta, Diastella thymeriodes & Erica brachialis. • The applicant cannot motivate that the Distillery is not an industrial use, which is not permitted in the Critical Biodiversity Area. This contrary to the Western Cape Land Use Planning Guidelines Rural Areas (March 2019) which only permits for leisure or tourism. A Distillery is considered a “nuisance” in terms of this Planning Instrument. • The smallholdings in the area between Rooi-Els and Pringle Bay identified as Core 1 in terms of the WC Land Use Planning Guidelines Rural Areas with the management objective (Terrestrial) to maintain in a natural or near natural state with no further loss of natural habitat. This policy doc identifies this area as 	<p>use rights were not in place. Contingent on the approval of this application, those rights will be in place, the license will be re-applied for.</p> <ul style="list-style-type: none"> • The Agricultural zone makes provision for certain activities of a commercial nature (such as what has been applied for) with consent if the Municipality considers them to be appropriate to the site and context. It is firmly contended, based on the motivation provided that the micro-distillery and farm shop/stall proposed are such appropriate enterprises. • The definition of Agricultural Industry includes a distillery, and the Land Use Scheme therefore makes provision for distilleries in such a zone. The proposed agricultural industry is not a regular industry which is characterised by larger scale, commercial operations with greater power, water, and waste disposal requirements. This is a small family concern specialising in a high-quality crafted product, making use of sustainable local resources such as solar energy, water from the well and wood from cut alien vegetation. The enterprise will promote tourist-related activities. The proposed farm shop/stall is a small-scale ancillary use to the distillery. It will sell produce from the farm and mementos related to the distillery. The number and range of products will be limited, and the target market will be visitors on tour to the distillery. This is therefore not a retail node or magnet and will not attract customers in the way a conventional shop would do. The enterprise does not require a large staff complement nor land area. It is designed to produce relatively small quantities of premium
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	<p>“Protected Area” or “Critical Biodiversity Area”.</p> <ul style="list-style-type: none"> • Some respondents make reference to the requirements for an agricultural industry and their sets of criteria regarding desirability to the City of Cape Town and Stellenbosch By-Laws. 	<p>products and the business model does not require ever increasing volumes to increase profitability. The sustainability of the micro-distillery is linked to the quality of the spirits produced and not the quantity. Based on the extensive information provided in this motivation report about the subject property and proposal it is clear this is a desirable and appropriate enterprise to be established on the property, and that granting of Consent is reasonable and desirable.</p> <ul style="list-style-type: none"> • The contention that the consent use as applied for in the application as vague and unmotivated is rejected as unfounded. The relevant sections of the motivation report provided the necessary information and motivation as prescribed by the By Law. • The necessary permit will be obtained should the landowner wish to harvest local fynbos species to utilise in the distillation process. Note that the project environmentalist (Green Africa) has confirmed that <i>“any landowner may apply for a permit, which may be issued for specific species to be harvested, regardless of whether threatened species are present or not.”</i> • Section 4.4 of the motivation report investigated and analysed the suitability and potential impact of the proposal on the Kogelberg Biosphere and Nature Reserve. • Nonetheless, the following needs to re-iterated: The Kogelberg Biosphere Reserve is different to a conventional nature reserve where nature conservation predominates, and human activities are minimised. By contrast the biosphere reserve
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		<p>includes within its area a significant permanent and non-permanent population, together with a wide range of economic activities including deciduous fruit farming, wine production, flower production, fruit processing, commercial pine plantations, tourism and even urban development.</p> <ul style="list-style-type: none">- Economic development is not prohibited within the biosphere reserve, but there is an emphasis on sustainable development and respecting the environmental characteristics and ecosystems of the area.- The proposed micro-distillery and associated activities are consistent with the biosphere principles because, amongst other factors, the proposal is of a small scale, recycles an existing building, makes use of renewable resources and operates in accordance with sustainable production processes.- The Kogelberg Nature Reserve and other formally protected areas constitute the core of the biosphere reserve. This sensitive core remains pristine and essentially wild, with a high level of biological diversity. Around the core is a buffer where agriculture and other activities occur.- The biosphere concept accommodates both conservation and development, ensuring that sensitive areas and biological diversity are adequately protected, but at the same time allowing human settlement and economic development, particularly in the buffer and transitional areas.- While the subject property is situated inside the Kogelberg Biosphere Reserve, it lies outside the
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		<p>Kogelberg Nature Reserve, and is not part of the core area.</p> <ul style="list-style-type: none"> - The micro-distillery and associated activities will be accommodated within an existing disused stable structure. The production process will not generate harmful impacts on the Reserve, and no alien plant species will be introduced onto the property which could potentially spread to the Reserve. Note that an Alien Invasive Management Plan will be included in the Environmental Management Plan (EMP) that will be submitted in due course for approval. - The biosphere concept accepts that development, under controlled conditions and of an acceptable nature, can be accommodated. No negative impacts on either the nature reserve or the broader biosphere reserve are foreseen.
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Town Planner's response

The property has the zoning of Agriculture Zone 1, and the distillery is a consent use in terms of the Amendment By-Law on Municipal Land Use Planning. The subject property zoning as Agricultural Zone 1 has been confirmed in 2005. Historical records, a document compiled by Taylor/Van Rensburg/van der Spuy "Zoning determination for Rooiels, Betty's Bay Small Holding Area", dated 2002, was an investigation to determine zoning allocations for the area. In this document, the zoning of Portion 141 is indicated as Agriculture Zone 1. Although the findings in the document never came to fruition, the subject property was indicated as Agriculture Zone 1.

The definition of an "**agricultural industry**" in terms of the Overstrand Land Use Scheme clearly stipulates as follows:

"means an enterprise for the processing of agricultural related products on or close to the land unit where these agricultural products, whether land- or marine-based (such as aquaculture), are grown, harvested and raised where processing in such proximity is necessary due to the nature, perishability and fragility of such agricultural products or promotion of tourism related activities, and includes, inter alia, dairies, wineries, distilleries, olive processing facilities, breweries and other facilities required for the processing of agricultural products where produce packed is not produced on the land unit but does not include service trades;"

The close proximity has not been defined in the Land Use Scheme due to limited agricultural products in the Overstrand area. Agricultural products necessary for a variety of agricultural related activities may only be available and grown in the adjacent Theewaterskloof Municipal area, which is more agriculturally based. The aforementioned relates to the nature of produce that can only be cultivated in neighbouring towns such as Caledon and is thus interpreted as in close proximity. The notion that agricultural industry relates only to an activity that is only allowed due to the cultivation of produce on the same portion of land is outdated, since many wineries for example, bring in the required stock from other vineyards within the area or outside the jurisdiction area of the Overstrand. It should be noted that due to the predominantly sensitive environment in the Overstrand Municipal area, the precautionary principle is applied in as far as the cultivation of land is concerned. It is more beneficial to the environment to rather compromise to bring in produce versus the execution of the primary right of clearing land to till and cultivate.

With regard to the Kogelberg Biosphere, underwrites the Lima Action Plan (2016-2025) read with the 2030 Agenda for Sustainable Development. Crucially in both the documents, human activity is included in sustainable conservation and economic development in the Biosphere. Although the portion of land is located in the Biosphere, it is not located within the Kogelberg Nature Reserve.

The Kogelberg Biosphere Framework Plan and the Kogelberg Biosphere Management Plan do not exclude any human and or economic activities. The same applies to activities located in Critical Biodiversity Area. There is no exclusionary clause that prohibits any form of development, subject to legislative requirements.

In terms of the Western Cape Land Use Planning Guidelines Rural areas, Chapter 4 indicates that the portion is located in Core 1 with the management objective to maintain the natural state with no further loss of the natural habitat. The application activities are located in existing buildings and thus comply with the objections since no loss of the natural habitat is envisaged.

Chapter 6:

Managing Rural Land Use Change: The guidelines are based on the SPLUMA Principles which clearly indicates that developments should be located on disturbed land, not be to the detriment of the rural character and proposed activities should not compromise the environment.

Chapter 12:

Rural Business which relates to the application for a farm stall/shop. The objectives are to facilitate the development of rural businesses serving the needs of local communities, rural tourist, and agricultural production. The proposed shop will only operate during guided tours to the Distillery and thus cater for rural tourists. The guidelines also address the location of such a shop (place bound) facility that should preferably be located within the farmstead precinct. The location of the shop complies with the guidelines.

Chapter 13: - Mining and Industry in the Rural Areas

In terms of the guideline document, it makes the distinction between traditional industry and industries associated with tourist facilities in rural areas such as small-scale brewery, butchery, etc., which does not compromise the environment and character of the area. The Boutique Distillery falls within the latter.

INAPPROPRIATE USE OF MUNICIPAL RESOURCES		
OBJECTOR	OBJECTION	RESPONSE
1, 2, 4, 10, 62, 64, 114	<ul style="list-style-type: none"> It is contended that scarce municipal resources will be required to upgrade municipal infrastructure such as Porter Road, the sewage system, waste removal and the firefighting capability for the benefit of a single landowner. The upgrading will be capital intensive and be expensive to maintain. This will be burdensome for the Municipality. 	<ul style="list-style-type: none"> The motivation report is clear, no municipal resources are required to either upgrade existing infrastructure or install new infrastructure to permit the proposed micro-distillery. Refer to Section 6.4.3 of the motivation report which dealt with utility services. The upgrading of Porter Road is not required based on the amount of traffic to be generated by the micro-distillery.

Town Planner's response

The motivation is clear that the consent use will not require any municipal services. The question of Porter Drive - the road reverted to a municipal street with the deproclamation of Porter Drive. The street was never officially closed and rezoned, thus remains a municipal street which is not privately owned by the holding company. This is evident in the comments received by the Western Cape Government: Transport & Public Works (Roads) dated 10 June 2021.

INAPPROPRIATE LAND USE WITH RESULTANT NEGATIVE CHANGE IN CHARACTER OF THE AREA		
OBJECTOR	OBJECTION	RESPONSE
1, 2, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 22, 23, 24, 25, 26, 28, 29, 29, 30,31, 31, 32, 34, 35, 36, 37, 38,	<ul style="list-style-type: none"> The proposed Distillery will be situated in a remote and ecologically sensitive area that will be negatively impacted upon. The existing "sense of place" created by the pristine, undeveloped environment, being situated within the Buffer Area of the Kogelberg Biosphere reserve & home 	<ul style="list-style-type: none"> The issue of the suitability of locating the proposed micro-distillery in this locale was dealt with in the last bullet point under the objection titled "<i>zoning of the subject property disputed, and consent use mechanism considered incorrect</i>". The proposed micro-distillery will not have a

<p>39, 41, 42, 43, 44, 45, 46, 48, 49, 50, 52, 53, 54, 56, 57, 60, 61, 64, 65, 66, 67, 68, 70, 71, 70, 75, 76, 77, 78, 79, 80, 81, 84, 85, 86, 88, 89, 91, 94, 95, 96, 97, 107, 108, 111, 112, 113; 114, 115, 119, 120, 123, 124, 125, 126, 127, 128, 129, 130, 133, 134, 135, 136, 137, 139, 140, 141, 142, 146, 147, 149, 152, 153, 154, 157, 158, 160, 162, 163, 164, 167, 169, 170, 171, 172, 173, 174, 175, 176, 179, 180</p>	<p>to many rare species of fauna and flora (such as the Cape Rockjumper and Fynbos).</p> <ul style="list-style-type: none"> • The Distillery with its attendant by products will negatively impact on the fauna and flora and is therefore not considered to be ecologically friendly or sustainable. • The subject property is situated in an area designated by SANBI as having “critical biodiversity importance”. • By allowing light industry in the Buffer Zone will weaken the protection offered by the Buffer to protect the Core Zone. No mention about the function & importance of the Buffer Zone provided in the motivation report. • The subject property is situated within the nearly pristine stretch of land between Rooi-Els and Pringle Bay comprising critically endangered Kogelberg Fynbos vegetation & endangered Hangklip Sand fynbos. This means it is an inappropriate land use in this locale. • It is this unspoilt environment that results in eco-tourism (and especially avi-tourism). The proposal will change the underdeveloped character of the area (between Rooi-Els and Pringle Bay) to now including commercial activities. • The proposal will negatively impact on the existing use and enjoyment of the area by the general public & loss in income generated by eco-tourists (birders and hospitality industry serving them). The type of tourists who visit distilleries and tasting facilities are undesirable and will be out of place in this area. • Concern is expressed about “drinking & driving” after the patrons have left the Distillery. This type of behaviour will be difficult to police. When alcohol is involved, it will result in a noise disturbance. • It is suggested that the Distillery be situated in an 	<p>negative impact in terms of its location, an existing building will be repurposed, and therefore it also does not encroach into an ecologically sensitive area.</p> <ul style="list-style-type: none"> • A Waste Management Plan (WMP) will be implemented, and a copy thereof is contained in Annexure 3. Note that this is slightly updated version of the WMP included with the February 2021 submission. Consequently, the possible impacts of the establishment and operation of a micro-distillery have been assessed and as well mitigatory measures proposed, to be implemented if required. • The property may be located in an area designated as being of “critical biodiversity importance”; however the proposed use of an existing building will have no negative impact on the biodiversity of the area. • The proposed use will not impact on the Rockjumper or fynbos in the area. • Section 4.4 of the motivation report dealt with the Kogelberg Biosphere and nature reserve and included its various components. It was concluded no negative impacts on either the nature reserve or the broader biosphere reserve is foreseen. • The statement regarding the pristine nature of the area is true, in so far as it excludes the farmyards and historically transformed areas where the proposed micro-distillery will be. It must be emphasised that the subject property is zoned for agricultural use. If the landowner wants to develop other areas excluding the historically disturbed farmyard, an EIA would be required, and the
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	<p>existing developed area accommodating industrial activity such as in Gordon's Bay, Hermanus, Kleinmond, or even in Pringle Bay or Bettys Bay.</p> <ul style="list-style-type: none"> • The proposal will degrade the landscape for nature conservation and related tourism activities (birding, whale watching and coastal fynbos). • The proposal will have a negative impact with the long-term alignment of eco-sustainability industries in the region, skills development and jobs creation. • A potentially dangerous and noxious industry with heavy duty vehicles will detract from the present eco-tourism use of the area and amenity value of retaining the pristine and natural "sense of place" of the area. 	<p>legislatively empowered authority would decide on such application. The current application does not constitute such an application, and the concern is unfounded.</p> <ul style="list-style-type: none"> • The contention that the proposal will negatively impact on eco-tourism in the area based on its attributes is rejected. The proposed use of the existing structure will not impact on avi-tourism. The low-key nature of the proposed tourism component of the distilling activity presents a diversification of the tourism offering in the area even to discerning birders, whale-watchers etc. • The concern regarding "drinking and driving" is not directly related to the use but rather a behavioural observation, generalised and misplaced with respect to a tasting facility. • The "sense of place" of the area between Rooi-Els and Pringle Bay will not be impacted upon due to the nature and scale of the proposal. Section 7.1.2 of the motivation report dealt with Policy S1 of the PSDF which included "sense of place" and it was concluded that, "...the development will not constitute urban sprawl, but will make use of an existing building (with a minor extension) to undertake an activity that is consistent with the rural character of the site. The character of the buildings and operations within the buildings will enhance the sense of place", located within a tourism area. All of the aforementioned are incentives for the operators of the micro-distillery to have as little as possible impact on the environment within which the proposed micro-distillery will be embedded, noting also that the operators will live on site.
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		<ul style="list-style-type: none"> • A shuttle vehicle will ferry the guests to the micro-distillery to and from the parking area at No 16 Central Road. Measures would therefore be in place to ensure the safe delivery of tourists who visit the micro-distillery. • The allegation that the type of guest to a micro-distillery such as the one proposed will somehow be inappropriate to the area is unsubstantiated by fact. It must be emphasised that what is proposed is not a bar but a micro-distillery that offers a tasting experience. This tasting experience is very different from going to a bar and binge drinking. • The suggestion that the proposal be situated somewhere else is rejected and irrelevant, as the desirability of the application on the proposed property needs to be evaluated.
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Town Planner's response

In terms of the Western Cape Development Framework, the Overstrand coastline is depicted as leisure and the towns of Betty's Bay, Pringle Bay and Rooi Els as tourism opportunities. However, the aforementioned must be read in context with its locality within the Kogelberg Biosphere namely that activities be of low impact, not to the detriment of the environment and prevent loss of biodiversity. Imperative to note that the application property is not located in the Kogelberg Nature Reserve, but the Biosphere, which does not restrict economic and social activities as per the Kogelberg Biosphere Framework.

The application will not have any detrimental effect to loss of biodiversity due to the refitting of an existing building, thus making use of an existing structure on disturbed land. The sense of place relates not only to the character of the area, but also the sustainability of activities relating to the land uses applicable to the area. The proposed boutique distillery, due to its scale and proposed operation, will attribute to eco-tourism with regard to education of the area and the Biosphere that is in line with the principles of Man and the Biosphere. The proposed Distillery will rather enhance the importance of the Biosphere and open up the area for eco-tourism to have a positive socio-economic return.

The operational processes are environmentally sensitive as indicated in the Waste Management Plan. The Distillery can only be accessed per appointment and a guided tour, thus has less of an impact than the avi-tourism that has no restrictions pertaining behaviour, amount of people and waking into the veld and transgressing over private properties.

APPLICATION CONTAINS MISLEADING AND ERRONEOUS INFORMATION		
OBJECTOR	OBJECTION	RESPONSE
2, 4, 7, 13, 20, 25, 33, 34, 36, 50, 58, 64, 70, 73, 77, 78, 84, 86, 94, 96, 107, 111, 113, 115, 120, 125, 127, 128, 129, 145, 150, 151, 152, 157, 157, 158, 160, 167, 177, 178, 179, 180	<p>It is contended that the application contains a mix of distortions, half-truths and baseless claims. Examples include:</p> <p><u>Building Plans:</u></p> <ul style="list-style-type: none"> Landowner has pre-empted the issuing of the required municipal approval by completing additions to the existing building under guise of building the barn. Building plans for the additions to the stable building were submitted under false pretences and without full disclosure of the future intended use. In the application, an outdated photo of building (Figure 6) was included creating the false impression that the construction of the distillery will only take place after the approval of the application. Old and outdated building plans were included in Annexure 6 of the motivation report. After the previous application was withdrawn, building plans for a structure claimed to be a barn were submitted July 2020 and subsequently approved in September 2020 and the building inspected in January 2021, while the current planning application was submitted in February 2021. It is clear that the “barn” was concealed in the application and outdated Distillery plans and photos included. It is contended that the “barn” shown in Figure 5 corresponds exactly to the planned Distillery and 	<ul style="list-style-type: none"> The building plans were submitted on 24th July 2020 and approved on 11th September 2020 for two new stores of various sizes to the existing stables/barn structure. A copy of the building plan approval is contained in Annexure 5. Building commenced on ± 20th January 2021. It should be noted that that once building plans are approved, construction can commence. The plan submission and approval were in accordance with the applicable legislation and approved. The application submitted in November 2020 was subsequently withdrawn and resubmitted in February 2021 (due to the title deed issue). The photographs and plans included used at the time were accurate. The contention that building plans were submitted under false pretences is denied, as the structure will only be utilised as a distillery should the current application be approved. The fact that Planning Partners has submitted the application cannot be construed as a breach of ethics. The building is designed in a way that it can be

	<p>transgresses the building lines. The ethics of the town planner is questioned as the construction of the distillery is almost complete. Based thereon Planning Partners is accused of being in breach of the code of conduct and ethics in terms of the Planning Professional Act if they were aware that the additions were intended as a distillery and advised/allowed the submission of the plans as “additions to a stable”.</p> <ul style="list-style-type: none"> • It is claimed that the landowner has spent two million rand on the dam and distillery building and therefore what is proposed is not a modest addition to the former stable building. <p><u>Scale:</u></p> <ul style="list-style-type: none"> • The scale of the distillery is misrepresented in the application as a micro distillery can produce up to 2 million litres of spirits per annum. • This is not a small “home distillery” but a large-scale operation because of extensive buildings, dam and parking garage in Pringle Bay. <p><u>Dam:</u></p> <ul style="list-style-type: none"> • In addition, the dam is six times the minimum size for which authorization is required in terms of NEMA. 	<p>repurposed easily, i.e., contingent on the success of this application.</p> <ul style="list-style-type: none"> • The monetary value spent on the property is irrelevant and unsubstantiated. Much of the labour was carried out by the family members where possible and much of the building materials used was recycled from the internal stable walls (building blocks). • The landowner has constructed the barn in accordance with approved building plans. The addition is modest – note square meterage and %. <p>• The terminology utilised to describe the activity is related to the classification utilised in the relevant legislation. A micro-distillery manufacturing licence applies to a maximum of two million litres. This is the smallest legislated licence.</p> <ul style="list-style-type: none"> • The dam has nothing to do with the distillery function (& which is confirmed in the letter received from DEA & DP contained In Annexure 1). • The parking venue is a solution to respecting neighbours’ privacy. <p>• This statement is not correct. That applies to where indigenous flora is removed. The dam was constructed on a historical dumping site which was at the time covered by exotic <i>kikuyu</i> lawn. The</p>
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	<p><u>Fire & Waste:</u></p> <ul style="list-style-type: none"> • The application conceals and/or misrepresents the fire risk, the quantity and quality of wastewater produced. Limited and inaccurate info provided about the disposal of the Distillery's wastewater. • The waste disposal process is not adequate to provide sufficient protection to the environment. 	<p>landowner has applied for a 24G submission in terms of National Environmental Management Act which provides for an administrative process to rectify the unlawful commencement of listed activities which require environmental authorisation under NEMA (being the dam).</p> <ul style="list-style-type: none"> • The operators of the proposed micro-distillery appreciate the fire risks associated with a micro-distillery. Contingent on the approval of the current application, a Fire Engineer will be appointed to advise on how to fireproof/fire safe the building. The distillery will not be allowed to commence with operations until the fire department as approved the fire engineer's plan. • Refer to the WMP contained in Annexure 3 which addresses waste management, including waste prevention & minimisation (waste avoidance), to its collection, treatment, recovery and final disposal. It addresses the practicalities of waste management, and issues of public education and changing concepts, as these are vital to a successful management system. The Plan is guided by National and Provincial legislation and new municipal by-laws drafted to enforce the recommendations of the WMP. It demonstrates the importance of this issue and the operator's commitment to complying with the relevant legislative framework and will ensure that the environment within which the proposal is situated is well protected. The author of WMP, Green Africa, is of the professional opinion that it contains
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	<p><u>Qualifications:</u></p> <ul style="list-style-type: none"> • Falsely claiming that the landowners are qualified master distillers. <p><u>Distillation process:</u></p> <ul style="list-style-type: none"> • The provision of misleading flawed and incomplete information on the distillation process. <p><u>REDI:</u></p> <ul style="list-style-type: none"> • Mr Elves states he is a member of REDI, but it is not registered as a Fire Protection Agency and does not have a fire brigade or firefighting capacity which creates a false impression as its function is merely advisory. <p><u>Quantities of alcohol & grain required:</u></p> <ul style="list-style-type: none"> • Doubt is expressed regarding the amount of ingredients required and the amount of alcohol to be produced. The actual and potential future impacts of the Distillery cleverly & dishonestly downplayed. <p><u>Outdated letters from other Authorities:</u></p> <ul style="list-style-type: none"> • Approvals contained in Annexures 9 & 10 (being the 2018 letter from DEA & DP and the 2018 letter from the Breede Gouritz Catchment Management Agency) were 	<p>sufficient information as required by the DEA & DP and the Overstrand Municipality.</p> <ul style="list-style-type: none"> • Refer to response further on (under Landowners are not master distillers) regarding the allegations about the landowners qualifications, and the response from a representative of Distilleque. • The information contained in section 6.3 of the motivation report is considered to be accurate and containing sufficient detail to make an informed decision. • Mr Elves volunteers to assist REDI, in which he assists in maintaining the fire-fighting equipment for the village. This equipment is utilised to fight fire in Rooi-Els and the REDI volunteers are part of a community initiative. • The information contained in Section 6 of the motivation report provided by our client is considered to be accurate. It is contended that the motivation report has been transparent with regard to manufacturing quantities. The statement is at most speculative in nature. • There is nothing untoward in including these letters. While the current application does make use of information used in the 2018 application including the letters received and included in
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	<p>obtained in 2018 in terms of a withdrawn application, and those bodies have not considered the current application and therefore the application be refused because of this serious misrepresentation.</p> <ul style="list-style-type: none"> • Also creates the false impression that both Bodies have given permission to current application. <p><u>Liquor license:</u></p> <ul style="list-style-type: none"> • On pg. 14 of the motivation, incorrect information is stated, i.e., a liquor license was granted but has since lapsed. The license was in fact refused. 	<p>Annexures 9 and 10, the intention for a micro - distillery as proposed in 2018 remains the same as what per the application submitted in February 2021, and the information remains relevant.</p> <ul style="list-style-type: none"> • A letter received from DEA&DP dated 22nd October 2021, contained in Annexure 1, confirms that, "...the proposed development on the property does not constitute any listed activities as defined in terms of the NEM EIA Regulations 2014 (as amended). Environmental Authorisation is therefore not required prior to the proposed development." This is the same as what was stated in the DEA & DP letter dated 26th January 2018 (and included in Annexure 9 of the motivation report). Furthermore, the October 2021 letter further states that, "...the Section 24G application relates to the development of a dam, which has no direct link to the extension of the stables to accommodate the micro-brewery. The proposed micro and the dam are two separate aspects and must therefore be treated as such. The micro-brewery must therefore not be linked to the Section 24G application". • It is acknowledged that the liquor license was refused, on the basis that the necessary land use rights were not in place. Contingent on the approval of this application, the license will be re-applied for, and the activity will only commence with the necessary approval.
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	<p><u>Photos:</u></p> <ul style="list-style-type: none"> • Figure 4 is deliberately misleading as it does reflect the large extension to the barn. <p><u>Members of Trustees</u></p> <ul style="list-style-type: none"> • Developers called the Trustees of the Free Life Trust, then Leigh & Monique Elves which it is contended is a deliberate attempt to create impression that it is small family business. • Also, a third trustee listed on resolution but omitted in the application form. <p><u>Application form:</u></p> <ul style="list-style-type: none"> • Applicant only indicates C3 and C13 need to be removed on application form, but still applies for all the others as well which constitutes misleading and conflicting info as contemplated by Sect 84(1)(e) of the OM by law. 	<ul style="list-style-type: none"> • As mentioned previously, the 1st application submitted by Planning Partners was in November 2020, while the 2nd was in February 2021 (due to the need to include the removal of restrictive title deeds component). Construction commenced near the end of January 2021, based on approved building plans. The photograph in Figure 4 was therefore taken prior to the November 2020 submission. • It is misleading to refer to the landowners as “developers” when in fact they are the landowners and residents of the subject property and wish to use a part of their property to accommodate a micro-distillery, subject to obtaining the necessary approvals. The Free Life Trust owns the property, and the trustees reside permanently on the farm. Law requires that a Trust has at least 3 trustees. The third trustee will have no interest in the Distillery and is therefore not mentioned as an involved party. • C4 and C13 were listed in the application form because those two conditions, in particular, restrict the proposal as intended. While application has been made to delete Condition C in its entirety (though C13 is only to be amended), it is only C4 (building line restriction) and C13 (land use) which are impediments to the proposal, and therefore need to be mentioned in the application form. Technically there are no reasons to retain these conditions save for a portion of clause C13 regarding the prohibition regarding public garages
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		or filling stations, and therefore application has been made to remove the other conditions listed under Condition "C".
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Town Planner's response

It should be noted that a building plan was submitted as a barn and approved as such. Only if the applicant deviates from the building plan, the Municipality can act. If a rider plan is submitted for the refitting of the barn as part of the distillery, it will be evaluated accordingly.

The licensing of a micro-distillery in terms of the relevant legislation can produce a maximum of 2 million litres per annum. The application indicated that due to its restricted space, the Distillery will only make one barrel (250l) per day which equates to 91 250 litres per annum, which is substantially less than provided for in terms of the relevant legislation.

The issue with fire and waste treatment has been dealt with extensively by the applicant in the motivational report and the Waste Management Plan. These issues will be addressed, approved and implemented before the operation of the Distillery. The objectors further raised issues with the distilling process, quantities of alcohol and grain etc., but none of the objectors qualified the statement and thus impossible to respond. The applicant did indicate in the motivation report that he will make use of relevant information of the previous application.

The liquor license application was refused based on the fact that the land use rights were not in place and for no other reason.

The restrictive conditions C.4. and C.13. applied for relates to the proposed consent use.

The applicant went further requesting the total removal of Condition C., with the exception of the proposed amendment of Condition C.13. The applicant did obtain consent from the personal servitude holder to remove Conditions C.1 to C.12., as it is deemed superfluous.

THE LANDOWNERS ARE NOT MASTER DISTILLERS		
OBJECTOR	OBJECTION	RESPONSE
7, 20, 120	<ul style="list-style-type: none"> It is contended that neither Monique nor Leigh Elves are master distillers. It is claimed that Distillique does not offer a “master distiller” qualification as claimed by the landowners. 	<ul style="list-style-type: none"> From a land use planning law perspective whether or not the applicant is a master distiller or not is irrelevant. However, the following is an extract of a transcript of a WhatsApp from Hendre Barnard from Distillique on 4th June 2021, contained in Annexure 6. We reproduce the following extract: <i>“We offer a Comprehensive Distilling Course – now this Comprehensive Distilling Course is colloquially referred to as a Master Class and many of our students and many people in the industry have taken to calling themselves Master Distillers after the completion of this Comprehensive Distilling Course. This is a term that is not legally defined, it is not a term that has any special meaning per say but it is a general term used in the distilling industry to refer to a person who has mastered a range of skillsets that applies to distilling and that is what the Comprehensive Distilling Course does. It teaches a range of skillsets.”</i> Based thereon this allegation is rejected. Nonetheless the applicants have completed the above cited course.

Town Planner’s response

The applicant completed a course e.g., Comprehensive Distilling Course. The applicant explained that people, who have done the course, call themselves Master Distillers, mastered a range of skillsets that applies to distilling.

LANDOWNERS ASSURANCES CANNOT BE TRUSTED		
OBJECTOR	OBJECTION	RESPONSE
2, 4, 13, 16, 17, 20, 25, 31, 34, 36, 55, 58, 71, 86, 96, 107, 126, 127, 128, 129, 131, 134, 135, 138, 139, 140, 147, 52, 152, 157, 160, 163, 177, 180,	<p>Due the past actions of the landowner, it would be irresponsible to permit the landowner to operate a Distillery. These actions include:</p> <p><u>Dam:</u></p> <ul style="list-style-type: none"> The construction of a dam without the necessary NEMA approval and illegally dammed a spring in the area within a wetland. <p><u>Building approval under false pretences:</u></p> <ul style="list-style-type: none"> Completion of the Distillery building being the “barn” before the planning application has been approved. <p><u>Conduct during construction:</u></p> <ul style="list-style-type: none"> As the landowners used the Rooi-El's entrance for construction vehicles during the construction of the Barn and therefore how can they be trusted to use the Pringle Bay gate for visitors to the Distillery. 	<ul style="list-style-type: none"> The dam was constructed on a historical dumping site which was at the time covered by exotic <i>kikuyu</i> lawn. The landowner's client however voluntarily applied for a 24G submission in terms of National Environmental Management Act which provides for an administrative process to rectify the unlawful commencement of listed activities which require environmental authorisation under NEMA (being the dam). The spring is still clearly visible north-east of the dam and has not been dammed. The barn was built according to approved building plans; no planning application was required not required approval for this to be done. Local suppliers from Botriver were used (sand, stone, bricks etc). These suppliers all used the Pringle Bay entrance. The builder resides in Somerset West and him and his team (either 1 or 2 bakkies a day Monday to Friday) used the Rooiels entrance. It should be noted that the El's were not the only property owners busy with renovations during this period. Any negative aspersion cast on the integrity of the El's character is rejected as unfounded and, in

	<p><u>Non-compliance with Environmental Law:</u></p> <ul style="list-style-type: none"> For past 15 years the landowner has allowed the spread of invasive species such as Eucalyptus, kikuyu and myrtle in an ecologically sensitive area. Deliberate retention of alien vegetation (i.e., the Bluegums) onsite suggests lack of concern for the environment and the law. <p><u>Conduct during previous fire:</u></p> <ul style="list-style-type: none"> During a previous veld fire in the area, landowner monopolised four fighting teams to protect his property. <p><u>Animal Management:</u></p> <ul style="list-style-type: none"> Letting sheep wander and graze where they wished in this critically endangered area, the shooting of a caracal in a trap & that an employee/caretaker of the subject property shoots mongoose on site. 	<p>the context of the application, is irrelevant and should be disregarded by the decision-maker.</p> <ul style="list-style-type: none"> On the contrary, over the last 16 years, the landowner has removed alien vegetation and planted many indigenous plants, and this is an ongoing task. The landowner is growing indigenous trees for replanting to replace some of the gums, and this will be dealt with in terms of the alien vegetation management plan. Our client has appointed an Environmental Company to draw up an EMP which will be audited annually by environmental affairs. Any negative aspersion cast on the integrity of the Elves' character is rejected as unfounded and, in the context of the motivated removal, is irrelevant and should be rejected by the decision-maker. This allegation is rejected. Please refer to Annexure 7 which contains a written account of the incident as recounted by Mrs Elves. Any negative aspersion cast on the integrity of the Elves' character is rejected as unfounded and, in the context of the motivated removal, is irrelevant and should be rejected by the decision-maker. While none of these allegations are relevant to the determining the desirability of the application, a response is nonetheless provided, due to the deliberate attempt being made to denigrate the character of the Elves. The sheep owned by the landowner roam over some of our neighbours' property. None of these
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	<p><u>Membership of Community Organizations:</u></p> <ul style="list-style-type: none"> It is contended that the landowners only joined the local community groups after the withdrawal of the 1st application to obtain support for the new application. Campaign led by the RERA/REC Treasurer to have the owner of the subject property onto the RERA and REC Exco, which raises questions how people are being influenced to support the current application. There was probably a carefully orchestrated plan to influence some of the Rooiels Ratepayers in order to “divide and rule”. Being on committees is not evidence of environmental commitment. 	<p>neighbours have complained to date. The landowner has informed the neighbours that if this is an issue, the sheep will be penned in.</p> <ul style="list-style-type: none"> An unemployed and homeless individual resided on the property while waiting for a disability pay-out from the RAF. The Elves were not aware that he shot any animals, and to their knowledge he did not own a firearm. Trapping of animals is contrary to the lifestyle ethos of the landowner. Any negative aspersion cast on the integrity of the Elves’ character is rejected as unfounded and, in the context of the application is irrelevant and should be disregarded by the decision-maker. Similar to the above, this has no bearing on the desirability of the application. Our client was invited by a Pringle Bay resident to join the local hack group when they settled permanently on the property (2017) and have been members ever since. Our client offered to stand for election as committee members as they felt that they could add value to the Rooi-Els community. They abstained from any decision making with regard to the distillery application. The accusation of the Treasurer leading a campaign is absurd as the Elves did not know him personally. The statement is based on unfounded and unsubstantiated conjecture. Any negative aspersion cast on the integrity of the Elves’ character is rejected as unfounded and, in the context of the motivated removal, is irrelevant and should be rejected by the decision-maker.
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	<p><u>Pringle Bay Gate:</u></p> <ul style="list-style-type: none"> No guarantee that the Pringle Bay entrance undertaking will be used once the approval is granted. It is questioned how this guarantee will be enforced (policed) and by whom, and if it will be binding on any successor in title. The erection and control of a gate at the Pringle Bay side without permission. <p><u>Condition of title:</u></p> <ul style="list-style-type: none"> The retention of one condition creates doubt that the applicant disclosed full intent to HBE and that the landowners has taken advantage of the sole remaining member of HBE. 	<ul style="list-style-type: none"> The gate with the padlock was erected before our client purchased the subject property in 2004. This undertaking was made by the Elves in good faith, and they remain committed to accessing the Distillery from the Pringle Bay side. Should issues arise, these can be taken up at the appropriate forum and rectified. This claim is rejected. The authorised representative of Hangklip Beach Company, Mrs Elizabeth Wallers, has given written permission to remove Condition C in its entirety save for a portion of C(13) namely that “<i>No public garages or filling stations shall be erected on the land</i>”. Copies of the relevant resolution, consent and notice are contained in Annexure 8 of the motivation report. As such no undue influence has been exercised on the authorised representative of the HBE.
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Town Planner’s response

The applicant has constructed a dam on a historical dumping site and the compliance is being dealt with by the Landowner and DEA&DP in terms of a 24G application.

There is no restriction for any landowner to submit a building plan, should an applicant deviate from the building plan, it will be addressed.

The access point from Rooi Els and or Pringle Bay cannot be prohibited since it is a municipal street. The fact that landowners restrict movement does not deem the road as private. It is ironic that should any of the vacant holdings be developed, the owners also will be forced to make use of Pringle Bay Gate to allow construction vehicles delivering building material. It is irrelevant whether the applicant or any other owner make use of the Rooi Els access since it is not prohibited. It remains a Municipal Street and should be accessible to the

general public; the fact that it is restricting movement from the general public should be investigated. The applicant did indicate it will make use of the Pringle Bay access point and until the contrary is proven, the assumption is incorrect.

The question of invasive alien vegetation is irrelevant since all of the properties adjacent to the coastline stretching from Rooi Els and Pringle Bay has alien invasive vegetation that includes the Kogelberg Biosphere. None of the objectors mentioned or submitted alien invasive management plans, which includes the Biosphere to indicate how they are dealing with invasive alien cleaning. It is thus unclear why only the application property is mentioned if the environment of the area is of such importance.

Ms. Wallers, sole survivor of the Hangklip Beach Company, has the mandate to deal with conditions laid down by the Company. It is not the prerogative of the members of the community to dictate to her.

NOXIOUS NATURE OF A DISTILLERY & WASTE MANAGEMENT		
OBJECTOR	OBJECTION	RESPONSE
2, 4, 6, 9, 14, 16, 20, 21, 25, 27, 33, 42, 52, 64, 70, 71, 72, 77, 78, 82, 85, 88, 89, 91, 97, 123, 125, 126, 129, 130, 133, 137, 145, 150, 152, 156, 165, 166, 167, 169, 174, 176, 178, 180	<ul style="list-style-type: none"> The distillation process has noxious by-products. The noxious nature of the Distillery is acknowledged by the applicant as Condition C6 is to be deleted. The waste products are poisonous and escape into the air, land and water. It is claimed that distilleries are amongst the most polluting industries because ethanal fermentation results in the discharge of large quantities of liquid effluents with high concentrations of organic matter, nitrogen compounds, low pH, and high salinity. Distillery spillage poses a serious threat as it blocks out sunlight and inhibits photosynthesis and reduces oxygen in the water which negatively affects aquatic life. High pollution load causes eutrophication of water bodies. Ethanol emissions cause black fungus which is harmful to plants, humans and other animals. Concern is expressed as to the ability of the landowner to remove the solid waste generated by the proposal. None of the livestock farmers mentioned in the motivation report are situated nearby; therefore disposal 	<ul style="list-style-type: none"> As Hangklip Beach Estates does not intend to enforce this clause, and because National, Provincial and Municipal laws deal with noxious activities, there is no need to retain this condition in the title deed. A WMP has been prepared for the proposed micro-distillery and is included in Annexure 3. The WMP deals how solid and liquid wastes, distilled condensate waste, low volatility organic compounds and wastewater will be dealt with. According to our client, Fynbos Enterprises is situated in the Pringle Bay CBD. They have a producer's off-consumption liquor license (WCP036790). This means that they manufacture and distil their own alcohol on-site. To our client's knowledge, they are not aware of a single complaint made by anyone with regard to pollution, including smell or because of it being a fire hazard. The only "smell" that could be generated by the micro -distillery could possibly occur in the

	<p>of waste products to them is questioned.</p> <ul style="list-style-type: none"> • The amount of waste production and its risks and impacts have been underestimated. Spillage of grain could attract rodents, pests and birds not endemic to the area. • It is dangerous to establish a noxious industry in an area of high conservation value. There is no adequate oversight, supervision and policing in this remote location of a noxious industry. 	<p>fermentation phase. The proposed fermentation unit is a closed unit which would eradicate any smell.</p> <ul style="list-style-type: none"> • The scale of the micro-distillery needs to be appreciated. What is proposed is not industrial factory type building that will mass manufacture alcohol. Quality rather than quantity is to be ethos of this bespoke micro-distillery. Reference is made to Section 6.4.1 of the motivation report which deals with the Distillery operation and provides an overview of the production scale envisaged. At full production, it is estimated that 1000 bottles of whiskey and gin per month will be produced. • There are many livestock farmers in Somerset West, Grabouw and Botriver that could be potential consumers of the solid waste. Due the increase in food costs/animal feed, it is anticipated that there will be no shortage in demand. • The establishment and operation of the micro-distillery will be subject to the applicable National, Provincial and Municipal legal framework, which our client will comply with. • While the subject property is located between the villages of Rooi-Els and Pringle Bay, it is easily accessible to any enforcement agency.
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Town Planner's response

This aspect has been dealt with extensively in the Waste Management Plan. The process applicable will be a closed circuit. A similar venture is located within the CBD and none of the pollution issues raised by the objectors have been raised at the Municipality. None of the objections relates to specifics of the WMP. If the waste was underestimated, the objectors need to submit proof to the contrary.

PRECAUTIONARY PRINCIPLE SHOULD BE APPLIED		
OBJECTOR	OBJECTION	RESPONSE
2, 4, 25, 61, 67, 129, 134, 137, 180	<ul style="list-style-type: none"> • Good practice is for the Municipality to apply the “Precautionary Principle” before approving the proposal that could have irrevocable, unintended or unknown outcomes. • This means that the applicant must prove that there will be no harmful impact resulting from the establishment & operation of the Distillery. • The burden of proof is not the objector’s responsibility. • The incremental effect of the distillery on the environment over time requires more study, including possible future transformation of the area around the Distillery which could trigger additional authorisations. 	<ul style="list-style-type: none"> • The spirit and intent of the “precautionary principle” has been applied. This is evident in the wealth of information provided in the application which includes Section 6 which provides a description of the proposed micro-distillery & farm shop, an overview of the distillation process and specifics about the micro-distillery. In addition, the proposal has been assessed in terms of the applicable regulatory framework, and motivation provided for it in terms of the municipal by-law, the WCLUPA and SPLUMA. It was concluded that the proposal should be supported based on this assessment. • A WMP has been included with the application, which addresses how waste products produced in the distilling process will be managed. • The Department of Environmental Affairs and Development Planning in terms of their letter dated 22 October 2021, indicated that, “...<i>the proposed development on the property, does not constitute any listed activities as defined in terms of the NEMA EIA Regulations (as amended). Environmental Authorisation is therefore not required prior to the proposed development.</i>” • All of the aforementioned indicate that this principle has been complied with and it should not be used as a reason to refuse this application. • Should any future initiative require the permission in terms of applicable legislation, the requisite permissions, authorisation, permits will be sought at that time, prior to implementation.

Town Planner's response

The applicant has taken the principle into consideration by means of utilising an existing structure, provide parking off site to ensure privacy of landowners along Porter Drive and compile a waste management plan applicable to the proposed use. Proof can only be provided if the distillery is in full operation to assess in real time. The WMP has looked at all possible pollution possibilities to adhere to the Precautionary Discipline.

CURRENT AND FUTURE SCALE OF OPERATIONS INCLUDING POSSIBLE CHANGE IN OWNERSHIP		
OBJECTOR	OBJECTION	RESPONSE
2, 4, 11, 21, 28, 33, 55, 64, 66, 80, 85, 88, 91, 94, 97, 111, 113, 115, 120, 127, 128, 130, 140, 154, 160, 167, 177, 179, 180	<ul style="list-style-type: none"> • It is contended that based on demand, the scale of the Distillery could be increased as could the hours of operation. • Comparison is made with Appletiser in the Elgin Valley and its negative impact on the agricultural environment. • It is claimed that up to 2 million litres of spirits per year could be produced for which a micro-manufacturing license is required. • It is contended that the Distillery is in fact an industrial activity and not a small home business/craft operating (i.e., "micro-distillery) from a garage but a major business based on the amount of money (i.e., millions of rand) the landowners have spent to date and the process specified in Table 2 of the motivation report. • It is contended that a micro manufacturing license is required and/or permit 2 million litres of spirits per annum. • It is questioned why a "micro distillery" needs an off-site parking facility in Pringle Bay. • The amount of spirits to be produced and the amount of ingredients in the motivation report is questioned. Due to the which could because of the financial unviability of the distillery, activities could be expanded to be a 	<ul style="list-style-type: none"> • The scale of the micro-distillery cannot be increased without the requisite permission sought. • The comparison with what is proposed to other large producers such as Appletiser is pure hyperbole due to the scale of the proposed micro-distillery (which was clearly indicated in the motivation report). It must be appreciated that only a small percentage of the property will be utilized for the micro-distillery. This is not an industrial scale facility, but rather a boutique craft distillery. • It is not possible to produce 2 million litres a year in a building that measures ±491 m². • A threshold of 2 million litres is set in legislation, as the upper threshold for a micro-distiller licence. It is required to permit anything equal to or less than the threshold amount. Current electrical and space limitations limit PRD would never be able to manufacture 2 million. Note power is generated on site via solar technology. • Off-site parking is required to control access and limit impact on the environment. • No chapel is situated on site. The only land use activities that will be accommodated on site will be

	<p>wedding venue as there is a chapel on site or as a “bush drinking” place.</p> <ul style="list-style-type: none"> • Nothing precludes the current landowner from selling the property to a commercial distiller in the future or expanding operations. • If sold, nothing obliges the new owner to maintain baseless assurances given by current landowner. 	<p>the ones applied for in terms of the application.</p> <ul style="list-style-type: none"> • The application, if granted, will be subject to conditions which the Elves and/or any future owner will have to comply with. The selling the property on in the future poses no new or additional risk to environment. • The inference that the landowner is not to be trusted is baseless and denied. The statement should be disregarded by the decision maker.
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Town Planner's response

An approval will be subject to conditions relating to the application site, thus should ownership change, the same conditions will apply. Should the applicant intend to expand, an application will have to be lodged in terms of the Planning legislation. The liquor license upper limit for a micro-distillery is determined by legislation and not actual production within a building measuring 491m². The applicant indicated that the building size restricts production to 91250 litres per annum. Due to the size of the distillery, it will not be able to produce 2 million litres per annum.

Any expansion of the business activity will have to go through a formal planning process. The possibilities of a chapel, bush pub, etc., as indicated by the objections received, are unfounded since it does not exist at present or have been applied for.

NEGATIVE TRAFFIC RELATED IMPACT		
OBJECTOR	OBJECTION	RESPONSE
2,4, 6, 8, 9, 10, 11, 13,14, 15, 16, 17, 20, 21, 22, 23, 25, 26, 25, 27, 31, 33, 37, 39, 41, 44, 45,48,49, 51, 54, 55, 58, 60, 64, 65, 66, 68, 71, 72, 77, 78, 79, 80, 82, 84, 86, 88, 89, 91, 94,	<ul style="list-style-type: none"> • Porter road is a narrow, one-way dirt road that serves only the properties between Rooi-Els and Pringle Bay and pedestrians such as hikers, joggers and birders. • Increased vehicular traffic resulting from the Distillery will threaten the physical safety of the existing road users, damage the road and result in various forms of pollution (noise, light, gas emissions and general littering) which will disturb the tranquil character of this area. • The increase in vehicular traffic could negatively impact 	<ul style="list-style-type: none"> • Regarding road operations on this road, it is understood that all of the smallholding owners currently use the road as follows: <ul style="list-style-type: none"> - There are certain spots where a vehicle can pull over onto the side (shoulder) of the road. - One would have to give way to the approaching vehicle by reversing to one of these spots and allowing the approaching vehicle to pass. • The constraints of Porter Road are acknowledged by the fact that it is intended that guests to the

<p>95, 96, 97, 107, 111, 112, 114, 115, 119, 120, 123, 125, 127, 128, 129, 130, 133, 135, 136, 137, 138, 139, 140, 142, 144, 145, 147, 150, 152, 153, 156, 157, 158, 160, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 175, 176, 177, 178, 180</p>	<p>on fauna and flora such as the Cape Rock Jumper and the Fynbos.</p> <ul style="list-style-type: none"> • The increased usage of Porter Road due to the Distillery will require the road to be upgraded specially to accommodate heavy vehicles required for the operation of the Distillery. • The increased carbon footprint resulting from vehicular traffic to be generated by the Distillery is not ecologically sustainable. • It is questioned who will maintain the road. • The proposed limitation on vehicular access will be controlled (i.e., limited to the use of the Pringle Bay Gate) is baseless and unenforceable as there is no legal mechanism to regulate it. • As porter Road is a public road there nothing to prevent vehicular access to the Distillery from the Rooi-Els side. Similarly, there is nothing to prevent visitors to the Distillery from using private vehicles instead of the shuttle service. • The amount of parking off and on site is questioned. Parking site in Pringle Bay is zoned Business zone 3 which does not permit parking garage or warehouse as a primary or consent use. • A full Traffic Impact Assessment should be provided to demonstrate the impact of the increased traffic resulting from the proposed Distillery. • The shuttle service is a smokescreen to get the application approved. It is questioned if the shuttle driver requires a PDP, where the drivers will be sourced and housed & lead to the taxi industry demanding to be included. 	<p>micro-distillery will park their vehicles at No 16 Central Road in Pringle Bay to be transported via the Pringle Bay side utilizing a minibus or safari type vehicle, and on completion of the tour, be returned to No 16 Central Road. The shuttle service has been incorporated specifically to reduce the traffic related impact of the proposal.</p> <ul style="list-style-type: none"> • A “bakkie” type vehicle will be required to transport the grain barley. As stated in the motivation report, one bakkie load is envisaged per week, while at full production (which it is estimated will take 8 years to reach) will require three bakkie loads per week. All visits to the micro-distillery are intended to be by appointment only with no “walk-ins”. Numbers can therefore be controlled. Due to the scale of the micro-distillery in terms of production, employees, guests and the shuttle system proposed, it is anticipated that Porter Road, in its current state, can and will accommodate the minimal amount of traffic to be generated by the proposal without any negative impacts. The scale of the proposal does not justify a Traffic Impact Assessment or Statement. • The “carbon footprint” to be generated the micro-distillery will be negligible and in no way negatively impact on the ecology of the area. • The minimal amount of additional traffic to be generated by the proposal will not damage the road. As it is a “public” road, it is the Municipality’s responsibility to maintain it to a sufficient standard to allow all landowners of the small holdings between Rooi-Els and Pringle Bay to access their properties.
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		<ul style="list-style-type: none">• The Elves have confirmed that all traffic to and from the subject property will utilize the Pringle Bay Gate.• Any driver transporting passengers requires a PDP. The driver will be employed by the distillery and locally sourced and live off site.• Porter road to the best of our knowledge does not form part of a minibus taxi route and due to the scale and target market of the proposal; it will not result in the minibus operators using Porter Drive to transport guests and/or staff to the micro-distillery.• The Central Road site will not be utilized as a warehouse or as a commercial parking garage. It is simply a site which visitors to the micro-distillery will park their vehicles and then be chauffeured to the micro-distillery. This in our opinion does not require any particular land use approval.
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Town Planner's response

The condition of the road is noted, and that is the reason why a shuttle service is introduced. The road is a Public Road and thus is the responsibility of the Municipality to do the upkeep. It is unclear why the objectors make reference to a taxi route and drivers that will be sourced and housed. The applicant did indicate that the Pringle Bay access will be utilised, however there no documentation could be found indicating how the access control came about and therefore no reason why the Rooi Els access cannot be used by owners or the general public. The Rooi Els and Pringle Bay areas are not exclusive to a particular group of people and the comment is disregarded as an objection.

A Traffic Impact Study was not requested by the Engineering Services Department. The scale of the proposed activity is neglectable and thus a Traffic Study is not necessary. The fact that the street has access control only for the benefit of the Holdings, is not in the interest of the general public and or owners intending to develop their properties and should be investigated on how it came about.

THE DISTILLERY REPRESENTS A FIRE RISK		
OBJECTOR	OBJECTION	RESPONSE
2, 4, 6, 7, 8, 9, 13,14, 15, 16, 17, 21, 22, 23, 25, 26, 29, 30, 33, 36, 37, 38, 39, 41,44, 48, 49, 51, 52, 54, 56, 57, 58, 64, 65, 66, 67, 68, 70, 71, 72, 73, 77, 78, 80, 82, 84, 85, 86, 88, 91, 95, 96, 97,113, 119, 125, 126, 127, 128, 129, 133, 134, 135, 137, 138. 139, 140, 141,142, 145, 150, 153, 156, 158, 160,	<ul style="list-style-type: none"> • A distillery is a huge fire risk in an area that has experienced many fires over time. • The applicant has not addressed the many fire hazards associated with a Distillery and this aspect is downplayed in the application. • It is claimed that Ethanal vapor is highly flammable and is one of the main causes of fire and explosions at distilleries. • Ethanal can be released from leaks in tanks, casks, transfer pumps, pipes and flexible hoses. • The proposed distillery has the potential to intensify and exacerbate the power and rapid spread of fire from another source and have severe impact on the surrounding environment. • Use of wood to fire the stills represents a huge fire risk. • Locating a Distillery in a remote and unsuitable location means that there will be delays in emergency response units to the site in the event of an emergency. 	<ul style="list-style-type: none"> • Fire prevention and safety should be a top priority for every landowner in this area and is for our client. • The fire department have visited and inspected the site. This acknowledged in the letter received from the Environmental Management Section dated 17th June 2021 in which the following is stated, "...<i>the dam was confirmed as a useful fire defence mechanism by the Overstand Fire Department who were present at the site visit</i>" and "...<i>the transformed garden acts as a defendable space in the event of a fire. This was also confirmed by the OM Fire Department on site.</i>" • If the application is granted, a fire engineer will be appointed to advise on how to fireproof the building. Permission to commence operations will not be permitted until the "fire plan" has been approved by the fire department and will include

<p>162, 163, 165, 166, 167, 169, 171, 172, 173, 174, 175, 176</p>	<ul style="list-style-type: none"> • Due to its location, it means there will be lengthy response time for professional firefighting brigades. • The dam is too small to be used by a firefighting helicopter. • The construction of the 600m² “fire pool” which indicates that the distillery is a fire risk. • A fire at the distillery would constitute a hazardous material fire which the Overstrand Municipality is ill equipped to deal with. • Blue Gums/Eucalyptus trees are very flammable and therefore should be removed. • During a fire in 2017, four units of fire fighters were stationed on the gum tree forest on the subject property, indicating how seriously the fire fighters considered the fire risk associated with these trees (& could have been better utilised elsewhere). • Further information is requested regarding the i) storage of the highly flammable woodchips, ii) what fire suppressant systems will be installed in the distillery & storage areas, and iii) will employees be trained in the safe handling of dangerous material (being ethanol & alcohol) to mitigate fire & explosion risk. • It is claimed that Mr Elves’ previous family business involved with an explosion in which people lost their lives. 	<p>details pertaining to sprinklers, fire extinguishers and fire hoses etc. All staff employed at the micro-distillery will be trained in fire prevention and what to do in the event of an emergency event.</p> <ul style="list-style-type: none"> • The wood will be stored in very close proximity to the dam. The fire department will dictate what suppressant systems will be required. • The subject property is accessible via Porter Road and emergency vehicles can, and do, access this area between Rooi-Els and Pringle Bay, as and when required, as for example during the fire of 2017. • It is fallacious thinking to state that the mere existence of a dam proves that the proposed distillery is a fire risk. The Dam is a separate issue from the micro-distillery as confirmed by the DEA & DP letter dated 22nd October 2021. Nonetheless, common sense dictates that in the event of a fire, any source of available water will be used to douse the fire. • Neither the alleged conduct of our client during the 2017 fire nor the fire at their previous business has any bearing on the desirability of the current application. Any negative aspersion cast on the integrity of the Elves’ character is rejected as unfounded and, in the context of the motivated removal, is irrelevant and should be rejected by the decision-maker. Nonetheless, for the sake of accuracy the following is provided: <ul style="list-style-type: none"> - Refer to Annexure 7 which contains an account of the 2017 fire as written by Mrs Elves & the allegation that the Elves monopolised firefighting units.
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		<ul style="list-style-type: none"> - In the 60 years that the family has owned an engineering company, there was one explosion/fire at one of their premises. Mr Elves' brother lost his life while making sure that the staff was evacuated. Mr Elves had severe burns, mostly on his hands and arms from trying to remove an employee's clothing that had caught alight. Mr Elves spent 2 months in an intensive care unit fighting for his life. There were several investigations by the Fire Department, Police, WCA, Afrox and the insurance company. The finding was that there was a faulty valve in an Afrox acetylene cylinder and NO human error. This particular cylinder could have been issued to any business or persons.
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Town Planner's response

Fire prevention in the area is a priority and not only applicable to the application property, but all the landowners in the area. The Distillery will have to comply with all the fire regulations applicable to the use and will thus be less of a risk as to the surrounding landowners that do not have to comply with the strict regulations. A Fire Plan will be submitted to the Fire Department before the Distillery come into operation.

It is however unfortunate and insensitive of the objectors reverting to personal attacks with no basis of their allegations. The reference to a fire on a previous business owned by the applicant, who lost his brother in the process, is uncalled for.

USE OF A SEPTIC TANK		
OBJECTOR	OBJECTION	RESPONSE
2, 16, 23, 37, 79, 107, 111, 112, 115, 140, 157	<ul style="list-style-type: none"> • It is questioned whether or not the septic tank system proposed can accommodate the additional load in terms of wastewater, sewerage etc resulting from the additional people (staff, patrons) utilising the system. • It is not possible to establish how much of the water required per spirit run will be dumped into the septic 	<ul style="list-style-type: none"> • An existing septic tank is used for sewage disposal. It is anticipated that the current tank will accommodate the additional amount of sewage that will be generated by staff and guests once the distillery is operational. • If the current septic tank arrangement process to be

	<p>tank.</p> <ul style="list-style-type: none"> No indication of how often tank needs to be emptied and how big the tank is. The use of a septic tank is considered to be unsustainable & will need to be emptied frequently. It is claimed that hazardous water could be stored in the septic tank. It is claimed that septic tanks leak and therefore a conservancy tank is to be used. That passes the responsibility and cost to the Municipality for its safe disposal. 	<p>insufficient to accommodate the extra load generated by the operation of the micro-distillery, our client intends to install a “composting toilet” to supplement the system which is deemed to be more environmentally friendly than a conservancy tank, subject to the Municipality’s approval.</p> <ul style="list-style-type: none"> Refer to response provided in Table 2 regarding the septic tank which provides further detail in this regard.
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Town Planner’s response

Most of the landowners in the area make use of a septic tank i.e., French drain system. Should it be necessary the owner will revert to a composting toilet, similar to the systems used at the Cape Nature tourist facilities in the Kogelberg Biosphere. The septic tank will only be used for sewage disposal and wastewater through reverse osmosis process. This aspect was highlighted by the Environmental Section as a point of concern. The response from the applicant was that it does not agree with the suggestion of a conservancy tank, but rather make use of a composting toilet facility. In a discussion with the Environmental Section the proposed alternative is deemed viable and accepted. However, to ensure that there is no pollution from the existing system, it is advisable that the Applicant submit water samples at the lowest point of the present system on a 6 monthly basis to the Environmental Section to ensure that the discharge is acceptable into the ground water system is an acceptable range as determined by legislation. The Municipality does not service the area and therefore no cost will be incurred by the Municipality.

NEGATIVE WATER RELATED IMPACTS		
OBJECTOR	OBJECTION	RESPONSE
4, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 25, 24, 26, 27, 30, 31, 33, 34, 39, 42, 44, 45, 49, 52, 56, 57, 58, 64, 65,	<ul style="list-style-type: none"> Extraction of subterranean water for industrial purposes, being the Distillery, is unacceptable and is not ecologically sustainable in a water poor country and will negatively impact on the water table and aquifer in the area. It is contended that whole area between Porter Drive and the Sea constitutes a Wetland. 	<ul style="list-style-type: none"> The amount of water to be used for the distillery is negligible in terms of the irrigation water (allowance) that the farm has. No liquid chemical waste will be released into the environment as per the revised waste management plan. The WMP covers only the relevant areas as there will be no contamination of soil and

<p>66, 67, 70, 72, 79, 80, 81, 82, 84, 85, 86, 95, 96, 113, 119, 120, 125, 127, 128, 129, 130, 133, 134, 135, 137, 138, 139, 140, 141, 142, 142, 147, 150, 151, 152, 153, 156, 157, 158, 161, 163, 163, 165, 166, 167, 168, 168, 169, 169, 174, 176, 177, 178, 179, 180</p>	<ul style="list-style-type: none"> • There is a real risk of ground water pollution through spillage, which could impact on the wetlands close to the Distillery. • It is contended that the liquid waste has a high concentration of chemicals and minerals therefore cannot be used for irrigation, and the greywater also contains high levels of chemicals, minerals and nutrients and therefore also cannot be used in a Fynbos region which is concerning as this is proposed to be used for irrigation purposes on site. • The true scale and nature of the waste products produced is intentionally concealed and misrepresented. • The proposal will over time devastate the subject property and surrounding Fynbos biosphere area. • Further detail is required as to how the applicant will deal with all water from the distillation process so that it does not enter the ground water or any vegetation. • Concern is expressed about the use of, and, water treatment, of the borehole water and if it will require a water treatment plant due to the high levels of iron contained in the borehole water. This in turn questions the financial viability of the distillery as it is expensive. • It is contended that the Waste Management Plan was simply “copied and pasted” from the internet and indicates that this aspect was not properly considered and is not site specific. • No adequate measures which will protect from severe environmental harm caused by accidental spillage, fumes, smoke, explosion, contamination of soil, pollution of groundwater and other accidents. • A Water Usage License Application (WULA) is required to use the water for the Distillery (to use water from the 	<p>groundwater.</p> <ul style="list-style-type: none"> • The information provided in the motivation report is to the best our knowledge is accurate and no attempt has been made to hide any detail of the waste to be generated by the micro-distillery, nor how these products will be handled. • The project environmentalist, being Green Africa has confirmed that the WMP is correct and adequate. It is acknowledged however that there is very little information available on micro-distillery waste management in South Africa. Nonetheless, it has been prepared to meet the requirements of DEA & DP and the Overstand Municipality. • A WULA is only required under Section 21(i). (The distillery is less than 100m from the adjacent river). The necessary permissions will be obtained as prescribed in the relevant legislation, if any. • The wetlands south of the micro-distillery are fed from the spring southeast of the dam as well as the adjacent river. • No contamination will occur. The current 24G is investigating the accusation that the building is within the 32m of a wetland, and it is contended that it is not. • The project environmentalist has also confirmed that the only maps for this area which are available are large-scale maps showing the majority of the conservancy as a wetland. However, there are no small-scale maps (e.g., 1:50) showing the detailed historical farmyard and surrounds, <u>which do not fall within the wetland</u>. Furthermore, Green Africa confirmed that as far as the statement that the building is on a wetland is concerned, there is no
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	<p>dam and borehole).</p> <ul style="list-style-type: none"> • Furthermore, if water from a natural spring that flows into a wetland on the property that it has dammed, it requires a Section 21(c) & (i) authorization. The dam reduces water flow to the wetland to the south of the distillery. • There are numerous wetlands and aquatic systems in close proximity to a high-risk activity which could be contaminated by distillery waste. • If any building work occurs within 32m of a wetland, it triggers NEMA regulations. 	<p>evidence to that as the area is actually a Kikuyu farmyard since the 1970s and the current building has been constructed before the 1998 NEMA cut-off date. Consequently, the Elves cannot be sanctioned if there is evidence that the area was a wetland prior to 1970.</p> <ul style="list-style-type: none"> • As previously mentioned earlier in this Response, the DEA & DP confirmed in their letter dated 22nd October 2021 (refer to Annexure 1), that the Section 24G application relates to the dam and has no direct link to the extension of the stables to accommodate the proposed micro-distillery. • Refer to response provided in Table 2 under “wetlands and vegetation on site” which provides further detail in this regard.
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Town Planner’s response

The amount of water to be used is less than irrigation of farmland. The Waste Management Plan deals with the waste as a by-product of the distillery. The Waste Management Plan was part of the documentation distributed for comments and was not rejected by the various external departments. In a discussion with the Environmental Management Section the proposed alternative is deemed viable and accepted. However, to ensure that there is no pollution from the existing system, it is advisable that the Applicant submit water samples at the lowest point of the present system on a 6-monthly basis to the Environmental Management Section to ensure that the discharge is acceptable into the ground water system is an acceptable range as determined by legislation.

The application site has allocated water rights, and should a water license be required, the applicant will have to obtain the necessary permission should the application be approved and before the distillery come into operation.

INAPPROPRIATE RELATIONSHIP		
OBJECTOR	OBJECTION	RESPONSE
4, 158, 180	<ul style="list-style-type: none"> • It is contended that there is an inappropriate relationship between the landowner and Overstrand Municipality. • Claimed that several elected Rooi-Els officials are 	<ul style="list-style-type: none"> • These claims are rejected as unfounded. If any proof exists, this should be provided to the appropriate authorities.

	friendly with the applicants and have supported the landowners by actively lobbying for people supportive of the application, distributing a circular downplaying or omitting key facts about the application.	<ul style="list-style-type: none"> Any negative aspersion cast on the integrity of the Elves' character is rejected as unfounded and, in the context of the motivated removal, is irrelevant and should be rejected by the decision-maker.
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Town Planner's response

It is unclear what is meant, since whether you are an objector or applicant, you have a right to an audience with the Municipality.

BUILDING LINE		
OBJECTOR	OBJECTION	RESPONSE
4,10, 65, 114, 160, 172 177, 180	<ul style="list-style-type: none"> The reduction of the building line is not supported as building lines are to ensure harmony and uniformity among the properties in the area. It is contended that reducing the building line towards the water's edge will undermine the fragile ecosystem. The departure, if granted, will not prevent the landowner from erecting any new structures in this new adjusted building line area. Reducing the building line will increase light and noise pollution on the fragile ecosystem. By reducing the building line, it could impact on other properties in the area. The building line departure should not be granted because of the natural sense of place of the smallholding area between Pringle Bay and Rooi-Els. The landowner should be required to demolish that part of the building that encroaches into the building line. Regulations should be followed and not departed from. 	<ul style="list-style-type: none"> The regulation departure does not apply uniformly to the street boundary of Porter Drive but only to a specific portion of the disused stable structure as indicated on Figure 19 in the motivation report. Only a relatively small portion of the <u>existing</u> structure is within the street building line. The remainder of the structure is positioned more than 30m from Porter Drive. Note that the planned extension to the structure is on the ocean side of the structure and unaffected by the street (or common) building line. As the footprint of the structure is not built parallel to Porter Drive the impact of the reduced building line is negligible. The structure was built in accordance with an approved building plan (refer to Annexure 6 in the motivation report) and therefore presumably in accordance with the then applicable planning regime. The current application is required to bring an existing building that pre-dates this application in line with the provisions of the existing planning regime. It would be grossly unfair to the current

		<p>owner if this departure is not approved for an existing structure that was built by a previous owner.</p> <ul style="list-style-type: none"> • The distance the structure has been setback from the road edge is more than sufficient to ensure the safety of road users (both vehicles and pedestrians) and continuity of a rural sense of place. • There is no valid reason to require our client to demolish the triangular portion of the building that is situated within the building line. • The building line departure applies to the Porter Road side and not the ocean side of the property. • As the departure is to regularise an existing situation and one that was built in accordance with approved building plans issued many years ago, the contention that it will result in increased light and noise pollution is rejected. • The structure has been in existence for many years without negatively impacting on Porter Road. • Precedent is not a valid argument to refuse or approve an application. Each application needs to be assessed in terms of its own unique set of circumstances and context.
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Town Planner's response

The building for the stables was approved in 1989 by the Caledon Divisional Council and thus has legal standing. The applicant lodged the application for a departure to align the approved building with the Title Deed Restriction of a 30m building line from Porter Drive. This aspect has never come to forefront from any landowner in the vicinity. The building will have no detrimental effect on view corridors or the scenic route along Porter Drive.

AIR POLLUTION		
OBJECTOR	OBJECTION	RESPONSE
6, 8, 9, 11, 13, 14, 23, 31, 33, 42, 52, 67, 70, 72, 76, 77, 78, 80, 82, 84, 85, 88, 89, 95, 97, 113, 125, 128, 129, 130, 141, 145, 150, 152, 154, 156, 158, 160, 162, 163, 167, 168, 172, 174, 178, 180	<ul style="list-style-type: none"> • The Distillery will negatively impact on air quality due to foul odours resulting from the distillation process and is therefore a health risk (including dust and smoke). • Air pollution will result from wood firing of the stills and because a large amount of wood is required to keep the distillation process in operation. • Concern is expressed regarding particulate matter and other pollutants such as mercury, carbon monoxide and volatile organic compounds. This could have a long-term detrimental effect on the local fynbos. • Applicant concedes noxious nature of distillery because applied for C6 to be removed. • Additional information regarding the following needs to be provided: <ul style="list-style-type: none"> • Amount of wood required & the effect of its combustion on the environment. • Will there be filtration to remove the ash and a stack that ensures that gases are emitted safely? • Are pollutants such as Sox, NOx, Cox going to be measured? • Is the City of Cape Town air pollution control by laws & the Natural Environment Management Air Quality Act (39/2004) complied with? 	<ul style="list-style-type: none"> • The system is closed circuit (the wash travels from the mash tun to the wash backs to the stills in closed stainless-steel piping). There are no open containers where odours can permeate into the air. • The proposed micro-distillery will be managed in accordance with the relevant legislative framework applicable to air quality, and if our client transgresses any such law, adjoining landowners or other interested and affected parties will have recourse in terms of that legal framework, which is the National Environmental Management Act: Air Quality Act 2004. This Act will apply to any pollution resulting from the micro-distillery including carbon monoxide. • No mercury will be used in the distillation process and the spirit is in a closed-circuit system. • The contention that the micro-distillery is a noxious activity based on the application to remove the condition relating to noxious industries is premised on a superficial understanding of the application. All of the conditions in Condition C (save one) have been applied to be deleted as the entity (i.e., Hangklip Beach Company) in whose favour these conditions were imposed does not intend to enforce these clauses and because there are now National and Municipal laws now dealing with these issues. • The proposal is situated in the Overstrand Municipality and not the City of Cape Town Municipality. Nonetheless it is believed that the proposal will comply with the applicable By-laws.

		As previously stated, our client has confirmed that their micro-distillery will comply with the provisions of the Act as it applies to the micro-distillery.
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Town Planner's response

The application indicated that it is a closed system, and the use will be subject to the Air Quality Act, 2004 and should there be a transgression, it will be dealt with in terms of the relevant legislation. It should be noted that the application has been distributed to all relevant departments and none raised any issues that needs to be addressed in terms of air pollution resulting from the activities. The Environmental Section also indicated compliance with the relevant legislation and that Broilers, depending on the MW capacity and the other specifications indicated within the regulations must be registered with the Overstrand Municipality designated Air quality Control Officer, Ms T Zweig. The applicant accepted this requirement.

PRECEDENT		
OBJECTOR	OBJECTION	RESPONSE
8, 10, 11, 18, 22, 25, 26, 27, 36, 37, 45, 50, 51, 66, 76, 107, 108, 114, 125, 126, 127, 135, 136, 138, 146, 152, 153, 156, 156, 160, 168, 171, 173	<ul style="list-style-type: none"> • By granting this application, it will create a precedent for other landowners in the area to establish their own commercial and/or industrial enterprises. • Additional similar types of applications (if granted) will negatively impact on a sustainable future. Concern is expressed that other type of commercial activities could be permitted in the area if this application is granted such as resorts, multiple dwelling developments, agri-industry, as well as host weddings, raves, motorbike rallies. • Concern is expressed that the Distillery could be expanded in the future by the current or future owners based on the granting of this application. 	<ul style="list-style-type: none"> • Precedent is not a valid argument to refuse or approve an application. Each application needs to be assessed in terms of its own unique set of circumstances and context. • The scale of the micro-distillery (now and in the future) has been dealt with earlier in this Response. • The potential for development elsewhere or within the area is not relevant to the current application. • The decision maker must apply its mind to the current application at hand. • Future expansions, if any, will need to comply with the prevalent legislative regime.

Town Planner's response

All applications are being dealt with on its own merit. The example of resorts, etc., has no bearing on the application. Should one take the examples into consideration it is clear that none of Cape Nature tourist accommodations and facilities should have been allowed, which is not the case.

LACK OF DESIRABILITY		
OBJECTOR	OBJECTION	RESPONSE
10, 16, 24, 25, 27, 28, 32, 45, 55, 59, 68, 75, 114, 119, 125, 126, 129, 137, 140, 146, 149, 160, 162, 177, 178, 180	<ul style="list-style-type: none"> • It is contended that the proposal only benefits the landowner. • It is questioned how a distillery/light industrial activity and/or a large tourist development is in the public interest and the environment. • It is asserted that the application only serves to divide the local community. • The motivation report is not based in scientific evidence and is very biased in favour of the landowner. • The income derived from the Distillery to the local economy will be limited, while income derived from eco-tourism (because of birdlife, and specifically the rock jumper & fynbos) is far greater. • The distillery will degrade and damage the environment (i, e, a noxious industry with heavy delivery vehicles using a narrow, dirt road creating noise, dust and exhaust fumes) which will negatively impact on existing eco-tourism, all for the benefit of a single landowner. • The proposal will have no significant social benefit or contribute significantly with regard to job creation. • A few extra jobs (permanent & temporary) do not constitute positive socio-economic returns. • Other than undertaking to protect fynbos, no motivation is provided to explain how the proposal will benefit the area in general except for personal gain. • The lack of economic benefit for Rooi-Els and wider community do not justify potential environmental risks. • Comparison of the distillery to a wineries and 	<ul style="list-style-type: none"> • The scale of the development needs to be appreciated and understood. It will be bespoke micro-distillery and not an industrial distillery producing alcohol and a factory type setting. • The proposal will be accommodated in an existing building with a minor addition to it. • Due to the scale of the proposal, it is acknowledged that only a few extra jobs will be created, but that needs to be seen in the context of the current high levels of unemployment in South Africa. • The proposed land use is considered to be appropriate in terms of location due to its scale and limited impact envisaged, including a minimal increase in vehicular traffic. Furthermore, potential waste related impacts have been considered and therefore a WMP was included with the application, and an EMP will be submitted to the DEA & DP and the Overstrand Municipality in due course. • The micro-distillery will have a small but appreciable benefit for the local and regional economy in terms of job creation and tourism, as well as diversifying the tourism appeal of the area. • Due to its scale, type of operation as described in the motivation report as well as further elaborated on herein; its impact will be limited and will not impact on existing activities currently enjoyed in this area, such as birding. • Section 7 in the motivation report assessed the application in terms of the applicable Policy Framework, being the Provincial Spatial

	<p>breweries on other farms is irrelevant as those were established on farms where the raw material is produced, which is not the case in this instance.</p> <ul style="list-style-type: none"> • Ad hoc nature of the proposal is not in keeping with the spirit of SPLUMA and will result in fragmentation of the area. • The proposal not aligned with Overstrand IDP. 	<p>Development Framework, Overstrand Municipal Growth Management Strategy, Overstrand Municipal Spatial Development Framework, and the Overstrand Municipality Land Use Scheme, as well as Section 42 of SPLUMA in Section 13 of the motivation report. Based on this assessment it was concluded that what is proposed is desirable and worthy of support. Consequently, the claim that what is proposed is not in keeping with planning policy is rejected.</p> <ul style="list-style-type: none"> • It is acknowledged that the proposal will benefit own client, if approved and proves to be successful. Nonetheless, a great deal of their resources has been committed to this endeavour. • It is firmly contended that the proposal will in turn have a small but positive benefit for the area and will be able to co-exist with surrounding landowners due to its limited anticipated impact on the environment and due to its scale.
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Town Planner's response

The area is earmarked for tourism and leisure development in terms of the Western Cape Spatial Development Framework. The consent use is prevalent in the South African rural landscape as an added factor in stimulating tourism with the spin-off effect of people visiting the surrounding towns and their amenities. The applicant dealt extensively with the requirements of the SPLUMA principles in the motivation Section 12, page 38 and the various policy documents, Section 7, page 20, is as far as compliance with policy requirements indicating the alignment of the application in terms of the aforementioned document.

The rural landscape in the Overstrand is renowned for its eco-tourism which varies from extreme sports, nature orientated activities and eco-friendly commercial activities such as distilleries, breweries, wine production and tasting. This application is no different to the activities in Stanford, Hemel-en-Aarde Valley, etc. It should be noted.

SECURITY		
OBJECTOR	OBJECTION	RESPONSE
10, 22, 26, 114	<ul style="list-style-type: none"> The proposal could result in potential security risks to residents due to increased number of people (visitors to the distillery, employees, delivery workers) accessing this area. 	<ul style="list-style-type: none"> Crime is an ever-present threat to South African society no matter where one is located, be it in a township, suburb, high security residential estate or small holding. Crime exists in Roo-Els and Pringle Bay and what is proposed will not result in an increase in crime levels. The days of preventing people from accessing an area ended with the dismantling of Apartheid in which the "other" was feared and prevented from entering a particular area. The use of the property as proposed and the associated increase in numbers of people does not present an undue security risk.

Town Planner's response

To reiterate as per a previous comment, the area is not exclusive to landowners. Porter Drive is a public street. Secondly, the avitourists then also pose a security risk due to the transgressing on private properties to view the fauna and flora by individuals from surrounding areas.

USE OF WOOD		
OBJECTOR	OBJECTION	RESPONSE
11	<ul style="list-style-type: none"> The use of hack invasives to produce enough wood to heat the still is questioned if the still is to operate four times a week. A projection of wood usage should be provided and if wood will need to be delivered (increasing traffic load). The disposal and amount of wood ash is not described in the motivation report. 	<ul style="list-style-type: none"> It is not the intention that wood will be sourced exclusively from alien clearance activities on the property and in the area. Half a bakkie load of wood is required per spirit run. The applicant intends to bring in wood on their weekly trip to Caledon/Botriver. The wood ash is minimal and will be disposed of responsibly. It will be used for composting and for agricultural purposes.

Town Planner's response

The applicant's response is noted and agreed with.

ADDITIONAL IMPACT STUDIES/INFORMATION REQUIRED		
OBJECTOR	OBJECTION	RESPONSE
11, 12, 16, 18, 21, 27, 55, 58, 86, 88, 96, 107, 119, 120, 123, 127, 129, 130, 135, 147, 171, 178, 179, 180	<p>Additional information and/or studies need to be provided to make an informed decision about the proposed Distillery.</p> <p><u>Additional info required:</u></p> <ul style="list-style-type: none"> Due to the possible impacts of the Distillery on its environment, a full Environmental Impact Assessment is required before an informed decision can be made. This is done by an independent specialist and not by someone previously involved with the project. EIA may be required as disturbance of indigenous vegetation might exceed 300m². <p><u>Disposal of Waste:</u></p> <ul style="list-style-type: none"> The claim of disposing of grain waste to cattle and pig farms is unsubstantiated. <p><u>Effect of planned irrigation:</u></p> <ul style="list-style-type: none"> Specialist study required on the effect of irrigation and of increased phosphates on the fragile natural fynbos ecosystem, including on the seepage areas and run off into the sea is required. <p><u>Wastewater:</u></p> <ul style="list-style-type: none"> The amount of wastewater to be generated and disposed of needs to be independently verified regarding the implications and potential impact on 	<ul style="list-style-type: none"> DEA & DP have confirmed that a full EIA is not required. Refer to the letter dated 22nd October 2021 contained in Annexure 1. An EIA can be done by any consultant that the landowner wishes to appoint. In keeping with the applicant's intension to minimise waste, grain waste will be disposed of to livestock farmers in Somerset West, Grabouw and Botriver There is a small orchard and vegetable garden on the farm which is only for home use. This has been irrigated for many years and no specialist study is required. The WMP (refer to Annexure 3), confirms that wastewater will not be released into the environment.

	<p>environment (especially the Fynbos) and ground water.</p> <p><u>Fire:</u></p> <ul style="list-style-type: none"> • A comprehensive fire risk assessment required including aspects such as layout, design and storage of flammable material. <p><u>Wetland:</u></p> <ul style="list-style-type: none"> • Based on John's botanical assessment and the Hardcastle letter, requires a freshwater specialist to confirm existence of wetland <p><u>Questions:</u></p> <ul style="list-style-type: none"> • Will locals be employed and are there any BEE requirements? • What kind of public liability will the Distillery have in place for surrounding owners, & owners in Pringle Bay and Rooiels? • What kind of insurance & capability does the Municipality have to contain and clean -up a spill of highly toxic material in the Buffer area of the Biosphere reserve? 	<ul style="list-style-type: none"> • This was dealt with earlier in this response. • The proposed micro-distillery is on a historical dumping site which was covered by exotic kikuyu lawn and is far removed from any wetland or pristine flora. • Refer to response included under "negative water related impacts". • Refer to response provided in Table 2 under "wetlands and vegetation on site" which provides further detail in this regard. • Locals will be first option for employment. B-BBEE compliance for companies is not a legislative requirement. Companies are not required to disclose their B-BBEE status or verify their status. • Once the application has been approved, and the distillery constructed, the Elves insurance company will advise on the public liability that they require. • This is a small-scale craft distillery. The largest quantity of spirit produced will be 250 litres at a time and contained in a wood barrel.
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	<ul style="list-style-type: none"> • How will the grey water be used / stored? • More info regarding the educational lessons, i.e., how many guests, qualifications of the lecturer & how can these lectures be held in co-ordination with whiskey & gin tasting & the quality of info to be provided? • It is contended that the subject property is covered with alien species to the extent that it has spread to other properties. What is planned to get rid of them? • Will all visits to the Distillery be via appointment only and what about “walk-ins”? • Alien vegetation to be used as fuel on the land unit is finite. No info is provided about what alternative fuel will then be used. 	<ul style="list-style-type: none"> • The grey water will be stored in a sealed container (Jo-Jo type) and used for irrigating the vegetable garden (raised beds) and the fruit orchard. • As a sustainable eco-distillery, our client will provide back-ground on the surrounding area, flora and fauna as part of the tourism information disseminated to visitors to the distillery. The application clearly states that each tour would include a maximum of 12 people. • This assertion is rejected. The gum trees do have benefits for bees in summer. Our client will introduce new indigenous trees and phase out the gum trees. Our client has not had any complaints about alien vegetation from the neighbours. • All tours will be appointment only. There will be no “walk-ins”. • Currently the supply of alien vegetation as a fuel source is sufficient to ensure the operation of the distillery. There are many suppliers of harvested wood from alien species in the Cape who for supply of alien wood. As the Elves are part of the hacking teams in the area, they would like to see how they could benefit them by purchasing a chipper and removing some of the vegetation after hacks. This will not be our client’s main supply, but more a community service.
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Town Planner's response

The issues with regard to Environmental Impact, Wetland Study, Irrigation Study, etc. have been dealt with in previous comments and have not been required by any of the mandated Departments.

BABOONS		
OBJECTOR	OBJECTION	RESPONSE
16	The waste grain will attract baboons	All waste products will be stored and disposed of properly and in accordance with the Waste Management Plan.

Town Planner's response

All waste products will be stored and dispose of as per the Waste Management Plan.

LAYOUT OF DISTILLERY		
OBJECTOR	OBJECTION	RESPONSE
16	<ul style="list-style-type: none"> No bathrooms provided and the tasting room is too small to accommodate social distancing as required due to Covid 19, will not be able to be provided. Space is required for a small kitchen and storeroom for the snacks. A seating area is required if on site liquor license granted. 	<ul style="list-style-type: none"> The layout of the micro-distillery as depicted in the Figure 11 in the motivation report was clearly labelled "Conceptual Distillery Layout Plan". Contingent on the approval of the land use application, this plan will be refined prior to it being submitted for building plan approval (confined to the existing structure). Note that the number of visitors will be limited as discussed above. For as long as Covid-19 regulations are in place these will be complied with.

Town Planner's response

If the application is approved a site development plan and building plans need to be submitted at which time all the requirements of National Building Regulations have to be met.

FINANCIAL VIABILITY		
OBJECTOR	OBJECTION	RESPONSE
24, 25, 33, 55, 107, 160, 180	<ul style="list-style-type: none"> • The financial viability of the proposal is questioned because flavoured gin & whiskey is not rare anymore and will only be profitable if scale is increased and/or more tourists visit than what was stated in the application. • The stated intention of being a small-scale business is not in line with capital investment. • The “real” intentions of the landowners are questioned. • It is contended that the landowners have already invested more than R4.3 million to produce 1000 litres of whisky and gin which could conceivably be produced in a garage or big kitchen without the need for the entire infrastructure the landowners have built). It is contended that production will need to be increased to 38 000 litres per week (2 million litres per annum) to be viable. 	<ul style="list-style-type: none"> • Most gin sellers purchase bulk spirit from commercial distilleries and flavour with flavourants, colourants etc. • The proposed micro–distillery is unique as it will be one of the few that actually distil their own spirit. Locally produced whiskey is not commonly sold. • As previously mentioned, due to size of the consent use area, the equipment, solar generated power, etc.; the scale of the operation cannot be increased. • The financial viability or not of the proposed distillery is not a valid ground for objection, as it does not relate to the use of the property. Financial decisions and responsibility of the proposed use are the landowner's concern.

Town Planner's response

The financial risk is that of the owner.

DEVALUATION OF PROPERTY		
OBJECTOR	OBJECTION	RESPONSE
27, 33, 108,140, 172, 164	<ul style="list-style-type: none"> Property values will decrease with the introduction of commercial activity and because the view of industrial type building with smoke and vapor emissions will reduce surrounding property values. 	<ul style="list-style-type: none"> The claim is rejected as the micro-distillery, will be accommodated in the existing barn structure (with a small addition). It is not the proposal to construct any new large-scale industrial building with chimney stacks on the property. The converted barn will not be “an industrial building” nor will in impacted on current views as it exists, the only extension is the new storeroom and lock up to store as indicated in the approved building plan depicting the addition to the barn contained in Annexure 5. Note that the height if the addition is about 6.5m

Town Planner’s response

No study was done to prove the possible devaluation of the property. The activity will be located in an existing building (stables) and not an industrial building in the traditional sense.

NOISE POLLUTION		
OBJECTOR	OBJECTION	RESPONSE
33, 82, 125, 128, 129, 156, 158	<ul style="list-style-type: none"> The Distillery production could be noisy which will disturb both people and wildlife in the area. Noise pollution could result from the Distillery been used for a venue for parties, weddings or similar type activities. 	<ul style="list-style-type: none"> The production process is not a noisy one and will be enclosed in the converted barn. The subject property will only be utilised for a residence for our client and the micro-distillery & farm store. Council’s approval for events is required should the property be utilised for parties, weddings etc. currently no such approval is being sought.

Town Planner's response

The distillery is located within an existing barn, the assumption that the property will be used as a venue for other uses is incorrect. An application in this regard will have to be submitted.

UNSPECIFIED OBJECTION		
OBJECTOR	OBJECTION	RESPONSE
87	No reason given for objection	An objection with no reason(s) provided cannot be refuted.

Town Planner's response

No comment.

ADDITIONAL MANPOWER		
OBJECTOR	OBJECTION	RESPONSE
111, 112, 115	<ul style="list-style-type: none"> At full production and bottling of 15000 bottles of whisky will require more manpower than what is stated in the application. 	<ul style="list-style-type: none"> It is not clear on what basis the 15000 bottles are derived. This is a small-scale boutique micro distillery and details about the projected workforce were provided in Section 6.4.2 of the motivation report and that remains unchanged.

Town Planner's response

The workforce was discussed in the motivation, Section 6.4.2, page 17, which indicates that only the groundsman/ caretaker will be housed on site.

PROOF OF NOTIFICATION		
OBJECTOR	OBJECTION	RESPONSE
120, 178	<ul style="list-style-type: none"> No proof provided that all property owners of the small holdings were sent Notice of the application. Notification of an application is a legal requirement. 	<ul style="list-style-type: none"> All the Interested and affected parties were notified of the application via e-mail and registered mail. Proof of compliance regarding the prescribed

		notification process was provided to the Municipality.
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Town Planner's response

The applicant was informed to distribute the application to the surrounding owners and all the objectors on the previous application of which the Friends of Rooi Els was an objector. Motsoo Investments 2 (Pty) Ltd, owner of Erven 266 and 267 is part of the Township of Rooi Els, an approved Township, which does not form part of the Holdings area. The application was distributed to the Ward Councillor, Area Manager, and Ratepayers Association and advertised in the local newspaper.

INCOMPATIBLE WITH ENVIRONMENTAL AND HERITAGE OVERLAY ZONING		
OBJECTOR	OBJECTION	RESPONSE
25, 113, 129	<ul style="list-style-type: none"> It is contended that the Distillery is incompatible with these overlay zones. Can't discharge domestic effluent/grey water into the EMOZ. No land user within the EMOZ may utilise vegetation in a vlei, marsh or within the flood area of a watercourse in a manner that may cause the deterioration or damage to the natural agricultural resources. 	<ul style="list-style-type: none"> The impact of the proposal on the Coastal Protection zone was assessed in Section 7.4.2 of the motivation report, and in terms of the Buffer Protection Zone EMOZ in terms of this response. In terms of the WMP no waste is to be discharged into the area. The application does not entail the utilisation of <i>"vegetation in a vlei, marsh or within the flood area of a watercourse in a manner that may cause the deterioration or damage to the natural agricultural resources"</i>.

Town Planner's response

The application did deal with the Overlay Zones and as indicated the application does not entail the utilisation of the vlei, marsh or floods area that may cause a negative impact on the environment. The Wastewater Management Plan indicated that no waste will be discharged into the area. The applicant did indicate an oversight of the Protected Area Buffer Zone Overlay and requested that it be included in the evaluation of the application. The latter is a consent use in terms of the Overlay zone, which is dealt with in a similar fashion as the consent use for an Agricultural Industry and thus no additional information is required.

PROPOSAL IS ELITIST		
OBJECTOR	OBJECTION	RESPONSE
149	Proposal is elitist as it intends making expensive gin for a few rich people	The socio-economic bracket that the product is directed at is irrelevant. The proposed use of the property diversifies the tourism offering in the Overstrand. As such it will make a contribution to the tourism and hospitality sectors of the Western Cape Economy. The tours of the micro-distillery will be open to all. Nonetheless, it does not make the land-use undesirable.

Town Planner's response

It is the prerogative of the owner to establish which market his product caters for.

NOT IN ACCORDANCE WITH THE PROVINCIAL AND MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORKS		
OBJECTOR	OBJECTION	RESPONSE
127	SDF only promotes business use intensification within an existing node and to protect the reserve from urban development and therefore the proposal not in compliance with these Planning Instruments.	This claim is rejected. Section 7 of the motivation report assessed the application in terms of applicable planning policies, including the Provincial Spatial Development Framework and the Overstrand Municipal Spatial Development Framework. Based on this assessment, it was concluded that the proposal is compliant and should be supported.

Town Planner's response

The application deals extensively with the planning documents of both the Municipality and the Western Cape Government.

NOT MOTIVATED IN TERMS OF THE BY LAW		
OBJECTOR	OBJECTION	RESPONSE
113	<ul style="list-style-type: none"> • It is contended that the motivation provided in terms of Section 66(1) of the By Law is incorrect or denied, with the exception of Section (l). • The application of the Development principles and Sect 42 of SPLUMA is very selective. • No assessment done on the cumulative impact of the proposal. 	<ul style="list-style-type: none"> • This claim is rejected as no reasons were provided to support this claim. • A comprehensive motivation, which included its cumulative impact, for the proposal was provided in the motivation report. Section 11 provided general motivation for the application in terms of the municipal planning by-law, while Section 12 provided motivation in terms of the Development Principles contained in WCLUPA and SPLUMA. Section 13 provided motivation in terms of Section 42 of SPLUMA.

Town Planner's response

The application extensively deals with the principles in the motivation, Section 11 and 12 of the motivation report.

RESPONSE TO THE LETTERS RECEIVED FROM THE MUNICIPAL ENVIRONMENTAL MANAGEMENT SECTION AND THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

WETLANDS & VEGETATION ON SITE	
COMMENT FROM EMS	RESPONSE FROM APPLICANT
Wetlands (watercourse): please refer to Appendix 1 for spatial representation of the wetlands on the property.	<ul style="list-style-type: none"> • The project environmentalist has confirmed that: While it is agreed that according to Appendix 1 the area is represented as a wetland. However, note that: <ul style="list-style-type: none"> - this area is zoned for agriculture and has been a working farmyard since the 1970's and therefore is exempted in terms of the 1998 NEMA cut-off date. - The spatial maps do not indicate landfill and other micro activities that were done by previous owners of the farm in the period from 1970 to 1998. - Furthermore, the only maps for this area which are available are large-scale maps showing the majority of the conservancy as a wetland. However, there are no small-scale maps (e.g., 1:50) showing the detailed historical farmyard and surrounds, <u>which do not fall within the wetland.</u>
Portion 141 of Farm 559 contains Critically Endangered Kogelberg Sandstone vegetation. The proposed expansion of the existing stable is within the transformed area as specified in the application and the DEA & DP correspondence referred to (i.e., in the 2018 letter from DEA & DP)	<ul style="list-style-type: none"> • It is agreed that the expansion area is in the transformed area. However, the DEA&DP correspondence referenced has been superseded by the DEA&DP dated 22/10/2021 which is contained in <i>Annexure 1</i>, where the DE&DP have provided their consent for the activity to go ahead.
<p>Eucalyptus species are classified as a Category 1b Alien Invasive Species by the National Environmental Management Biodiversity Act: Alien Invasive Species List, 2016:</p> <p>a) Category 1b within-</p> <ol style="list-style-type: none"> i) Riparian areas; ii) A Protected Area declared in terms of the Protected Areas Act; iii) Within a Listed Ecosystem or an ecosystem identified for conservation in terms of a Bioregional Plan or Biodiversity Management Plan published under the Act. <p>b) Not listed within Nama-Karoo, Succulent</p>	<ul style="list-style-type: none"> • Only certain Eucalyptus species are classified as Category 1B. Others are classified as Category 1C, 2 and 3. • In this particular case the Eucalyptus does not fall within a riparian area or a protected area. Notwithstanding, our client has an alien invasive species management plan that will address the removal of these trees over time, and the legislative requirements will therefore be complied with. • Currently these trees form a windbreak and protection from the elements. • These trees are currently used for bee forage and are more than 50

<p>Karoo and Desert biomes, excluding within any area mentioned in (a) above.</p> <p>c) Category 1b in Fynbos, Grassland, Savanna, Albany Thicket, Forest and Indian Ocean Coastal Belt biomes</p> <p>i) Category 2 for plantations, woodlots, bee-forage areas, windrows and the lining of avenues.</p> <p>ii) Not listed within cultivated land that is at least 50 meters away from untransformed land but excluding within are (a) above.</p> <p>iii) Not listed within 50m of the main house of a farm but excluding in (a) above.</p> <p>iv) Not listed in urban areas for trees with a diameter of more than 400mm at 1000m of height at the time of publishing this Notice but excluding (a) above.</p> <p>The Listed Ecosystem referred to above at a) (iii) above is the Critically Endangered Kogelberg Sandstone as indicated in 2.a. of this document.</p> <p>As per the above, the gumtrees on the property therefore do not have a "Heritage" status.</p>	<p>meters away from untransformed land and are less than 50 meters from the main house.</p>
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Town Planner's response

It is acknowledged that the property falls in the area represented as a wetland. However, the land is zoned agriculture and has been used as a working farm since the 1970's. The structures on the property were approved before 1998, except the extension which was approved at a later stage. Thus, irrespective of its locality within an identified wetland area, this information is generic and not site specific. The stables have an approved building plan, dated 1987, which supersede the Environmental Legislation, dated 1998.

The existing Eucalyptus trees are located near the main dwelling and serves as a windbreak and forage for bees. The owner intends to replace the trees with indigenous trees or shrubs over a period of time. To remove the trees now will leave the dwelling vulnerable to the weather, especially wind. The transformed garden area acts as a defendable space in the event of fire and has been confirmed as such by the Fire Department during a site inspection. The trees are located more than 50m from untransformed land and does not fall within the Riparian or protected area.

NEW NEMA APPLICATIONS	
COMMENT FROM EMS	RESPONSE FROM APPLICANT
<p>DEA & DP statement included in the 2018 letter received from DEA & DP, (i.e., that the proposal does not trigger any Listed Activity) has been included here due to the information</p>	<ul style="list-style-type: none"> Approval has now been given by DEA&DP (refer to letter dated 22nd October 2021, contained in Annexure 1).

<p>submitted in the 2021 application that indicates that the expansion is below the applicable threshold. However, Figure 11 (being the Conceptual Distillery Layout Plan) indicates that the extension includes:</p> <ul style="list-style-type: none"> • 131.4 m² Distillery and • 19.6m² Boiler Room addition <p>The total development footprint is therefore 150.1m². Due to the increase in the proposed development footprint and proximity of less than 32 meters from the watercourse, EMS request that a new application using the NEMA Applicability Checklist is submitted to the DEA&DP for EA.</p>	<ul style="list-style-type: none"> • The proposed listed activity therefore has the approval of the DEA&DP, and no new application is required.
<p>It must be noted that the removal of Title Deed Restrictions does not surpass the National Environmental Management Act (NEMA, 1998) Environmental Impact Assessment (EIA) Regulations published as Government Notices 324, 325, 326 and 327 in 2017.</p> <p>If any activities related to the removal of Restrictive Title Deed clauses – for e.g., “6. <i>No noxious trade or activity shall be carried on the said land</i>”.</p> <p>The relevant authority must be notified, and permission applied for to undertake NEMA listed activities prior to commencement of such an activity.</p>	

Town Planner’s response

The expansion area is located in a transformed area and the proposed consent use has the approval of DEA&DP.

CONFIRMATION OF THE APPLICATION TO LEGALIZE THE DAM	
COMMENT FROM EMS	RESPONSE FROM APPLICANT
<p>The applicant must provide evidence that the section 24G NEMA process for the legalization of the dam is underway.</p>	<p>Refer to the letter received from DEA & DP dated 9th September 2021 acknowledging receipt of the Section 24G application contained in Annexure 2.</p>

Town Planner’s response

The illegal dam is a separate issue from the land use application. The aforementioned is being dealt with by the owner in conjunction with DEA&DP. A 24G application has been submitted.

INCLUSION OF THE PROTECTED AREA BUFFER EMOZ IN THE APPLICATION	
COMMENT FROM EMS	RESPONSE
<p>The Protected Area Buffer Zone was not included in the application. The application must be amended to be accurate.</p>	<ul style="list-style-type: none"> • Section 7.4.2 provided an overview of the five Environmental Management Overlay zones, and in particular the Coastal Protection Zone EMOZ. • Reference to the Protected Area Buffer EMOZ was omitted in the motivation report. • Similar to the Coastal EMOZ, the proposed micro-distillery and farm shop/stall do not constitute any of the prohibited activities, as per Schedule "A" in Protected Area Buffer EMOZ, but includes activities only permitted with Council consent, i.e., "commercial" and "construction or placement of any permanent object, building, shelter, pathway or structure", as in Schedule "B". • The requisite consent is herewith applied for.
<p>In a subsequent e-mail the Environmental Officer stated that, <i>"141/559 has both the Coastal Protection Zone and Protected Area Buffer Zone EMOZ, please make sure both are in the application (you have included the Coastal Protection EMOZ, but I can't find reference to the Protected Area Buffer Zone?). The Schedules for both of these EMOZ for e.g., prohibited activities or activities that require permission etc. for e.g., harbouring alien invasive species (the gum trees), installation of conservancy tank (I requested this be installed to replace soak away) storing water (the dam) etc."</i></p>	<ul style="list-style-type: none"> • Consent for the two activities requiring Council's consent in the Protected Buffer Area EMOZ is applied for as per the above. • Refer to the statement regarding the Eucalyptus species provided under "wetlands and vegetation on site." • It has been confirmed that current sewage system on the property which is a "soak away" septic tank system, is to remain. It has been confirmed that the soak-away system does not require pumping/removal by a sewerage truck. The soak away is a natural process system and works with natural bacteria that break down solids. • The capacity and functioning of the system will be closely monitored. • Based on the aforementioned, what is proposed regarding the blue gums and the retention of the existing septic tank, means that it is not in contravention of the prohibited activities (i.e., the blue gums) as per Schedule "A" or requires consent (i.e., the conservancy tank) as per Schedules "B" applicable to the Protected Area Buffer Zone EMOZ. • Regarding the dam, it is a completely

	separate issue and must not be conflated with the land use application for the micro-distillery and farm store/shop. This is confirmed in the letter dated 22 nd October 2021 from DEA & DP contained in Annexure 1 .
It was noted in the letter received from EMS that, <i>“The owners indicated that the current soak-away septic tank will be used to collect wastewater produced by the Reverse Osmosis Filter used in the distillery process. The application indicates that this wastewater does not contain organic waste but is high in dissolved minerals. The owners and the written application indicated that the septic tank should require more frequent emptying the service will be contracted out by the owner.”</i>	This is incorrect. The existing soak away septic tank that receives sanitary ablution waste should not be confused with the waste management system designed to serve the micro-distillery. The wastewater from the micro-distillery will not discharge into the septic tank. Please refer to the Waste Management Plan (WMP) contained in Annexure 3 for further details regarding this, and specifically Section 5.2 in the WMP.

Town Planner’s response

The applicant acknowledges the omission of the Protected Area Buffer Zone. The requisite consent is herewith applied for. The Coastal EMOZ and Protected Area Buffer Zone does not prohibit the proposed application as per Schedule A, but includes activities only permitted with Council consent as per Schedule B of the aforementioned.

The applicant indicated in his motivation that the septic tank soak away will only be used for the household and not proposed distillery. This aspect has been dealt with extensively in the Water Management Plan, Section 5.2 of the Plan.

ADDITIONAL INFORMATION REQUIRED	
COMMENT FROM EMS	RESPONSE
Due to the location of the soak-away system away from property access points, it is not clear how the soak-away system will be accessed by a sewage truck to remove excess wastewater if the need arises. Clarity from the applicant is requested on this point.	Refer to the 3 rd , 4 th and 5 th bullet points in the 2 nd in the response titled “inclusion of the protected buffer EMOZ in the application.”
A Waste Management Plan (WMP) was submitted with the application. The WMP should be updated and resubmitted to include the conservancy tank installation.	Waste Management Plan has been updated, and a copy thereof is contained in Annexure 3 .
There is no information in the application regarding the harvesting or utilization of fynbos species. It is therefore unclear what species will be used – or the conservation status of the fynbos species – will be.	<ul style="list-style-type: none"> • Our client no longer intends to harvest fynbos for use in the micro-distillery. • Nonetheless, nothing prevents our client from applying for the requisite permit at a later date. • Cape Nature will only approve permits for specific species that may be harvested that are not endangered.
It is unclear whether a permit will be required from Cape Nature for this proposed activity, it is requested that the applicant contact the relevant authority and include in this application the proposed activities with	

regard to fynbos harvesting, the amount of harvesting required for the proposed activity and either reasons for not requiring a permit (i.e. the lawfulness of the activity without a permit) or the assurance that the permit process will be undertaken if proposed application is granted.	
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Town Planner's response

To reiterate, the proposed application does not indicate a conservancy tank and the applicant has no intention to install a conservancy tank, since it is not necessary. There is a misunderstanding between the Environmental Section and the Applicant with regard to the wastewater discharge. In the WMP there is two sections deals with different types of waste namely Section 5,3 of the WMP, referring to Liquid Waste, which will be held in a separate holding tank for irrigation purposes and then in Section 5.6 of the WMP, referring to Wastewater which will be discharge into the existing septic tank sewerage line. The latter is possible due to the reverse osmosis process to eliminate all harmful elements released in the groundwater. The latter which were addressed in the abovementioned reply under Negative Water Related Issues.

The applicant will not harvest fynbos, but if it does at a later stage, the necessary legislative procedure will be followed.

RECOMMENDED CONDITIONS OF APPROVAL	
COMMENT FROM EMS	RESPONSE
It is recommended that the approval for this application should include conditions that for e.g., should road traffic be seen to increase due to increased and/or valid complaints are received, measures will be put in place to mitigate.	<ul style="list-style-type: none"> This is acceptable to our client.
Broilers, depending on the MW capacity and the other specifications indicated within the regulations must be registered with the Overstrand Municipality designated Air Quality Control Officer, Tamzyn Zweig (tzweig@overstrand.gov.za).	<ul style="list-style-type: none"> Contingent on the approval of the application, this will be complied with, if required. It is anticipated that the proposal will use far less than 1 MW of electricity.
The condition of approval of this application should therefore include, as per National Legislation and the Overstrand 2020 EMOZ regulations (as described in section 1 of the EMS letter), a commitment from the applicant to remove the AIS species over a period of time. An Alien Vegetation Management Plan should be attached to the application.	<ul style="list-style-type: none"> This is acceptable to our client. Note that an Environmental Management Plan (EMP) is being complied by the project environmentalist (i.e., Green Africa) and will be submitted for approval once complete, and contingent on the approval of this application. The EMP will address the requirements of EMS (including the Alien Vegetation Management Plan).
The property must comply with fire regulations at a National, Regional and Municipal level before the commencement of commercial micro	<ul style="list-style-type: none"> This is acceptable to our client who is committed to complying with the applicable National, Provincial and

distillery activities.	Municipal fire regulations.
Due to the proximity of the wetlands on the property, it is requested that a sealed conservancy tank is installed with off-site suction point is installed. The EMOZ requires that the installation of conservancy tanks be further than 50m of a watercourse. An amended plan to the Overstrand Building Control Department must be submitted to indicate the location of tank and suction point.	<ul style="list-style-type: none"> As explained earlier the current septic tank “soak away” system has been operating well for many years and the Elves are loath to remove it and replace it with a conservancy tank, which also requires consent in the Protected Buffer Zone EMOZ. Furthermore, the justification for it, i.e., due to the presence of a “wetland” is refuted for the reasons provided earlier in this Table.

Town Planner’s response

The conditions stipulated is acceptable to the Applicant, except for the conservancy tank that has been dealt with extensively in the Waste Management Plan and has been dealt with in under Negative Water related Issues.

COMMENT FROM DEA & DP (dated 19 May 2021)	
COMMENT FROM EMS	RESPONSE
The site is located within 32m of a watercourse and the existing building will be expanded by more than 100m ² to accommodate the proposed micro-brewery and farm shop/stall ad triggers Listed Activity No 48. Written authority is required from the competent authority prior to the undertaking of the proposed micro-distillery.	This letter has been superseded by the letter received from DEA&DP dated 22 nd October 2021 contained in Annexure 1 in which it is confirmed that, “... <i>the proposed development on the property does not constitute any listed activities...</i> ”

Town Planner’s response

The comments have been replaced by a letter dated 22 October 2021 which confirm that no listed activities are triggered.

8. SUMMARY OF APPLICANT’S REPLY TO COMMENTS

See Paragraph 7 above.

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

See Paragraph 7 above.

Internal and External Departments

The application was supported by all internal municipal departments as well as the external departments.

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

10.1 Background

N/A

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

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

The objectives relating to:

Spatial Justice

N/A

Spatial Sustainability

The proposed application has no impact on the biophysical environment and agricultural land. The activity will not be to the detriment of existing or future generations.

Efficiency

The application property is self-sufficient in terms of services and thus will not be a liability for the Municipality. The operational management is based on recycling of by products, thus efficient use of organic material. The same applies with regard to the re-use of water due to the close system in the distillery process.

Spatial Resilience

Resilience refers to adaptation to change with the emphasis of the proactive involvement of human involvement. The latter has reference to use of new technology, creativity and flexibility. The application is making use of alien vegetation for firewood; use the newest technology to implement a closed system where water is reused as well as the by-products of the process.

Good Administration

The application followed due process.

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

Same as Point 10.2 above.

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

In line with low impact eco-tourism and non-agricultural uses in the rural areas to

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

N/A

10.6 Impact on Municipal Engineering Services

No impact on municipal services.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

N/A

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

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.

Condition C has no financial value for the Hangklip Beach Company since it is not an active developer anymore where land uses may have impact on the selling of the properties.

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

None, since the sole beneficiary agreed to the removal of Condition C., with the exception of amending Condition C.13.

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

It will enable the applicant to establish a micro distillery and to legalise an approved building.

The social benefit of the restrictive condition remaining in place.

None, since Condition C. is for the sole benefit of the Hangklip Beach Company, with the exception of C.13.

The social benefit of the removal of the restrictive condition.

It will enable tourism related facilities of low impact to stimulate and attribute to the local rural economy.

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.

The removal will remove all the rights, Condition C., with the exception of Condition C.13. However, the Hangklip Beach Company has voluntarily relinquish these benefits.

12. THE DESIRABILITY OF THE PROPOSAL

The application is for a micro distillery and an associated farm shop/stall. The facility will be housed in the existing horse stables. The property is zoned Agricultural Zone 1 and the aforementioned uses can be accommodated under a Consent Use. In terms of the Overstrand Municipality Land Use Scheme, 2020, a distillery is accommodated under the definition of Agricultural Industry. The latter is defined as follows: *“means an enterprise for the processing of agricultural related products on or close to the land unit where these agricultural products, whether land- or marine based (such as aquaculture), are grown, harvested and raised where the processing in such proximity is necessary due to the nature, perishability and fragility of such agricultural products or promotion of tourism related activities, and includes, inter alia, dairies, wineries, distilleries...”*.

The products needed are available in the Overberg District. The close proximity as per the definition of an Agricultural Industry was specifically not stipulated since many of the farms in the Overstrand is environmentally sensitive and best should not be developed as productive farming units. The adjacent areas of Theewaterskloof, which is predominantly farming orientated and most of the products needed in quantity and quality is obtainable from the adjacent municipal area. It is to the benefit of the Overstrand rather to make use of existing supply versus forcing farming land of a sensitive nature to be tilled for production. The proposed farm shop/stall will be stocked with local products from the Overstrand Municipal area. The latter will only be available for the tour groups and not the general public.

The guided tours will be limited to 12 people that will be transported from Pringle Bay to the application property, with tours being conducted only on weekends from 10:00 to 18:00. Tours will be 2 -3 hours long.

The distillery has been designed that it can only produce one batch (250 litres) per day. The grain barley will be collected once a week and at full production up to 3 “bakkie” loads per week. The employment ratio is the driver, administrative assistant, groundsman/caretaker and seasonally, the Pringle Rock Distillery may employ part-time tour guides and assistants to work in the tasting room. Marketing/branding will be outsourced and only the groundsman of the aforementioned employees will reside on the site permanently.

The services required will be off-grid and self-sufficient. The applicant also envisaged that the collection of grain barley will serve a double function by removing the waste products not necessary for the site to the farming community simultaneously.

The applicant did submit a Waste Management Plan to be implemented should the application be approved.

The applicant needs to apply for a water licence at the Breede–Gouritz Catchment Management Agency (BGCMA) but indicated that the property has abstraction rights of 8762,08m³ per annum as per letter dated 17 September 2018, which will be sufficient for the operation of the micro-distillery. This aspect will be addressed should the application be approved, since if not approved there will be no need to lodge a permit application for water usage for a distillery.

The departure application of the street building line from 30m to 23m is to align the approved building with the Title Deed Requirements. The building has been approved in the 80's and has been there for the past 40 years and no complaints have been received in this regard.

The application evaluation in terms of the policy documents applicable

Kogelberg Biosphere Reserve Framework, September 2012

In terms of the Kogelberg Biosphere Reserve-Framework, dated September 2012, the categories depicted are Core, Buffer and Transitional zones. The application site falls under the category depicted as Buffer Zone. The Framework further distinguishes between Buffer 1 Areas: conservation activities as per Core 1 and 2 areas including sustainable consumptive and non-consumptive uses.

The biodiversity compatible land uses are indicated as follows:

- Low density eco-housing;
- Resort and holiday accommodation;
- Tourist and recreational facilities, and
- additional dwelling units.

The location criteria are that development to target existing farm precincts and disturbed areas, with employment of existing structures and footprints to accommodate development. It also has a Buffer 2 Area relating to activities and uses directly relating to the primary agriculture enterprise. Although the property is zoned Agriculture, it is to the benefit that the property is not fully cultivated due its environmental sensitive nature. (Table 2: Appropriate land Uses and Activities in the KBR SPCS, p 23)

Diagram 5: KBR Socio-ecological Spatial Concept depict the area between Rooi Els and Pringle Bay as Supporting Tourism Zones and Routes by promoting integrated rural development, including natural and working landscapes, establishing of rural development areas comprising agri-based settlements, processing and tourism nodes and land reform; supporting tourism zones and routes, promoting the KBR as a district focussing on especially regarding environmental awareness; promoting renewable energy.

The application does comply with the requirements of the Framework in as far as the utilisation of existing structures, located within the farming precincts and on disturbed land. In terms of the socio-ecological requirements is one of the principles of the Distillery to create an awareness of the KBR as part of the tour of the facility. The development of the property off grid and make use of renewable energy, which is in line with limiting the carbon footprint of the operation.

Western Cape Spatial Development Framework, 2014

In terms of the Framework, Policy E2: Diversify and Strengthen the Rural Economy, the policy identifies tourism and related facilities and activities to promote and to create and strengthen rural economies. This relates to create the opportunity for socio-economic development without compromising the environment. The South African Rural areas have in recent seen the growth of wineries, breweries and distilleries on micro level that is an important impetus for the policy. The spin-off effects on the settlements in the transitional areas of the KBR further enhance the socio-economic benefits of rural economies of appropriate scale and form. The application is located in an existing building and the operation is at a micro level that can attribute to the rural economy of the area.

Removal of Title Deed conditions

This aspect has been extensively dealt with in the motivation report. Condition C., requested to be removed in totality with the exception of C.13., which is amended on request of the Hangklip Beach Company, is a personal servitude. Although the conditions with the exception of Conditions C.4. and C.13. which have direct relevance to the application, has been relinquished by the Hangklip Beach Company.

The removal of Condition C., with the exception of C.13., will modernise the Title Deed and align with present development trends in South Africa and spatial planning documents.

The application was distributed to the surrounding owners and all the objectors of the first application. The application was also published in the local newspaper and in the Provincial Gazette.

Character of the area

The Kogelberg Biosphere includes the Reserve itself and the buffer and transition areas. The application site is located in the Buffer Area, between Rooi Els and Pringle Bay. The road is a public road with restrictive access of vehicles, except the residents of the area. The area is typically of a rural setting with predominantly residential dwellings on the properties. Avi-tourism, as a niche market, is the prevalent common tourist activity in the area. Guided tours for international and national tourists are available to visit the area. Parking is at the gate and from there the bird watchers progress on to the gravel road and on private property.

The objectors have a major concern of the impact that the micro-distillery might have on the endemic Rock jumper in terms of disturbance of vehicle movement. A few aspects need to be taken into consideration which is that tours of birders have no limit on the amount of people walking on the road or on private property to photograph the various bird species, especially during the breeding season of August to November. There is also no restriction on the vehicle movement of residents of the area, which include building of dwellings and daily movement. The micro-distillery tours are guided on only weekends thus restricted to appointment only. It is envisaged that only up to three (3) trips are necessary per week to supply the grain barley required for the distillery. Tour times are restricted from 10:00 to 18:00 and a guided tour takes approximately 2-3 hours which equates to a maximum of four (4) guided tours per day.

The guided tours include the environmental education of the Kogelberg Biosphere Reserve and the importance thereof. This is one of the main principles of Man and the Biosphere is the education of the importance and community involvement, whether it is residents, birders or previously disadvantaged groups.

The proposed distillery is located in an existing building, which one of the requirements of the framework plan, it is of low impact and the owners are involved in the operation and not a third party. The applicant is residing on the property and part and parcel of the community of the area.

The area is earmarked for low impact tourism related activities and facilities and due to the low impact of the distillery and green technology to be utilised, the proposal is much more environmentally friendly than most of the dwellings in the area.

The Environmental and Heritage Protection Overlays

In terms of Sections 4 and 6 read with Schedule B of the Environmental Overlay Zone, the proposed application is subject to the requirements of the Protected Buffer Area and Coastal Protection Zone. The application is not prohibited but can be accommodated with consent of Council.

In terms of Sections 11 and 19 the Heritage Protection Overlay zone, the proposed property is subject to the requirements of the Landscape Significance and Hangklip Smallholding Protection. The application does not trigger any of the requirements due to the fact that the proposed use is located within an existing building and the land uses applied for is permitted in terms of the Land Use Scheme.

CONCLUSION

The Kogelberg Biosphere Reserve is for all the people of South Africa, especially the Overstrand and should be made available for eco- and environmentally friendly tourism. The proposal is one activity that can assist in contributing to the socio-economic wellbeing of the rural areas of the Overstrand. Environmental education is key to protect the importance of the Kogelberg Biosphere Reserve and one of the key drivers is eco-tourism.

13. RECOMMENDATION

1. that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020 for the **removal** of restrictive title deed conditions C.1., C.2., C.3., C.4., C.5., C.6., C.7., C.8., C.9., C.10., C.11. and C.12. as contained in Title Deed T8920/2005 applicable to Portion 141 (a Portion of Portion 133) of the Farm Hangklip No. 559, to accommodate a portion of the existing dwelling, **be approved** in terms of the provisions of Section 61;
2. that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020 for the **amendment** of restrictive title deed condition C.13. as contained in Title Deed T8920/2005 applicable to Portion 141 (a Portion of Portion 133) of the Farm Hangklip No. 559, **be approved**, in terms of the provisions of Section 61, to read as follows:

"No garages or filling stations shall be erected on the land";

3. that the application in terms of Section 16.(2)(o) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 on Portion 141 (a Portion of Portion 133) of the Farm Hangklip No. 559 for a consent use to for an Agricultural Industry to accommodate a distillery, tasting room and a farm shop/stall, **be approved** in terms of the provisions of Section 61;
4. that the application in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 on Portion 141 (a Portion of Portion 133) of the Farm Hangklip No. 559 for a departure to relax the street building line from 30m to $\pm 23,2$ m to accommodate the proposed application, **be approved** in terms of the provisions of Section 61;
5. that the application in terms of Section 16.(2)(o) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 on Portion 141 (a Portion of Portion 133) of the Farm Hangklip No. 559 for a consent in terms of the Overstrand Municipality Environmental Overlay Zone, Coastal Zone to “Commercial” activity and “Construction or placement of any permanent object, building, shelter, pathway or structure”, **be approved** in terms of the provisions of Section 61;
6. that the application in terms of Section 16.(2)(o) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 on Portion 141 (a Portion of Portion 133) of the Farm Hangklip No. 559 for a consent in terms of the Overstrand Municipality Environmental Overlay Zone, Protected area Buffer Zone to “Commercial” activity and “Construction or placement of any permanent object, building, shelter, pathway or structure” and “ Buildings/ structures associated with taking of water, storing of water, impeding or diverting flow, stream flow reduction, altering the bed, banks, course characteristics, outflow structures or discharge pipes”, **be approved** in terms of the provisions of Section 61;
7. that the approval in Points 1 – 6, be subject to the following conditions:
 - (a) that the micro distillery and farm shop be restricted to the existing building (stables);
 - (b) that the farm shop/stall only be available to the guided tour groups to the distillery;
 - (c) that the consent use not be transferable;
 - (d) that the Waste Management Plan, submitted by Green Africa Group (attached as Annexure P), be approved by the Waste Management & Engineering Services Departments;
 - (e) that an Environmental Management Plan be submitted to the Environmental Management Department for approval;
 - (f) that a 6-monthly water sample report be submitted to the Environmental Management Services Department of the Municipality for the determination of the efficiency of the existing septic tank. The sample point be determined by the Environmental Management Services Department, and the sampling cost be for the applicant.

- (g) that a Fire Management Plan be submitted to the Fire Department for approval;
 - (h) that the site development plan be submitted to the Senior Manager: Town & Spatial Planning for approval;
 - (i) that operational management be restricted to guided tours between 10:00 to 18:00 on weekends only as indicated in the motivation;
 - (j) that a maximum of three (3) trips per week be allowed to collect grain barley and simultaneously remove waste to the farming community;
 - (k) that an application for water licence permit be applied for;
 - (l) that no activities pertaining to the consent use may commence before the water licence permit is issued and building plans are approved;
 - (m) that all the conditions in the Services Report (attached as Annexure G) be complied with;
 - (n) that all the conditions imposed by the municipal Environmental Management Services Department, Conditions 4(b)(i),(ii) (attached as Annexure H) be complied with;
 - (o) that all the conditions imposed by the municipal Waste Management Department (attached as Annexure I) be complied with;
 - (p) that all the conditions imposed by Western Cape Government: Transport and Public Works (attached as Annexure M) be complied with, and
 - (q) that all the conditions imposed by BGCMA (attached as Annexure O) be complied with.
8. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above decisions.

14. REASONS FOR RECOMMENDATION

- ❖ The application is in line with forward planning documents.
- ❖ It will attribute to tourism and rural economic development.
- ❖ The development is a small-scale development in an existing structure.
- ❖ The application for the removal of restrictive title deed conditions has obtained the consent from the holder of the personal servitude.
- ❖ An extensive Waste Management Plan has been submitted to address pollution concerns.
- ❖ Access to the property is from a municipal road and not a private road/servitude as claimed by the objectors.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed T8920/2005
Annexure E:	Objections & support letters received
Annexure F:	Applicant's response to the objection received
Annexure G:	Services Report
Annexure H:	Comments: Environmental Management Services
Annexure I:	Comments: Waste Management
Annexure J:	Comments: Cape Nature
Annexure K:	Comments: Western Cape Government: EADP (Environmental)
Annexure L:	Comments: Western Cape Government: EADP (Planning)
Annexure M:	Comments: Western Cape Government: Transport & Public Works (Roads)
Annexure N:	Comments: Western Cape Government: Agriculture
Annexure O:	Comments: BGCMA
Annexure P:	Waste Management Plan

SIGNATURE**REGISTERED PLANNER**

Name: **H VAN DER STOEP**

SACPLAN registration number: **A/1708/2013**

Signature: _____

Date: _____

Annexure B 1/48

1. INTRODUCTION

This application is submitted on behalf of the Trustees for the time being of The Free Life Trust, the registered landowner of Portion 141 of the Farm Hangklip No 559 Caledon. The property is currently used for residential purposes and includes a dwelling house with a separate outbuilding, a disused horse stable and a small dam. The property is one of a number of smallholdings situated between the coastal villages of Pringle Bay and Rooi-Els within the jurisdiction of Overstrand Municipality. A micro-distillery and associated farm shop is proposed in the disused stable on the subject property. This will require a modest addition to the former stable building. To permit this proposal the following planning applications are necessary:

- Obtain consent for an "*agricultural industry*" and "*farm shop/stall*",
- Obtain a street building line departure,
- Deletion and amendment of restrictive title deed conditions, and
- Obtain consent to permit "Commercial" activity and "Construction or placement of any permanent object, building, shelter, pathway or structure", as required by the Environmental Overlay Zone Regulations.

The current owners of the property (Leigh and Monique Elves), who also reside permanently on the property, propose to convert the disused stables into a micro-distillery that will produce small batches of bespoke whiskey and gin in handcrafted copper stills. Personalized tours and tastings will also be offered. The proposal will be beneficial from both a local and regional perspective. It represents a "re-cycling" or re-use of an existing building which is no longer used for its original purpose, and will contribute, albeit in a small way, to sustainable economic activity with minimal impacts on the surrounding area.

It needs to be emphasized that the proposal is not a distillery of an industrial scale with concomitant impacts on utility services, traffic generation and waste by-products. The business model has been specifically formulated to make provision for a small scale, family run micro-distillery that is appropriate for the site and its context. The distilling process and business model are described in this report in order to dispel possible misconceptions about the proposal. It is submitted that the proposal is desirable, appropriate, and worthy of approval.

This is a new application and the process for notification and assessment must start afresh based on the information provided in this report. However this application makes use of information gained during a previous application process submitted on 23 January 2018 and subsequently withdrawn on 24 June 2020. The withdrawal of an application is permitted in terms of section 45(1) of then Overstrand Municipality By-Law on Municipal Land Use Planning, now amended as gazetted on 7 August 2020 ('Planning By-Law 2020'). The reasons for the withdrawal were to refine and supplement the written motivation for the application and to undertake further investigations in relation to the restrictive conditions of title.

The necessary supporting documents are included in the associated **Annexures**.

2. COMPONENTS OF THE APPLICATION

This application contains a number of component applications as provided for in the Planning By-Law (2020). These are described below.

2.1 Consent Uses

Application is submitted in terms of Section 16(2)(o) of the Planning By-Law 2020 to obtain Consent for the establishment of an "*agricultural industry*" and a "*farm shop/stall*" on Portion

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141 of the Farm "Hangklip" No 559 Caledon, as provided for in Part 2: Chapter 5, Section 5.1.1(b) of the Overstrand Municipality Land Use Scheme (2020) ('Land Use Scheme 2020').

Application is also submitted for Consent to permit "Commercial" activity and "Construction or placement of any permanent object, building, shelter, pathway or structure", as required by the Overstrand Municipality Environmental Overlay Zone Regulations 2020.

2.2 Building Line Departure

Application is submitted in terms of Section 16(2)(b) of the Planning By-Law 2020 to obtain a regulation departure from Chapter 2, Section 5.1.2(b)(i) of the Land Use Scheme (2020) to reduce the street building line from 30m to 23.2m.

2.3 Deletion and Amendment of Restrictive Conditions of Title

Application is submitted in terms of Section 47(1) of the Spatial Planning and Land Use Management Act, 16 of 2013 (SPLUMA) and Section 16(2)(f) of the Planning By-Law to delete restrictive title deed condition C(1) to (13) contained in Deed of Transfer T8920/2005 save for a portion of clause C(13), namely that "No public garages or filling stations shall be erected on the land".

3. SUMMARY OF BASIC INFORMATION

Farm Number & Portion	141 (a Portion of Portion 133) of the Farm "Hangklip" No 559
Registration Division	Caledon
Registered Owner	The Trustees for the time being of The Free Life Trust
Title Deed Number	T8920/2005
Extent	21.9052 ha
Address	Porter Drive, Pringle Bay
Mortgage	None
Zoning Scheme	Overstrand Municipality Land Use Scheme (2020)
Existing Zoning	Agriculture Zone 1: Agriculture (AGR1)
Existing Use	Residential dwelling, outbuilding, small dam & disused stables
Restrictive Conditions of Title	Yes, conditions relating to water rights for the benefit of erf holders & Local Authority of Rooi-Els. A number of conditions are included in the title deed for the sole benefit of Hangklip Beach Estates Ltd, which affect the application.
Current Application	Consent to permit an "agricultural industry" and "farm shop/stall"; regulation departure to reduce the street building line; deletion and amendment of restrictive conditions of title.

4. TOWN PLANNING CONTEXT

4.1 Locality

Portion 141 of the Farm 559 is situated in the Overstrand Municipality's jurisdiction between the coastal villages of Pringle Bay and Rooi-Els. **Figure 1** is an aerial photograph that identifies the subject property and its local context. The existing cadastral boundaries have been superimposed in yellow, while the boundary of the Kogelberg Nature Reserve, which lies to the east of the property is indicated in green. The property is part of a broad area including nature reserves, farms and towns that lie within the Kogelberg Biosphere Reserve.

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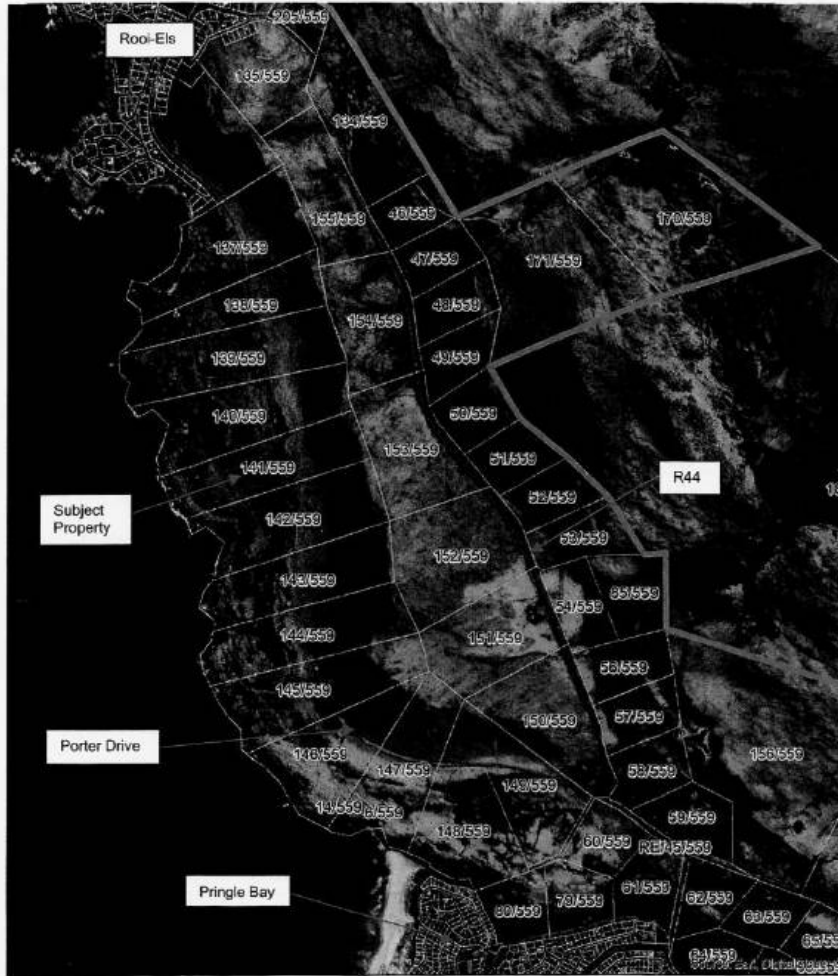


Figure 1: Local Context

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Figure 2 shows the regional context, from which it can be seen that the Overstrand Municipality forms part of the Overberg District Municipality. Pringle Bay is ± 85 km from Cape Town city centre and ± 60 km from Hermanus. The area is accessible to visitors from Cape Town and the local economy benefits from tourists who visit the attractions found in the district.

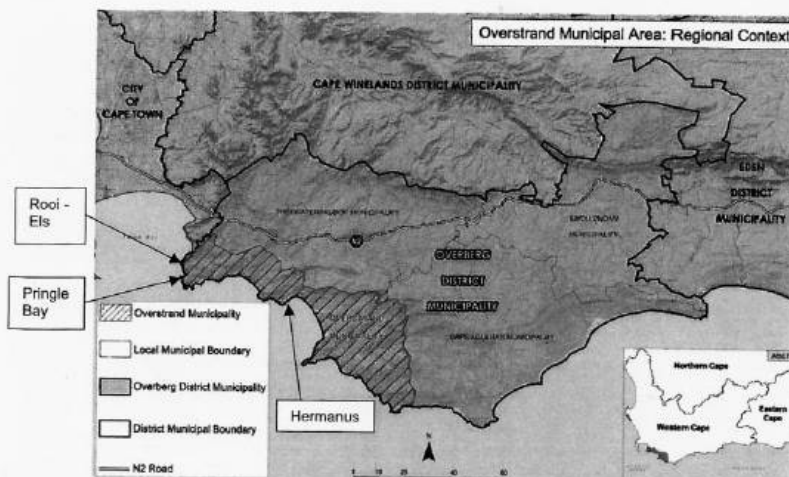


Figure 2: Regional Context

Source: Overstrand Municipality Draft SDF (January 2020)

The subject property is one of a number of smallholdings bounded by the Atlantic Ocean to the west, the foothills of the Kogelberg Mountains to the east and bracketed by Pringle Bay to the south and Rooi-Els to the north. The R44, which is a provincial tarred road, provides the primary vehicular route between Pringle Bay and Rooi-Els.

It is noteworthy that at one time the main route up the coast was along Porter Drive and this was originally designated as a Provincial Road. The Provincial Road authorities subsequently deproclaimed Porter Drive in favour of the R44. Some people have misunderstood this to mean that Porter Drive was closed as a public road, but this is not the case. The deproclamation meant that the status of Porter Drive changed from a Provincial Road to a Local Authority Road. The Surveyor General has confirmed that this road remains a public road in his records.

Both Pringle Bay and Rooi-Els are well known holiday destinations due to the magnificent natural setting and ease of accessibility, although the range of amenities is limited. The subject property is well suited for the establishment of a boutique micro-distillery that will have very limited impact on the natural, built or social environment.

4.2 Land Use

Figure 3 is an aerial photograph of the smallholdings between Pringle Bay and Rooi-Els and shows existing residential dwellings with a red triangle. All the dwellings and ancillary structures are situated on the ocean side of Porter Drive, a fact which will not be changed by

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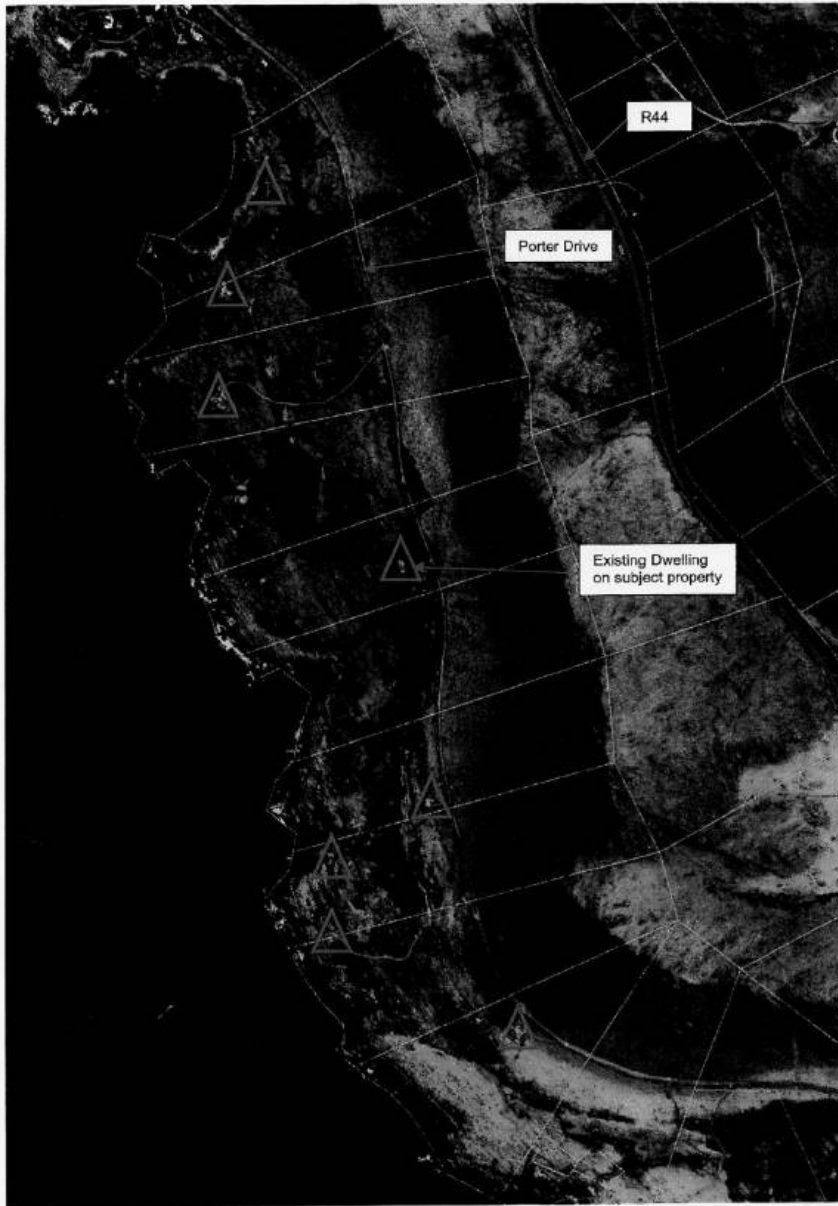


Figure 3: Existing Dwellings on the Small Holdings

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this application. There are eight existing dwellings on the various smallholdings, and the subject property has vacant properties on either side.

Most of the existing dwellings are located close to the ocean and away from Porter Drive. The subject property is one of the few that has buildings close to Porter Drive. It is evident there are few activities of a commercial nature on these smallholdings and they are primarily used as holiday homes. As a consequence, their contribution to the local economy is very limited. However, some properties are rented out to visitors for accommodation and one property is occasionally used for film or advertising shoots.

Figure 4 is a photograph of the dwelling, former stable and grove of gum trees on Portion 141 as viewed from the hillside above Porter Drive. The outbuilding is not visible in this photograph and is behind the grove of gum trees.

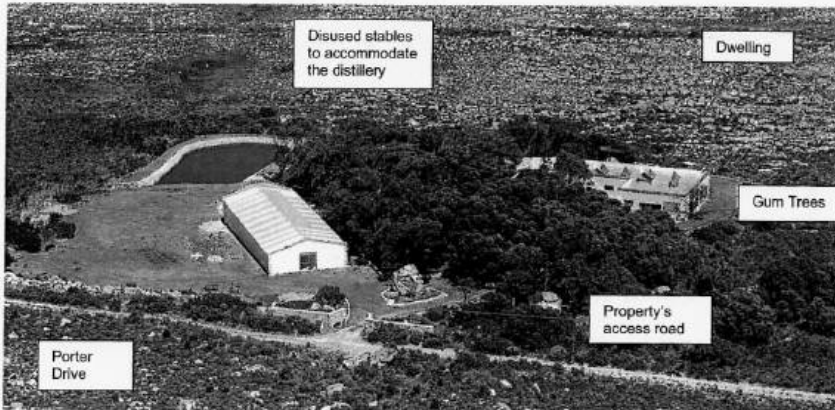
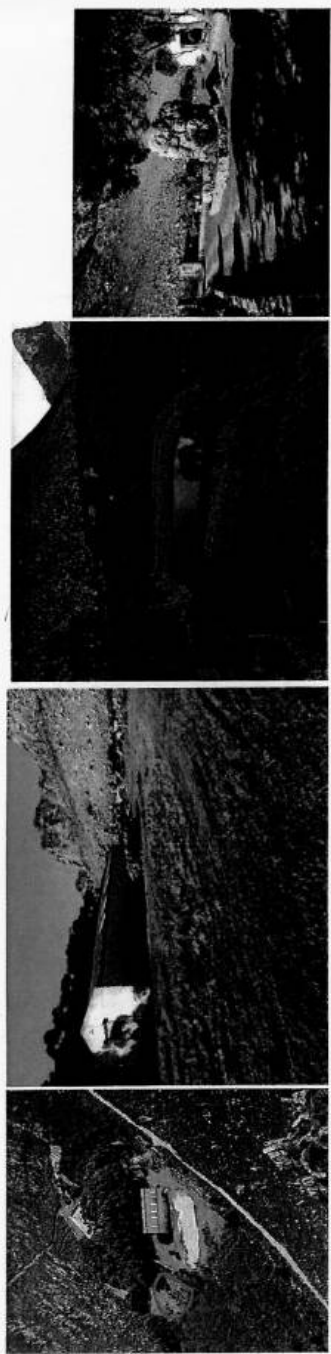


Figure 4: View of Former Stables and Residential Dwelling

Porter Drive, while classified as a municipal road, is a gravel road that is gated at the Pringle Bay and Rooi-Els sides. It is understood that the installation of a gate on this road was an attempt by the community to prevent poachers from easily accessing the sea from this route and to limit access generally in order to better protect bird life in the area.

Residents of the smallholdings make use of vehicles on this road, but access by other vehicles is discouraged. However birders, hikers and cyclists can use the road via a pedestrian access. The Rooi-Els gate has been upgraded and operates remotely, but the gate at the Pringle Bay side requires manual operation.

Portion 141 of Farm 559 was originally purchased in 1964 and shortly thereafter the main house was built. A stable for 14 horses with saddle rooms and amenities was added in 1987. A copy of the approved building plan for the stables is contained in **Annexure 6**. The property was bought by the current owner in 2005. The family reside permanently on the property and enjoy a low key rural lifestyle. They have a vegetable patch, small fruit orchard and keep chickens, ducks, and sheep. The existing stable is surrounded by kikuyu grass and the Elves have built a low stone wall to prevent the grass from encroaching into the fynbos. A gum tree stand is also situated on site. **Figure 5** contains photographs of some of the features on the smallholding and it is evident that this is more than just a coastal holiday home. The Elves



Red area depicts where the new dam was built. The disused stable.



View overlooking the Dam



View of the access road looking towards Porter Drive



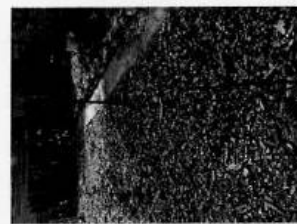
Raised vegetable beds.



Pear tree espallier.



Vegetable patch.



Fruit trees and chicken coup.



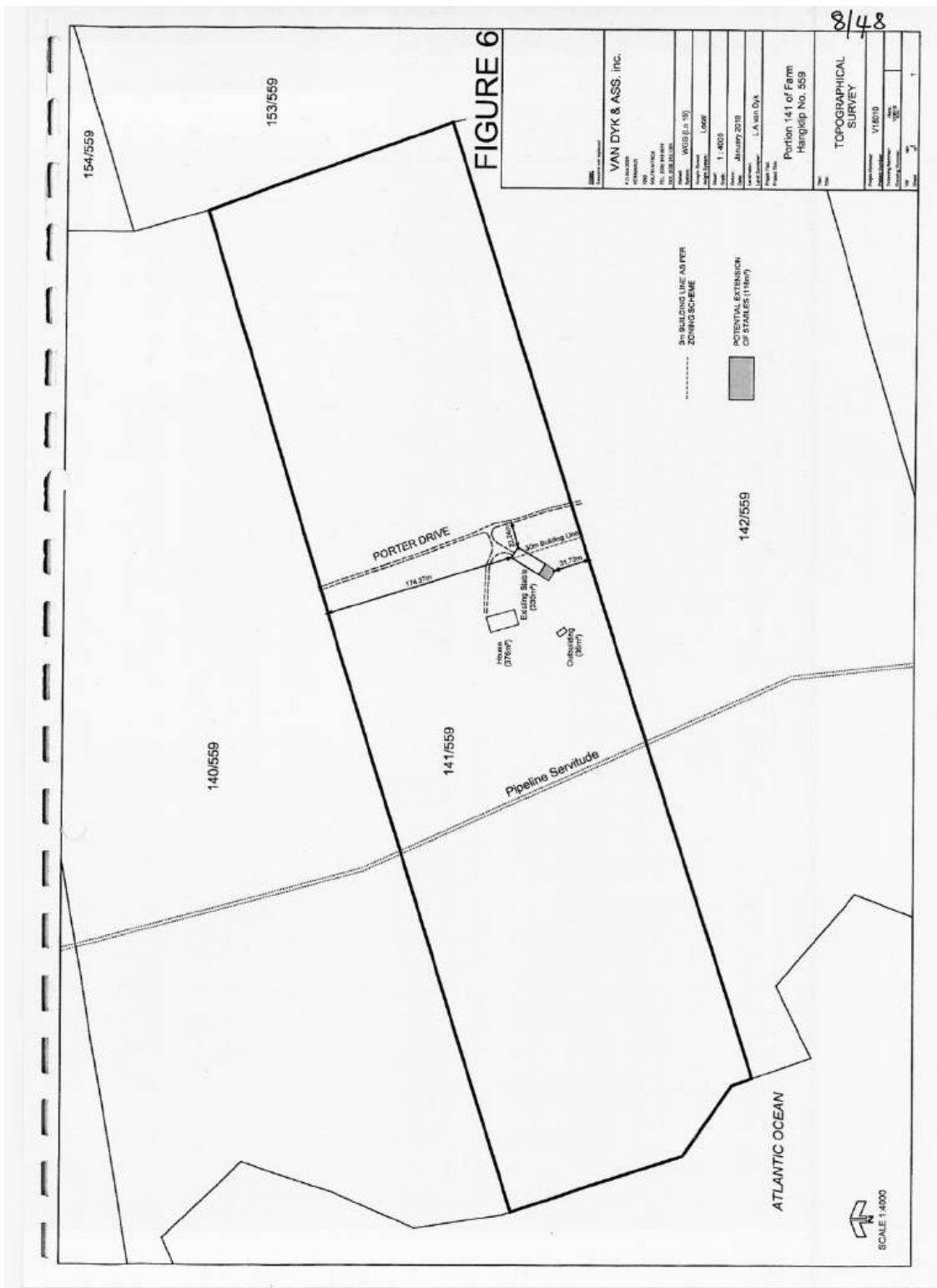
Compost area



Lower fruit orchard

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Figure 5: Photographs of Features of Interest on the Small Holding



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have made a permanent commitment to establish a sustainable eco-friendly lifestyle on the property.

Figure 6 is a survey prepared by land surveyors, Van Dyk & Associates, and indicates the structures on site, cadastral information, Porter Drive, relevant dimensions, and the proposed addition to the stable structure.

The surrounding area has a rural character due to the large sizes of the smallholdings, relatively few dwellings and location between sea and mountain. This character will not be adversely affected to any significant extent by the proposal. The micro-distillery will be accommodated within the former stables, with a minor extension to this structure on the south western (ocean) side. Production activities will occur inside the building, and because of the limited scale of the distillery, the intensity of operations will be limited.

4.3 Existing Zoning

Figure 7 is an extract of the municipal zoning map as downloaded from the municipal website.

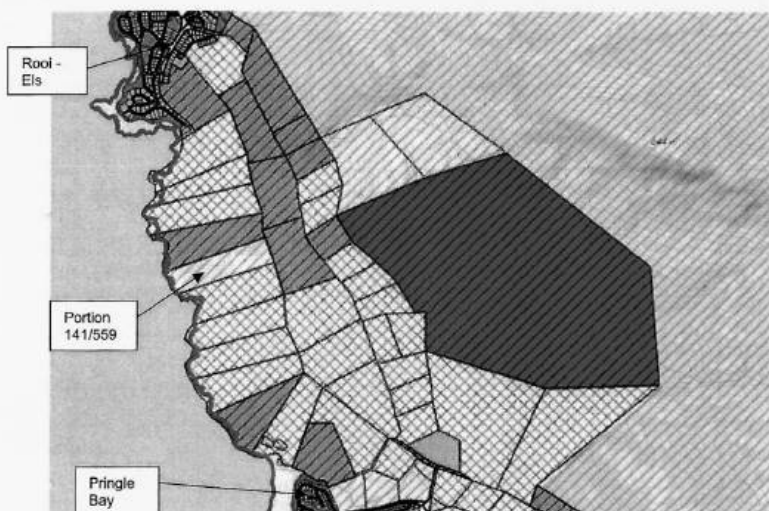


Figure 7: Extract of the Municipal Zoning Map

The zonings of Undetermined (red cross hatch) and *Rural Zone 2: Conservation Usage* (olive green with diagonal hatch) predominate between the ocean and the mountainside, with *Agricultural Zone 1: Agriculture* (green diagonal hatch) predominating as one moves eastwards. The subject property is the only smallholding zoned *Agriculture Zone 1* adjacent to the sea in this area. There is a large property to the east zoned *Utility Zone: Utility Services* (red with a diagonal hatch) and a property to the south east zoned *Community Zone 1: Community Services* (coloured grey).

While the Agricultural and Rural zones are generally understood, the Undetermined zone needs some explanation. The Undetermined zone permits only existing uses and is a mechanism that enables the Municipality to defer a decision regarding other land uses until

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an application for rezoning is submitted and motivated. It is noteworthy that the subject property is zoned Agricultural as opposed to Rural 2 or Undetermined. This clearly distinguishes the property from its neighbours in terms of potential development since the Agricultural Zone has more opportunities with a range of permitted and consent uses.

Table 1 below lists the Primary and Consent Uses permitted in the three zones that are found in the area, namely Undetermined, Agricultural 1 and Rural Zone 2: Conservation Usage.

Table 1: Primary and Consent Uses

	Primary Uses	Consent Uses
Undetermined	Limited to only lawful uses existing at the operative date of the land use scheme	None
Agricultural Zone 1: Agriculture	Agriculture, creche, dwelling house, guest rooms & home occupation	Additional dwelling units, <u>agricultural industry</u> , animal care centre, aquaculture, day care centre, <u>farm shop/stall</u> , fertiliser plant, guest house, hotel, institution, intensive animal farming, intensive horticulture, lodge, mining, places of assembly, entertainment and instruction, plant nursery, riding stables, service trade, tourist accommodation, tourist facilities, transmission apparatus, utility services, wellness centre and 4 x 4
Rural Zone 2: Conservation Usage	Conservation Use, dwelling house, guest rooms & home occupation	Agriculture, aquaculture, day care centre, harvesting of natural resources, intensive animal farming, intensive horticulture, places of assembly, entertainment & instruction, plant nursery, recreational facilities, 2 nd dwelling unit, tourist accommodation, tourist facilities, transmission apparatus & utility services

It is evident that the Agricultural zone of the subject property makes provision for certain activities of a commercial nature. This is particularly the case with consent uses whereby the Municipality can grant consent for a range of enterprises if they are considered to be appropriate to the site and context. The proposed micro-distillery and farm shop/stall are such appropriate enterprises.

4.4 Kogelberg Biosphere and Nature Reserve

The subject property is located within the Kogelberg Biosphere Reserve. According to information released by the Biosphere Reserve on its website, biosphere reserves are "new concept reserves: no fences to keep 'people' out and 'nature' in". It is the commitment of local communities, farmers, conservation agencies and local government that protects the magnificent landscapes and unique biodiversity". The designated area of the Kogelberg Biosphere Reserve is shown in **Figure 8**.

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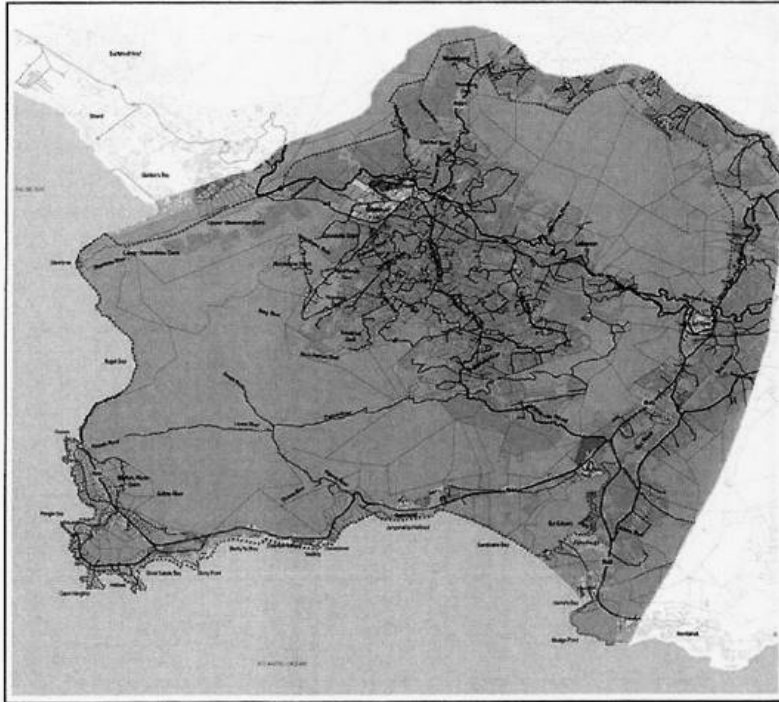


Figure 8: Kogelberg Biosphere Reserve

It is significant that the biosphere reserve incorporates a number of towns including Rooi-Els, Pringle Bay and even Kleinmond within its designated area. The Kogelberg Biosphere Reserve is different to a conventional nature reserve where nature conservation predominates and human activities are minimised. By contrast the biosphere reserve includes within its area a significant permanent and non-permanent population, together with a wide range of economic activities including deciduous fruit farming, wine production, flower production, fruit processing, commercial pine plantations, tourism and even urban development.

The Kogelberg Biosphere Reserve is managed by a private non-profit company, that is steered by a board of directors, and all stakeholders in the region can become members and have an input into the activities of the company.

Economic development is not prohibited within the biosphere reserve, but there is an emphasis on sustainable development and respecting the environmental characteristics and ecosystems of the area. The proposed micro-distillery and associated activities are consistent with the biosphere principles because, amongst other factors, the proposal is of a small scale, recycles an existing building, makes use of renewable resources and operates in accordance with sustainable production processes.

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The Kogelberg Nature Reserve, which has world heritage status, also needs to be mentioned. **Figure 9** depicts the extent of the three portions (coloured grey) which collectively constitute the Kogelberg Nature Reserve. The subject property is outside the nature reserve and the proposed development will have no impact on the reserve.



Figure 9: Kogelberg Nature Reserve (Source: CapeNature)

The Kogelberg Nature Reserve and other formally protected areas constitute the core of the biosphere reserve. This sensitive core remains pristine and essentially wild, with a high level of biological diversity. Around the core is a buffer where agriculture and other activities occur. The biosphere concept accommodates both conservation and development, ensuring that sensitive areas and biological diversity are adequately protected, but at the same time allowing human settlement and economic development, particularly in the buffer and transitional areas.

While the subject property is situated inside the Kogelberg Biosphere Reserve, it lies outside the Kogelberg Nature Reserve, and is not part of the core area. The micro-distillery and associated activities will be accommodated within an existing disused stable structure. The production process will not generate harmful impacts on the Reserve, and no alien plant species will be introduced onto the property which could potentially spread to the Reserve.

The operators of the micro-distillery hope to create a synergy between the biosphere reserve and distillery by including a short educational lesson about the reserve when guests visit the distillery to raise awareness about this unique world heritage site. The biosphere concept accepts that development, under controlled conditions and of an acceptable nature, can be accommodated. No negative impacts on either the nature reserve or the broader biosphere reserve are foreseen.

4.5 Existing Title Deed Conditions

Of further relevance to the town planning context and status of the property are the title deed conditions. Before 1984 most properties located in the districts and small villages were not covered by formal zoning schemes. Instead township conditions of establishment were imposed by the Administrator, the provincial authority responsible for township establishment. These conditions usually included specifications relating to use, building lines, coverage etc and included as reciprocal title deed conditions on the registration of all erven falling within the township established.

In some cases, subdivision of land did not involve a prior township establishment process. Sometimes conditions of subdivision were imposed by the local authorities and included as title deed conditions, while sometimes this did not occur. Sometimes land developers included conditions in the title deed that are private conditions, and not conditions imposed by the authorities.

After 1984 zoning schemes became applicable to all properties in the Western Cape and these zoning schemes included provisions to regulate the development of land in terms of use, height, building lines, coverage etc. This created a situation where some properties are affected by zoning regulations relating to use, building lines, height and coverage, and also by different conditions in the title deed dealing with use, building lines, height and coverage. In such a situation both sets of conditions apply, until one or other is amended. Such amendments are very common because contemporary zoning schemes usually have contemporary application, while older title deed conditions often do not.

Portion 141 of Farm No 559 is held under Deed of Transfer T8920/2005. This Deed contains a number of restrictive conditions including Condition "C" which lists 13 limitations and requirements pertaining to the property. Condition "C" in its entirety is reproduced overleaf, while a copy of the SG Diagram and Title Deed are contained in **Annexures 4 and 5** respectively. Of particular relevance to this application are condition C4, which relates to the distance of buildings from a road, and condition C13 which relates to uses.

The existing disused stable building, which will accommodate the micro-distillery and associated activities, is situated ± 23.2 m from the road edge (refer to **Figure 6**), while the proposed micro-distillery and farm shop/stall are affected by the title deed restrictions against a "shop" and "business premises".

A conveyancer's certificate is included in **Annexure 7** prepared by conveyancer, Nikki Malan, of DHM Attorneys, after extensive research which confirms that Condition "C" in its entirety was imposed for the sole benefit of the original land owner (developer), being Hangklip Beach Estates Limited (now Hangklip Beach Properties CC). Although the name of the company has been changed to Hangklip Beach Properties CC, it remains the same company. In this report the company is referred to as Hangklip Beach Company in order to simplify the narrative. The term Hangklip Beach Company will hereafter, where the context is appropriate, apply to both Hangklip Beach Estates Limited and Hangklip Beach Properties CC.

The authorised representative of Hangklip Beach Company, Mrs Elizabeth Wallers, has given written permission to remove Condition C in its entirety save for a portion of C(13) namely that "No public garages or filling stations shall be erected on the land". Copies of the relevant resolution, consent and notice are contained in **Annexure 8**.

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Copy of Title Deed Condition C

- C. SUBJECT FURTHER to the conditions contained in Deed of Transfer No. T23799/1964 imposed by Hangklip Beach Estates Limited for its sole benefit as owner of the remaining extent of the Farm "Hangklip" measuring as such 1466,0427 Hectares and held by it under Certificate of Consolidated Title No. T3720 dated 17 April 1937, provided always however that if in the said Company's opinion it is expedient the Company may suspend or relax restrictions contained in any of such conditions and then subject to such conditions as the Company may impose:-
1. The owner of this Lot shall without compensation be obliged to allow electricity and water mains to be conveyed across this Lot if deemed necessary by Hangklip Beach Estates Limited and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the Lot at any reasonable time in order to construct, maintain, alter, remove or inspect any manhole, channel, conduct, or other works pertaining thereto.
 2. All buildings and other constructional works commenced shall be completed within a reasonable time and if not so completed shall be demolished.
 3. No wood and iron buildings or works of any description shall be erected without the consent in writing of the Hangklip Beach Estates Limited and if required the consent of the Local Authority.
 4. No building shall be erected within 25,19 metres of any road or within 6,30 metres of any other boundary of the land.
 5. All buildings and other constructional works including fences and garden or other gates shall be of good design and sound construction.
 6. No noxious trade or activity shall be carried on on the said land.
 7. The purchaser shall not have the right to make or cause to be made upon the said land for any purpose other than for use in his own buildings and/or bricks, tiles or earthenware pipes or other articles of such nature nor shall he have the right to dig or quarry any earth, gravel, lime or stone thereon other than for use in his buildings and/or works on the said land.
 8. No debris, scrap, or other unsightly material shall be deposited on the said land.
 9.
 10. Access to public roads shall be limited to such points on the said boundary as may be approved by the Provincial or Divisional Council through its responsible Officers or by any other competent authority. It shall be the duty of the purchaser to obtain approval of points of access.
 11. No sewage shall be disposed of otherwise than by means of a properly constructed septic tank. No pit or bucket latrine will be permitted.
 12. The said land may be used for agriculture and the breeding or keeping of domestic animals, poultry and/or bees provided that no goats or pigs may be kept.
 13. No shop, public garages or filling stations, business premises, canteens, bioscopes, factory, or industrial buildings shall be erected on the land nor shall any such business or public entertainment be conducted on the land.

Based on Hangklip Beach Company's consent, the client's conveyancer, Ettiene Genis Attorneys, applied to the Registrar of Deeds in terms of section 68 of the Deeds Registries Act, 47 of 1937. This section relates to the registration, lapsing or cancellation of a personal servitude. Provision is made for cancellation of the registration of a personal servitude in pursuance of an agreement between the owner of the land encumbered and the holder of the servitude. If the property is mortgaged there is a requirement for consent from the mortgagee.

In the case of Portion 141 of Farm No 559 the bond amount has been fully paid and the bond cancelled, and so no bondholder's consent is required. However, the examiner at the Deed's Office rejected the application because he said the Municipality must also give its consent. The examiner believed the provisions of SPLUMA apply.

Section 47 of SPLUMA refers to restrictive conditions and provides that a restrictive condition may be removed, amended or suspended with the approval of a Municipal Planning Tribunal "in the prescribed manner". The definition of a restrictive condition in SPLUMA refers to any condition registered against the title deed restricting use, development or subdivision of the land concerned. In contrast, the Western Cape Land Use Planning Act, 3 of 2014 (LUPA) definition of restrictive condition excludes servitudes creating real or personal rights.

According to Schedule 1 of SPLUMA, provincial legislation may regulate the removal of restrictive conditions, which may include the determination of procedures pertaining to public involvement, participation, notification, advertising and circulation procedures. The relevant

provincial legislation in the Western Cape is LUPA, but as a result of the different definitions of "restrictive condition", Section 39 of LUPA does not deal with the removal of a restrictive condition in the nature of the title condition under discussion which are "servitudes creating real or personal rights". It is evident that LUPA envisages the removal or amendment of such conditions would be handled by agreement between the owner of the land encumbered and the holder of the servitude.

SPLUMA does stipulate that the authority for the removal, suspension and amendment of restrictive title conditions lies with the Municipal Planning Tribunal, and Section 35 of the Planning By-Law deals with the requirements for the removal, suspension or amendment of restrictive title conditions.

Like the definition in SPLUMA, the definition of "restrictive condition" in the Planning By-Law does not exclude personal servitudes, which it could have done based on the definition in LUPA, which is the provincial legislation passed in terms of Schedule 1 to SPLUMA. There is a resultant uncertainty in the Western Cape about how to remove or amend title conditions which are "servitudes creating real or personal rights". To move past this uncertainty it is considered necessary to apply to the Municipality to amend and delete the relevant restrictive conditions in terms of Section 16(2)(f) of the Planning By-Law and to follow the procedures set out in sections 35 and 36 of the By-Law.

5. NATIONAL ENVIRONMENTAL MANAGEMENT ACT (NEMA) APPLICABILITY

In November 2017, Mr Johan West, an Environmental Assessment Practitioner (EAP), of Green Africa Group, submitted the *Checklist for the Determination of the Applicability of the NEMA EIA Amendment Regulations of 2014* regarding the proposed micro-distillery on behalf of the current land owner.

In January 2018, the Department of Environmental Affairs and Development Planning (DEA & DP) confirmed that, "...the proposed conversion of existing stables and extension thereof will not result in the triggering of any listed activities in terms of the NEMA EIA Regulations, 2014 (as amended), as the development footprint within 32 m of identified wetlands does not fall within the core area of the Kogelberg Biosphere Reserve and is below the applicable threshold. Environmental authorisation is therefore not required from this Department prior to the development thereof."

In addition, the Department noted that, inter alia:

- The site is transformed and the area to be extended into currently contains a garden and lawn, comprising kikuyu grass.
- The property is zoned Agriculture and situated landward of the draft coastal management line.
- An existing access road will be utilised. There is no intention, at this stage, to upgrade this road.
- There are no watercourses within the proposed development site, however, according to available resources, wetlands have been mapped to the south and north of the site.
- The site is located outside the core area of the Kogelberg Biosphere Reserve.
- The portion of the property proposed for development is categorised as an Ecological Support Area.

According to the South African National Biodiversity Institute website, "*Ecological Support Areas are not essential for meeting biodiversity targets but play an important role in supporting the ecological functioning of Critical Biodiversity Areas and/or in delivering ecosystem services.*"

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A copy of the letter received from DEA & DP is contained in **Annexure 9**. A copy of the Determination of Applicability application prepared by Green Africa Group is available on request.

Earlier in 2020 the land owner built a small dam on the subject property for irrigation and fire fighting purposes. It also serves a rehabilitation purpose as it was constructed over that portion of land which had previously been used as a paddock for horses. The paddock had a large concrete structure that may have been used as a watering hole. However, over time it had become dilapidated, broken into pieces and was then smothered with Kikuyu grass. The dam is 30m by 20m which means it is 600m² in extent, and is 1 m deep. The land owner was subsequently made aware that environmental authorisation in terms of NEMA was required.

Application has been submitted in terms of Section 24G of NEMA which relates to a person commencing with a listed or specified activity without the necessary permission. The listed activity in this instance is Activity No 12 of Listing Notice 1 of 2014 which relates to the construction of a dam with a physical footprint of 100m² or more. In August 2020 Mr West of Green Africa Group submitted the section 24G application to the DEA&DP and the application is being processed by that Department.

Not only is the dam a source of irrigation water supply and a water supply for fire prevention but it is aesthetically pleasing. The EAP concluded that, "...the dam is an improvement with more benefits than disadvantages for the owner, environment or community." The dam in the short time of its existence has become a breeding ground for waterfowl. The water body has attracted frogs, geese, kingfishers, swallows and pheasants. The exposed west side of the wall has been rehabilitated with *Carpobrotus edulis* (sour fig) and a gully alongside the dam (the overflow) has created a wet area. A copy of the Section 24G application is available on request.

6. THE PROPOSAL

6.1 General Description of the Proposed Distillery and Farm Shop

The picturesque location offers an ideal setting for a bespoke distillery, which will appeal to a small niche market, and is to be known as *Pringle Rock Distillery* (PRD). The distillery will be accommodated in the repurposed stables which will be clad in natural rock, with restored original teak window frames from the Old Cape Town Railway station.

It must be emphasized that the proposed distillery will not be an industrial factory type building that will mass manufacture alcohol. PRD intends for their product to be 100% natural. Distilling is both an art and a science that requires precision and good fractional distillation. It is this science that will give the wonderful silky, smooth mouthfeel that one looks for in a great whiskey.

Today many alcohol producers mass produce and offer quantity over quality. Their mouthfeel is often achieved by adding artificial additives like vegetable glycerine and invert sugars. The same can be said for the colour achieved in producing whiskey. Instead of barrel aging, many manufacturers achieve instant colour by using woodchip in glass or plastic vessels or adding concentrated caramel colouring. Large scale commercial production is produced in continuous column stills that are run 24 hours a day, seven days a week, but the craft distilling process is very different as is explained in this report.

The farm shop component is a small ancillary activity that will occur inside the distillery building. A number of shelves will be installed in the tasting room with local items for sale and will include items served at the tasting, such as chocolate, preserves, nuts, biltong etc and

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brand related apparel such as t-shirts and peak caps. The produce will be offered for sale to visitors of the distillery and will not be a general commercial store.

In addition to producing small batches of high-quality whiskey and gin in handcrafted copper potstills, an authentic experience with tastings and private tours of the distillery will be offered to guests.

The tours and tastings at the distillery will be by appointment only. It is intended that guests will be collected from No 16 Central Road (Erf 378) in Pringle Bay and transported by a mini bus or "safari" type vehicle to the distillery using Porter Drive. When the tour is complete, the guests will be returned to No 16 Central Road. This will ensure the privacy of the other smallholdings that use Porter Drive for vehicular access. The controlled manner by which visitors will access the distillery will also help to mitigate potential disturbance of local birds and other fauna. Each group will comprise about 12 people and take 2 to 3 hours. **Figure 10** is an aerial photograph of Erf 378 Pringle Bay which is identified with a red outline.

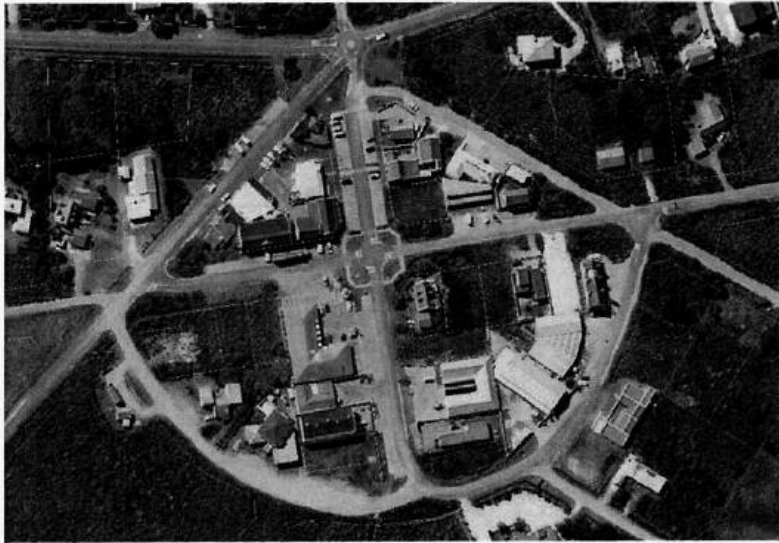


Figure 10: No 16 Central Road Pringle Bay

The proponents of the distillery are in the process of purchasing No 16 Central Road, which currently accommodates a warehouse and office. An agreement has been reached and the necessary administrative procedures are being followed to conclude the transaction.

Parking for about 12 vehicles can be accommodated in the warehouse, while another 6 vehicles can be parked outside the warehouse on the property. This parking will be available for the private vehicles of persons who participate in the tours to Pringle Rock. Visitors can easily be accommodated at No 16 and since this forms part of the commercial precinct at Pringle Bay, there will be no negative impact. The attraction of visitors could even provide some positive impact on the local Pringle Bay economy as people spend time and money at other enterprises in the village before and after their tour to Pringle Rock Distillery.

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Figure 11 depicts the initial layout plan for the proposed distillery. The area outlined in red indicates a proposed extension, but the internal layout may be subject to change, with the tasting room increasing in size and the boxing room being omitted. The stills in the bonded storage area may also be decreased in size. Contingent on the approval of this application, a Site Development Plan, depicting both the extension to the existing structure and internal layout will be submitted to the Municipality for approval.

Figure 12 is a photograph indicating (with an arrow) the side of the disused stable that will be extended to accommodate extensions to the distillery.



Figure 12: Side of Existing Stable that will be Extended

The tasting room will have a typical "whiskey" feel with aged wood, leather, organic and natural materials. The tour will open with a brief history/education of the area, the neighbouring villages, and the surrounding Kogelberg Biosphere. The tour will include taking the visitors into the "Still House"/Distillery where the copper pot stills are kept and the full whiskey/gin making process will be explained. Visitors will be able to view the bonded storage area where the barrels are kept. Thereafter they will experience a tasting of 4 or 5 of PRD's brands. Bottles of whiskey/gin can then be purchased on the way out.

The outfitting of the tasting room also has its unique history. Old wooden door frames will be restored. To re-create the coastal style, PRD has sourced antique teak window frames that were initially used in the Old Cape Town Station from the mid 1800's. These frames will be used in the distillery tasting room. The view through these framed windows will be of the aging oak barrels. There will also be large picture windows looking out towards the mountains. The raw spirit will be aged in American and French Oak barrels. PRD also intends to purchase casks from a local cooper whose family has owned the cooperage for several generations. The repurposed stable will retain its rustic aesthetic and will be visually unobtrusive. It is intended to erect a discrete sign on the front of the converted stable.

PRD intends to apply for both an "on site" and "off site" consumption license. A previous application for the license was granted on condition that the land use approvals were granted. The consumption license approvals have now lapsed. Once the current land use application has been finalised the process to obtain consumption licenses will be resumed. To qualify for an "on site" license, snacks need to be served. PRD intends to serve a variety of olives, breads, cheeses, preserves, and chocolates, all locally sourced, thereby supporting and

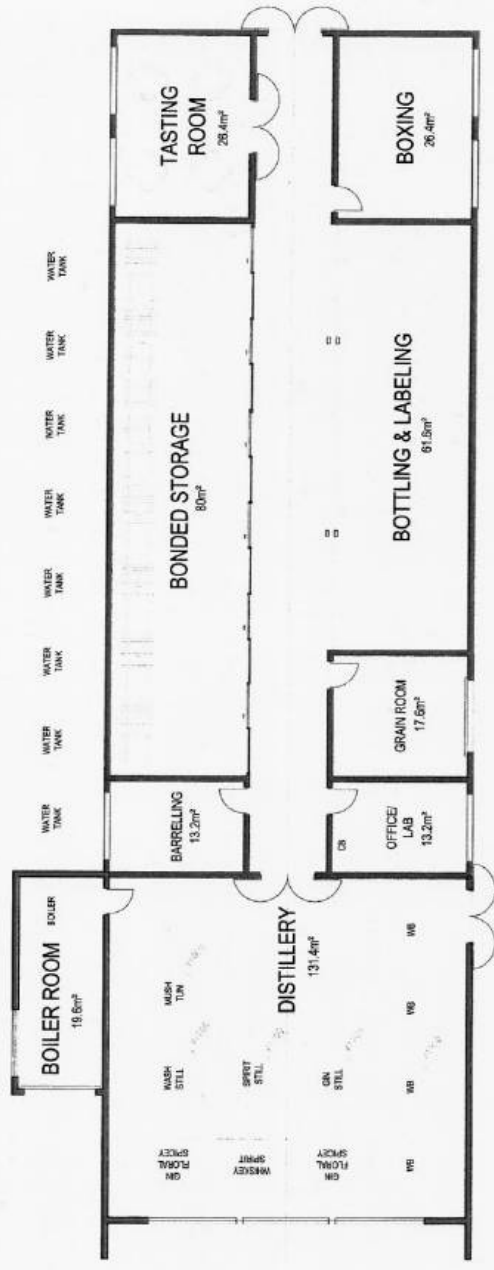


Figure 11: Conceptual Distillery Layout Plan

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strengthening the local, rural economy. The "off site" license is needed, as guests will be offered the opportunity to purchase bottles of whiskey and/or gin on completion of the tour.

It is currently foreseen that alcohol production will occur 4 days a week, with the tours being conducted over the weekend. Hours of operation will be between 10:00 and 18:00. Once the distillery is fully operational, the times may change subject to actual demand.

6.2 Ethos of the Landowners

To assist with the evaluation of this application, it is useful to understand the ethos of the proponents who will establish and operate the micro-distillery. The property is both their home, and contingent on the approval of this application, their livelihood as well. The owners have a strong love of the land and its flora and fauna and will operate the micro-distillery to have no negative impacts.

Shortly after purchasing the property in 2004, the Elves noticed that the grass was rapidly encroaching into the natural fynbos. To prevent the grass from further invading the natural fynbos, they built low (knee height) natural stone walls. In September 2018 the family joined the Pringle Bay Hack group which seeks to eliminate alien vegetation in the area. The Elves are in discussion with the local hack groups to form a synergy whereby the hacked alien vegetation will be collected and woodchipped to fuel the water heater for the stills. PRD will purchase a woodchipper for that purpose. The removal and recycling of the cut aliens has the beneficial side effect of helping to remove the problem of what to do with the eradicated alien vegetation and the potential fire hazards this dry alien plant material poses. Since the Elves have lived in this area, they have experienced two fires. Leigh Elves belongs to the Rooiels Firefighters (REDI). As previously discussed, the Elves have built a small dam which will be an essential supply of water in the case of future fires in the surrounding area.

The Elves also germinate indigenous proteas on the smallholding. The Elves collect seeds (February) and germinate protea seed and disperse the seed in March/April. There are many more protea bushes around their smallholding because of this. In winter, the family works to eliminate alien vegetation on the subject property. However, the indigenisation and removal of aliens is a never-ending process as there are always alien seedlings which must be removed. Although some of the locals would like the Elves to remove their glade of gum trees, these trees provide refuge for bird life and the flowers provide bees with nectar in summer when the proteas are not in flower. Although the gum trees are not indigenous, they still offer benefit.

The landowners have an appreciation of, and are sensitive to, the surrounding environment, are active members of their community and have no intention to cause harm to this environment by the establishment and operation of the micro-distillery.

6.3 Overview of the Distillation Process

To avoid possible misunderstanding about the production process, this section provides an overview of the distillation process that will take place at PRD.

The ingredients to be used in the process consist of grain, yeast and water. The critical steps in the distillation process include:

- **Mashing** which is the mixing of grain with water.
- **Fermenting** which is the addition of yeast to the liquid to produce a weak alcohol.
- **Distillation** which is heating the liquid to a steam and the condensing it to a concentrated liquid, and

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- **Ageing** after the concentrated liquid has been put into oak barrels for a minimum of three years.

There are 6 steps to the whiskey making process to be followed at PRD as described in **Table 2**. The same spirit that is produced in the whisky process, will be produced for gin. This spirit will be piped into the ginning still where it will be distilled a third time. This still will contain a ginning basket that will hold botanicals such as citrus, flora, spice, herbs etc. PRD will use some of the local fynbos, which is cultivated on the subject property, in this process. The gin will be bottled immediately. All bottling will take place on the premises. Bottles will be packed into cardboard boxes and transported from the farm in a small delivery vehicle. The ginning process can take up to two weeks.

Table 2: The Whiskey Distillation Process

Step	Action	Description
1	Preparation	The barley grain is grown in Caledon. PRD will use a combination of barley and malted barley. The malted barley is soaked, spread out to dry for a couple of days and allowed to sprout. It is dried and heated to make malted barley. Each spirit run requires 300kg (12 x 25kg bags) of grain. PRD intends to purchase 4 spirit runs worth at a time, collecting 1200kg in a Hyundai H100 bakkie.
2	Mashing	The grain and malted barley are added to warm water, which converts into a liquid known as "mash". This is done in a "mash tun". Twelve 25kg bags of grain will be emptied by hand into the mash tun. A water heater (in a separate room next to the distillery) that is powered by wood from alien vegetation will heat 1500 litres of water to a maximum of 98 degrees Celsius. The heated water flows through stainless steel pipes into the distillery and the hot pipes heat the equipment. This is called a closed-circuit hot water system and is safe with no fire hazard. (This water will be pumped from an open well on the property. The water pump is electric and is noise free). The liquid wash is drained from the mash tun and piped to the fermentation tank (wash back). The "waste" that is left in the mash tun consists of grain husks and fibre, rich in flavour, vitamins and other nutrients suitable for human or animal consumption. This by-product has commercial value but a relative short shelf life (2-3 days). It is in a semi-dry state (approximately 20% moisture). This waste will be used to feed sheep, chickens, ducks and other animals on the property. This waste product can also be used by bakeries to make rusks/health bars. It is also a great composting material. Any excess that is not used on the property will be sold or donated to other farmers and removed off-site in containers with a bakkie. This process takes less than one day.
3	Fermenting	The liquid wash is piped from the mash tun to the fermentation tank (wash back). Yeast is added and approximately a week later the wash will be distilled. During the fermentation process small amounts of CO ₂ is released. This is piped outside the working area. The wash (alcohol by volume is between six and nine percent) is now piped to the stripping still.
4	Distilling	The wash is piped into the stripping still. PRD use the same heating process as above to heat the still. The heat produces vapour in the still which condenses and comes out as liquid alcohol of ABV 28 to 30%. This alcohol (low wines) is piped into a holding tank (spirit tank) and is about one third of the original volume. The two thirds of the liquid wash left is waste – it consists of dead yeast, grain sediment and more than 80% is water. The liquid is very high in nutrients (especially vitamin B) making it suitable as supplement feed for animals. It can be further processed for human consumption but because the volume is so small it is not feasible. PRD will aerate this liquid and use it for animal feed and for irrigating the vegetable garden. It has a usable shelf life of four to six weeks. The low wines (28 -30% ABV) are then piped into the spirit still. This is the second distillation. The same process occurs as applies in the stripping still. The first bit of spirit (1,5 litres) that comes through the

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Step	Action	Description
		condenser is called the "heads". This distilled condensate is rich in methanol and ethanol with less than 10% water. This waste will be used in the distillery as cleaning solvent, sanitiser and for equipment sterilization. After the "heads" have been extracted, then the "hearts" are extracted. This is the spirit used to fill the barrels. This should fill a 250-litre barrel. The last bit to come out of the condenser is the "tails". This is low in alcohol content and will be added to the next stripping process. This process takes less than one day.
5	Aging	The "hearts" (about 250L) are piped into a holding tank and in turn piped into wooden barrels. Here the whiskey ages for at least 3 years in bonded storage.
6	Bottling	The barrelled whiskey is transferred into glass bottles and labelled.

6.4 Specifics about the Distillery

The distillery has been designed to produce one barrel of spirit (250L) per batch or spirit run, and the distillery cannot produce more than one batch per day. As the distillery is essentially a family operation it will not run seven days a week. There is also the need for cleaning, bottling, labelling, fermenting, and mashing that cannot all be processed in one day.

6.4.1 Distillery Operation

The operation of the Distillery will involve the following:

- One spirit run/batch from 300kg of grain barley will produce 250 litres of spirit for barrelling.
- Initially, one bakkie load is envisioned per week. Even at full production (which will take about eight years to reach), only three bakkie loads are envisioned per week.
- One bakkie load is envisioned as collection of the grain barley will be on an "as needed" basis as production might be seasonal – grain supply and weather will influence production.
- Eventually, at full production, about 1000 bottles of whiskey and gin will be produced per month.
- The best and most eco-friendly system for the heating system for the stills is a hot water heater that runs off wood chips. This does not produce pressured steam that is dangerous, but hot water that flows through the heating coils. As discussed above, the wood chips will come from the aliens hacked in the local environment.

It is important to appreciate that while the subject property is zoned Agriculture Zone 1 and therefore can be used for cultivation, the land owners do not wish to engage in commercial cultivation for the grains, due to the limited soil potential and substantial fynbos loss.

6.4.2 Projected Employment

Leigh and Monique Elves are both qualified (Distillique) master distillers.

In terms of employment, PRD will employ the following staff:

- A driver to collect the barley, as well as to perform other general tasks.
- An administrative assistant who will do accounts, sales, and bookings.
- A groundsman/caretaker, and
- Seasonally, PRD may employ part time tour guides and assistants to work in the tasting room when necessary.

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All advertising, label design and marketing will be outsourced. Of the employees, only the groundsman/caretaker will live on site.

6.4.3 Utility Services

6.4.3.1 Electrical Power

The subject property is not provided with electrical power from Eskom and power is generated by on site solar energy. This is an important fact as it limits the potential growth of the micro-distillery. This the landowners accept as it is in keeping with their ethos of a boutique micro-distillery. Currently, the landowners have a 5 kw solar system which results in surplus power, but will need to be doubled (i.e. to 10 Kw) to provide enough power for the distillery. This increase will be achieved by adding more solar panels and batteries. Electric power will mainly be used for pumps and lighting. All the pumps are smaller than a standard swimming pool pump. Production will be reduced during inclement weather.

6.4.3.2 Water

Approximately 3000 litres of water are required for one spirit run. No municipal supplied water is required for the distillery and only ground and surface water will be utilised. The water used in the distillation process is required for cooling in a closed-circuit cooling system. The water will be piped into the distillery and then piped out again. The water remains in the pipe and does not decrease in quantity or come into contact with anything else.

According to the Breede - Gouritz Catchment Management Agency's letter dated 17 September 2018, the "...proposed water use includes the abstraction of water from an on-site well to be used in a boutique distillery. Furthermore, it is stated that, "...the property may qualify to abstract a maximum volume of groundwater of 400m³/ha/a for irrigation, industrial and/or commercial purposes. This therefore equates to 400m³ x 21.9052 ha = 8762.08m³/a". This is sufficient for the purposes of running of a micro-distillery. A copy of this letter is contained in **Annexure 10**.

6.4.3.3 Sewerage

The subject property is not connected to the municipal sewerage system. A septic tank is used for sewage disposal. It is anticipated that the current tank will accommodate the additional amount of sewage that will be generated by staff and guests once the distillery is operational. The tank will be emptied more frequently if needed.

6.4.3.4 Waste Disposal

A Waste Management Plan (WMP) has been prepared by the Green Africa Group for the proposed distillery. A copy of the WMP is contained in **Annexure 11**. The WMP, "...plays a key role in achieving sustainable and waste management." The WMP "...prescribes measures for the collection, temporary storage and safe disposal of the waste streams associated with the project and includes provisions for the recovery, reuse and recycling of waste."

The following has been extracted from the WMP:

a) *Waste Management Principles*

An integrated approach to waste management on site is needed. Reducing volumes of waste is a priority. If reduction is not feasible, the maximum amount of waste is to be

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recycled. Waste that cannot be recycled is to be disposed of in the most environmentally responsible manner possible.

b) Waste Types at the Distiller

The following types of waste will be generated at the distillery.

Solid Waste: This consists of grain husks and fibre, rich in flavour, vitamins, and other nutrients and suitable for human or animal consumption. This by-product has commercial value but a relatively short shelf life (i.e. 2-3 days). It is in a semi-dry state (about 20% moisture) and easily collected in bins for transport. Not more than 300kg of solid waste will be produced per day.

The solid waste will first be used on the property, thereafter any waste not used on the farm will be removed to the locations listed below in the bakkie when the barley is collected

- to local piggeries, chicken, or sheep farmers for use as animal feed, and
- to local small bakeries/home bakeries for producing health rusks.

These arrangements will help to supplement the income derived from the distillery.

Packaging Waste: During the normal course of business, packaging material from received goods will be discarded or returned to suppliers. The non-returnable packaging waste consists of small amounts of plastic bags and cardboard boxes. These will be separated before disposal and arrangements made for re-cycling. Not more than 20 kg of plastic, cardboard boxes and other packaging waste will be produced per week.

Liquid Waste: This waste consists of three components: dead yeast, water (more than 80%) and grain sediment. It is very high in nutrients (especially in the Vitamin B-group) making it especially suitable as supplement feed for animals. It can be used as animal fodder or can be further processed for human consumption. However, the relatively small quantities produced (i.e. 100 litre per week) make it unfeasible for human consumption. Arrangements will be made to dispose of this waste with local piggeries, chicken farmers or compost producers once a week or once every two weeks while collecting barley. The relatively small quantities of greywater produced (i.e. 1000 litres per week) will be held in a separate holding tank for irrigation purposes.

Distilled Condensate Waste: The following waste products are produced during distilling:

- Condensed Highly Volatile Alcohols
- Small amounts (i.e. 10 litre per week) of distilled condensate waste is produced and is rich in methanol and ethanol with less than 10% water. This product is an excellent cleaning solvent to be used directly in the distillery during cleaning and for equipment sterilization purposes.

Low Volatility Organic Compounds: Limited amounts of this waste are produced weekly (i.e. 10 litre) and will be used in the next spirit run. No disposal is necessary.

Wastewater: Wastewater is from the following activities

- Reverse Osmosis (Filtering of Water): About 8% of water used for the dilution and blending of spirits will become wastewater dumped by the reverse osmosis water filter. This water does not contain any organic waste and is normally only rich in dissolved minerals. This small amount (i.e. less than 100 Litre per week) will be disposed of in the normal sewage line to the septic tank.

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- **Cleaning Water:** This is water used to clean the equipment and floors of the distillery and about 200 litre per week will be used and disposed of in the normal sewage line to the septic tank.
- **Other Wastewater:** Toilets, urinals and wash basin water will be disposed of in the normal sewage line to the septic tank.

6.4.4 Vehicular Access and On-Site Parking

Vehicular access will be via Porter Drive. Access will be from the Pringle Bay side.

No minimum on-site parking requirement is specified in the zoning scheme for a distillery or agricultural industry. In the absence of a specified requirement, it is believed that the following provision is reasonable and will be sufficient for both the residential dwelling and distillery.

- Owners : 2 bays
- Staff (3) : 3 bays for the employees discussed above,
- Deliveries / services : 1 bay
- Tours/ visitors : 2 bays for the vans bringing the visitors from Pringle Bay.

This amount of bays can be accommodated on site. Contingent on the approval of this application, the parking layout will be shown on the Site Development Plan (SDP), together with the final dimensions for the extension of the former stables structure.

7. POLICY FRAMEWORK

There are a number of town planning policies that have been adopted by the Provincial and Municipal authorities to guide development. These Planning Instruments vary in scale and scope from the Provincial Spatial Development Framework (PSDF) to local area specific plans, such as the Overstrand Municipality's Growth Management Strategy, Spatial Development Framework (SDF) and Land Use Scheme (Zoning Scheme). Each is dealt with in this section.

It must be noted that the overarching planning instruments (i.e. PSDF, Growth Management Strategy and SDF) are of limited applicability due to the limited scale and extent of the proposal. From this assessment it is concluded that the proposal is in general accordance with these planning instruments. The subject property is designated for agricultural usage, and the proposal can, with Municipality's consent, take place without the need to rezone the property.

7.1 Provincial Spatial Development Framework

The Western Cape PSDF 2014 was approved as a Structure Plan in terms of Section 4(6) of the Land Use Planning Ordinance (No 15/1985). With the commencement of the Land Use Planning Act (LUPA) in July 2015 this structure plan is regarded as the Provincial Spatial Development Framework in force in terms of section 4(1) of LUPA. **Figure 13** provides a summary of provincial spatial policies.

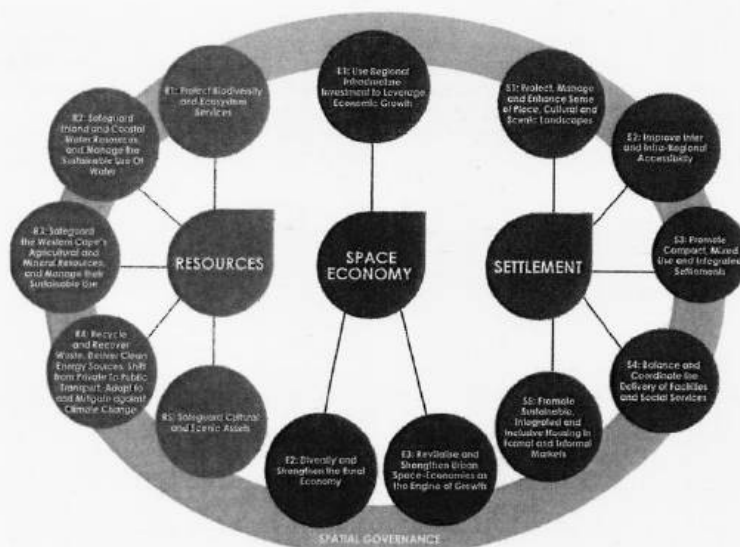


Figure 13: Provincial Spatial Policies

The PSDF "sets out to put in place a coherent framework for the Province's urban and rural areas that:

- i. gives spatial expression to the National and Provincial development agendas;
- ii. serves as basis for co-ordinating, integrating and aligning 'on the ground' delivery of National and Provincial departmental programmes;
- iii. supports municipalities to fulfil their municipal planning mandate in line with the National and Provincial agendas; and
- iv. communicates government's spatial development intentions to the private sector and civil society."

It must be emphasised that the PSDF is a planning instrument that applies to the Western Cape as a whole and its applicability to a single site within the Overstrand municipal area is limited. The PSDF addresses macro planning issues such as redressing the injustices of the past, and suggests interventions to promote more equitable distribution of resources, recognition of the natural, historical and cultural patterns of the Western Cape, strategies to accommodate projected population growth and creation of an enabling economic environment. Of the 14 policies contained in the PSDF, three are of particular relevance to the PRD application, namely Policies R1, E2, and S1.

7.1.1 Policy R1: Protect Biodiversity and Ecosystem Services

The Western Cape has implemented a system of Critical Biodiversity Areas (CBA) mapping which delineates the Province's biodiversity network. This is used to inform spatial planning and land use management decisions in the Province. Measures should be adopted to develop strategies and policies for securing priority areas outside the protected area network that are

critical for the achievement of the Province's conservation targets. These include measures such as incentivising private landowners to contribute to the Western Cape's biodiversity network, municipal zoning schemes that incorporate CBA overlay zones and development bonuses. Delineation of urban edges in municipal spatial development frameworks is required to divert urban growth pressures away from critical biodiversity areas.

With regard to the proposal, DEA & DP, concluded that no Environmental Authorisation is required to permit the establishment and operation of the micro-distillery. The distillery has a very limited development footprint and low impact operation, and the remainder of the property will be managed to support indigenous flora and fauna. In this way the property will fulfil its role as providing ecological support for the biosphere reserve. Moreover the emphasis on sustainability and the local environment that will be explained to visitors, will help to raise awareness about the biosphere reserve and its importance. Accordingly, the proposal is consistent with PSDF Policy R1.

7.1.2 Policy S1: Protect, Manage and Enhance Sense of Place, Cultural and Scenic Landscapes

This policy aims to prevent settlement encroachment into agricultural areas, scenic landscapes, and biodiversity priority areas, especially between settlements, and along coastal edges and river corridors. It promotes "smart growth" ensuring the efficient use of land and infrastructure by containing urban sprawl and prioritising infill, intensification, and redevelopment within settlements. Conservation strategies, detailed place-specific guidelines and explicit development parameters must supplement urban edges to ensure the effective management of settlement and landscape quality and form.

With regard to the proposal, the development will not constitute urban sprawl, but will make use of an existing building (with a minor extension) to undertake an activity that is consistent with the rural character of the site. The character of the buildings and operations within the buildings will enhance the sense of place. Accordingly, the proposal is consistent with PSDF Policy S1.

7.1.3 Policy E2: Diversify and Strengthen the Rural Economy

This Policy aims to incorporate rural considerations into municipal Integrated Development Plans (IDPs) and SDFs and relates to development outside of the urban edge, farm worker settlement and strengthening rural livelihoods. The Overstrand Municipality has delineated the urban edge around Pringle Bay and Rooi-Els based on the existing village footprints, while the area between the two settlements (including the subject property) is outside the urban edge.

The Policy clearly states that with regard to development outside of the urban edge, "*compatible and sustainable rural activities (i.e. activities that are appropriate in a rural context, generate positive socio-economic returns, and do not compromise the environment or ability of the municipality to deliver on its mandate) and of an appropriate scale and form can be accommodated outside the urban edge (except in bona fide wilderness areas).*"

There are many examples in the Overberg District of wineries, breweries and distilleries that operate outside the urban edge and play an important role in the local economy. In addition they add to the character and attraction of the area. The proposal is in complete compliance with PSDF Policy E2.

7.2 Overstrand Municipal Growth Management Strategy

The Overstrand Municipal Growth Management Strategy is to, "...promote the longer term sustainability of the municipal area and its sub-region." The strategy states that "...the intention of this growth management policy is not to grant or restrict existing zoning rights. It will however provide clear guidelines to be used by the Overstrand officials and political decision makers in executing their land use management functions."

The strategy includes a number of growth management objectives, including:

- Ensure optimal land use planning and the efficient use of infrastructure, services, facilities, and land, and
- To protect, manage and enhance the natural and built environment and landscapes.

The Strategy aims to "...achieve a targeted increase in the average gross base density of the Overstrand urban area" and contains several policies and plans to achieve this. These do not impact on the proposal and the Growth Management Policy has no significance for this application.

7.3 Overstrand Municipal Spatial Development Framework

The Overstrand Municipality Spatial Development Framework (OMSDF) of May 2020 is "...aimed at providing general direction to guide decision making on an ongoing basis, aiming at the creation of integrated, sustainable and habitable regions, cities, towns and residential areas."

The OMSDF provides a Municipal Spatial Concept and individual settlement spatial proposals. Due to the scale, nature, and location of the proposal, which essentially re-purposes a disused stable to accommodate a micro-distillery, the relevance and applicability of this planning instrument is limited.

The Development Framework for the Overstrand Municipality comprises several strategic spatial policy directives as illustrated in **Figure 14**. The directive of most significance to the distillery proposal is the Municipality's policy for "An Overstrand that enables a prosperous and diverse economy".



Figure 14: Spatial Policy Directives

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According to the OMSDF, "in order to be a prosperous area, the Overstrand should value its rural and natural environments, tourist attractions and heritage resources and profit from these economic pillars. It should furthermore stimulate economic growth and improve stability by diversifying its economy by means of introducing new sectors and expanding existing sectors with growth potential." The OMSDF recognizes that, "a diversity of agricultural, tourism, commercial and industrial activities occur in strategic locations throughout the Overstrand's rural and urban settlements, providing a range of local employment opportunities."

A number of Objectives are listed to "...enable a prosperous and diverse economy." Of particular relevance are:

- ECO 6: Overstrand attracts and retains highly skilled labour and entrepreneurs.
- ECO 8: Support the expansion and retention of the Overstrand's existing local business and generating new local economic/business opportunities.

The principle of *Land Use Diversification* is contained in the Development Framework. According to the OMSDF, land use diversification means "the diversification of rural and industrial based development opportunities based on locational and comparative resource advantages must be promoted in selected areas to stimulate growth and employment of the rural population."

Figure 15 overleaf depicts the Overstrand Municipality Spatial Management Concept. It is evident that:

- The subject property is situated between two settlements identified as Local Nodes, namely Pringle Bay and Rooi-Els.
- The area between Pringle Bay and Rooi-Els is identified as part of an Environmental Management Overlay zone,
- The property is close to an arterial road.

The proposal is in general accordance with the spirit and intent of the Development Framework as it will, albeit in a small way, assist with land use diversification and stimulate appropriate economic activity.

7.4 Overstrand Municipality Land Use Scheme

The Overstrand Municipality Land Use Scheme forms part of Planning By-Law 2020.

The subject property is zoned "Agriculture Zone 1: Agriculture" and is also situated in an Environmental Management Overlay Zone, specifically the "Coastal Protection Zone". Each aspect of the zoning scheme is dealt with separately.

7.4.1 Agricultural Zone 1: Agriculture

The Overstrand Municipality Land Use Scheme (2020), defines agricultural industry as "an enterprise for the processing of agricultural related products on or close to the land unit where these agricultural products, whether land or marine based (such as aquaculture), are grown, harvested and raised where such proximity is necessary due to the nature, perishability and fragility of such agricultural products or promotion of tourism related activities inter alia, dairies, wineries, distilleries, olive processing facilities, breweries and other facilities required for the processing of agricultural products where produce packed is not produced on the land unit but does not include service trade." (Planning Partners' emphasis).

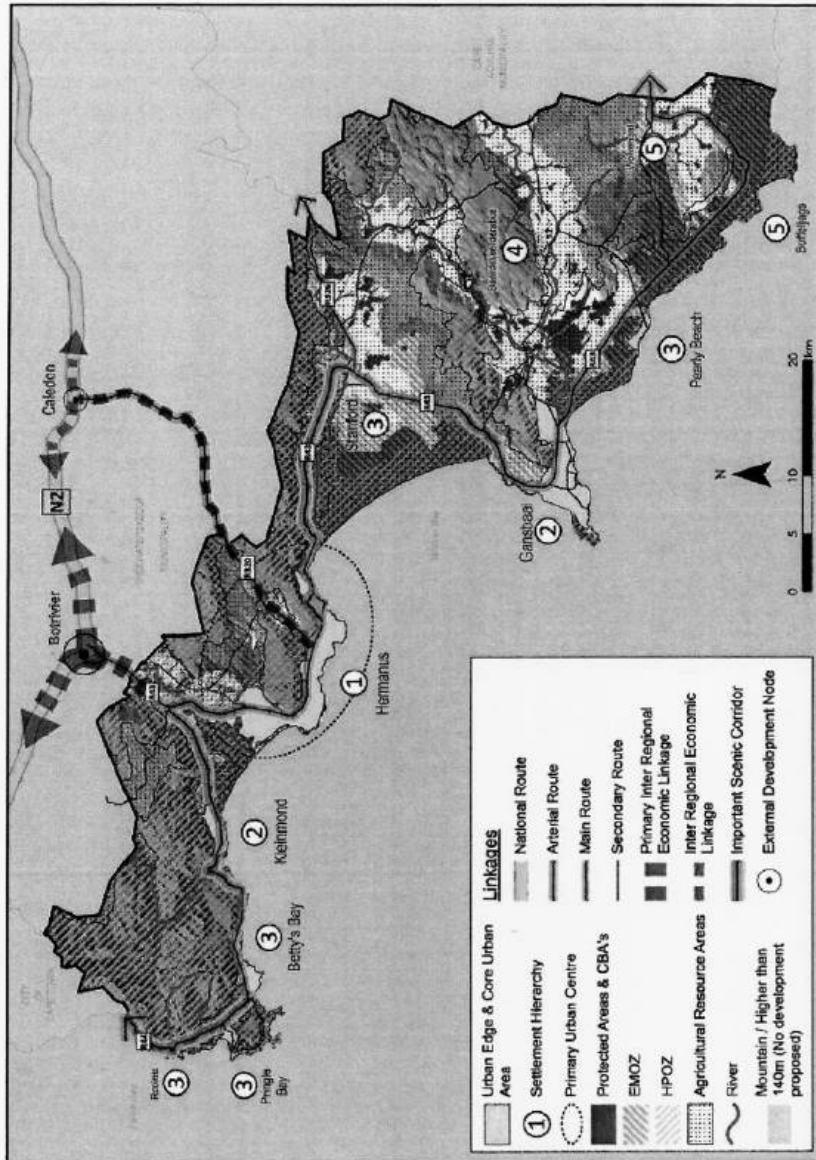


Figure 15: Overstrand Municipal Spatial Management Concept

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An agricultural industry is only permitted with consent in this zone. The Scheme defines consent as "...special permission granted by the Municipality after due consideration of all relevant facts and after following the prescribed legal process in terms of which a specific type of land use or activity is permitted, in addition to the primary uses applicable to the property concerned."

Application for consent for an *agricultural industry* is applied for in this application. Section 16.10.2 of the Land Use Scheme deals with general development parameters of an agricultural industry and is reproduced below.

The Municipality may approve an agricultural industry if it is satisfied that the proposed use or activity is desirable, provided that:

- a) the area affected by the agricultural industry must be clearly identified on a land survey diagram or other plan prepared by a suitably qualified person to the Municipality's satisfaction and endorsed by the Municipality; and
- b) the following development parameters apply:
 - (i) a site development plan must be submitted to the Municipality's satisfaction in terms of 16.3 for all new development or extensions within an area determined in terms of (a) above; and
 - (ii) parking and access shall be provided on the identified portion in terms of Chapter 17, provided that the Municipality may require additional parking and loading requirements in response to the operational requirements of a particular agricultural industry.

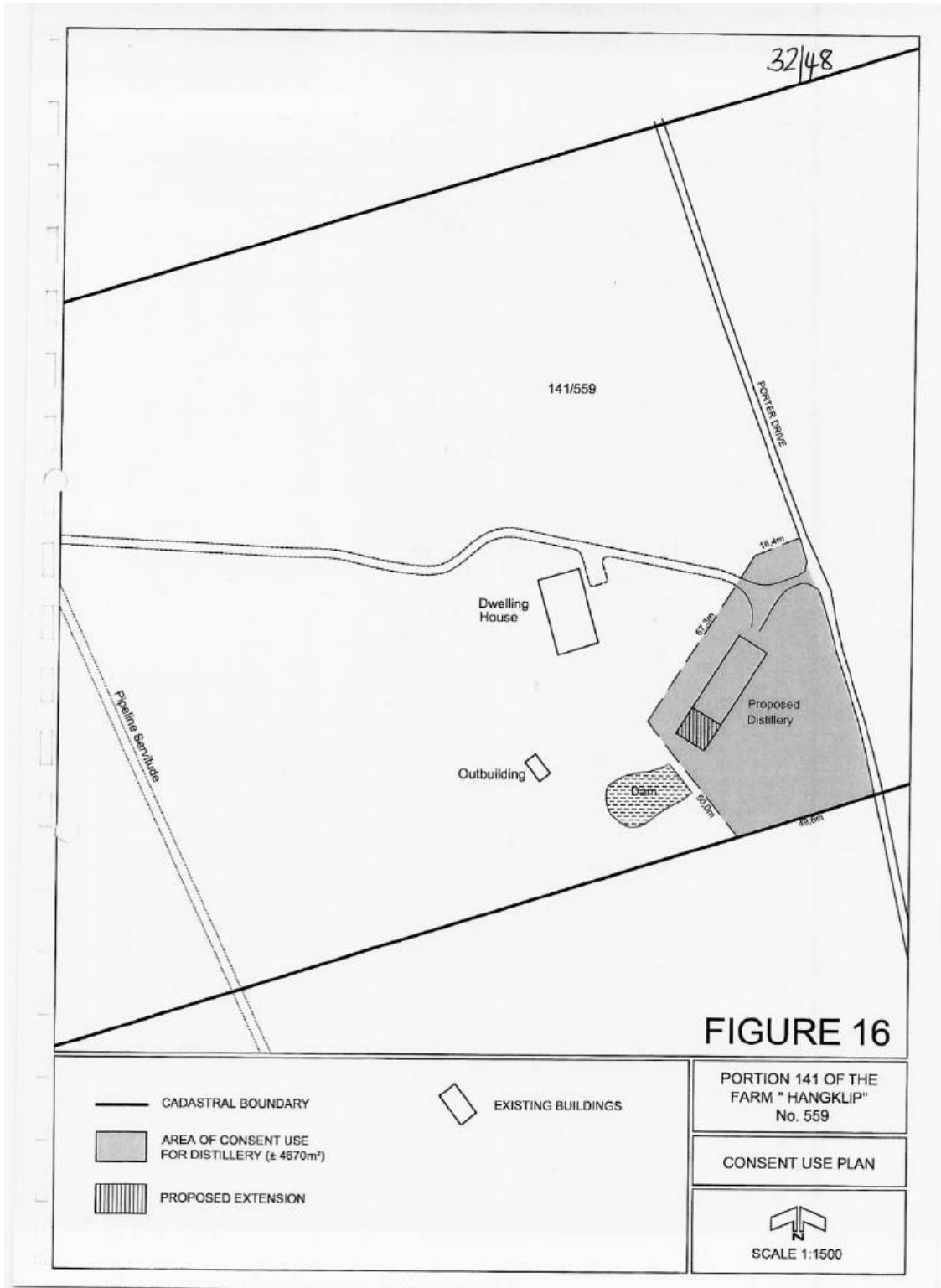
Contingent of the approval of this application, the requisite site development plan (SDP) will be submitted for approval. **Figure 16** satisfies Section 16.10.2(a).

Application for consent for a *farm shop/stall* is also included in this application. A "farm shop/stall" is defined in the Land Use Scheme as "a building, located on a farm, where a farmer sells produce and other goods to the general public". Section 16.10.7 of the Land Use Scheme deals with general development parameters of a farm shop/stall and is reproduced below.

Farm shop/stall

16.10.7 The Municipality may approve a farm shop, provided that:

- a) the maximum floor area of the farm shop/stall shall not exceed 300 m²;
- b) the maximum height does not exceed a single storey, measured from the base level to the top of the structure;
- c) sufficient parking is provided to the satisfaction of the Municipality; and
- d) the access requirements of the relevant road authority must be complied with.



The shop component of Pringle Rock Distillery will comply with all the Land Use Scheme requirements. However, it is not a shop in the normal sense of the word where the general public will buy a wide range of consumables and household goods. There will not be a separate shop but rather the goods for sale will comprise items such as preserves and local produce grown on the property, and mementos of the distillery. These will be displayed on shelves incorporated into the tasting room and will be available for sale to visitors of the distillery which is by pre-organised tours only.

Table 3 compares the development parameters prescribed for Agriculture Zone 1 with the proposal. It is evident that consent uses and one regulation departure are required.

Table 3: Comparison of the Proposal with Provisions of the Agriculture Zone 1: Agriculture

Land Use Scheme		Development Parameter	Proposed development	Compliance with the Scheme
Chapter 5, Section 5.1.1 (a) & (b)	Use of Property	Primary Use: Includes dwelling house Consent Use: Includes agricultural industry and farm shop/stall	Proposed distillery and associated uses, including shop for produce and mementos. Existing dwelling and outbuildings	Consent required for agricultural industry (distillery) and farm shop/stall
Chapter 5, Section 5.1.2 (a)	Floor Space	Total floor space on land unit may not exceed 5000m ²	Existing dwelling 376m ² Existing outbuilding 36m ² Existing stable 330m ² Proposed extension 118m ² Total 860m²	Compliant. No departure required
Chapter 5, Section 5.1.2(b)	Building Lines	For land units greater than 10 ha: Street & common building lines = 30m	Street = 23.4m from road edge Eastern common = 31.73m Western common: 174.37m	Non compliant. Regulation departure required to permit a street building line of 23m in lieu of 30m
Chapter 5, Section 5.1.2 (c)	Height	Max height from base level to top of structure = 8m & to top of agricultural building = 12m	3m to wall plate. 4.8m to top of roof. Refer to approved building plan in Annexure 6	Compliant. No departure required.
Chapter 17	Parking	None stated for Distillery or Agricultural Industry	Owners : 2 bays Staff (3) : 3 bays Deliveries/ services : 1 bay Tours/ visitors : 2 bays Total = 8 bays	Not applicable

7.4.2 Coastal Protection Zone

The Land Use Scheme (OMLUS) includes five Environmental Management Overlay zones (EMOZ), namely:

- Coastal Protection EMOZ.
- Mountain Catchment EMOZ.
- Protected Area Buffer EMOZ.
- Riverine EMOZ, and
- Urban Conservation EMOZ

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Figure 17 is an extract of the Coastal Protection EMOZ plan, and the light green depicts areas affected by this overlay zone, including the subject property.

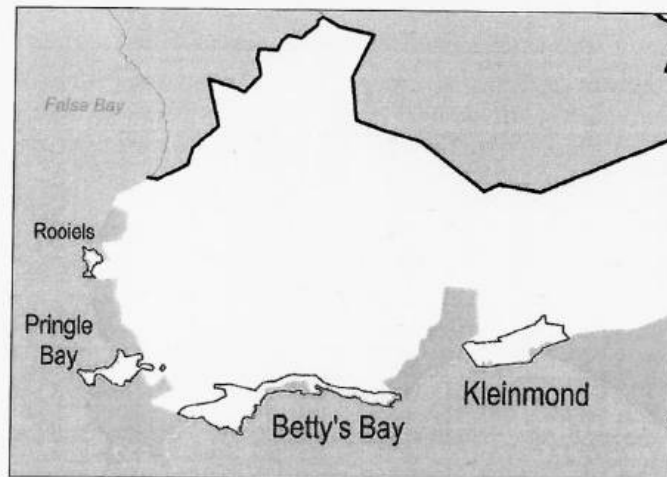


Figure 17: Extract of the Coastal Protection EMOZ

According to the OMLUS, an Overlay zone means "...a category of zoning applicable to a particular land unit or area, which:

- (i) stipulates development parameters for a land unit or area, in addition to the underlying zoning or base zone requirements;
- (ii) may include further development parameters in a particular area or zone which may be more or less restrictive than for land units which are not covered by the overlay zoning."

The regulations applicable to the various overlay zones are contained in the Overstrand Municipality EMOZ regulations 2020. In these Regulations Schedules A, B and C deal with Prohibited Activities, Activities which are only permitted with Council's consent and General regulations respectively.

The proposed micro-distillery and farm shop/stall do not constitute any of the prohibited activities (as per Schedule "A") in the Coastal Protection EMOZ, but includes activities only permitted with Council consent, i.e. "commercial" and "construction or placement of any permanent object, building, shelter, pathway or structure", as in Schedule "B". The requisite consent is applied for in terms of this application.

8. DELETION AND AMENDMENT OF CONDITIONS OF TITLE

In order to facilitate the proposed development it was initially considered necessary to delete one condition of title being clause C(4) which relates to the street building line, and to amend another condition being clause C(13) which relates to land use. These clauses were imposed by and for the benefit of the original land owner (developer), being Hangklip Beach Estates Limited (Hangklip Beach Company).

Hangklip Beach Company was approached for its consent to make these deletions / amendments. During this process Hangklip Beach Company decided that there was no reason to retain the other conditions save for a portion of clause C(13), namely that "No public garages or filling stations shall be erected on the land". Since Hangklip Beach Company no longer wishes to enforce the other conditions, and the owners of the property have no intention to erect or operate a public garage or filling station, an agreement was reached between the parties. The relevant documentation is contained in **Annexure 8**.

8.1 Conditions to be Deleted

Application is made to the Municipality to delete the following restrictive title conditions contained in Deed of Transfer T8920/2005:

C1, C2, C3, C4, C5, C6, C7, C8, C10, C11, C12.

Note that condition C(9) was previously deleted.

8.2 Condition to be Amended

Application is made to the Municipality to amend Condition C(13) which relates to land use and currently reads as follows:

- *"No shop, garages or filling stations, business premises, canteens, bioscopes, factory, or industrial buildings shall be erected on the land nor shall any business or public entertainment be conducted on the land."*

Application is made to amend Condition C(13) to read as follows:

- *"No public garages or filling stations shall be erected on the land."*

The application in respect of title deed conditions is made in terms Section 16(2)(f) read with Section 35 of the Planning By-Law 2020. The application is also made in terms of Section 47(1) of the Spatial Planning and Land Use Management Act, 2013.

Section 35(4) of the Planning By-Law 2020 describes criteria that the Municipality must have regard to when considering the removal, suspension or amendment of a restrictive condition. Before providing motivation in terms of these criteria, an overview of the history of Condition "C" is provided as background to explain how, why and by whom this condition was imposed.

8.3. History of Condition "C"

DHM Attorneys Inc, were instructed to investigate whether any title conditions should be removed to permit the proposal. The result of this investigation is contained in their letter dated 26 October 2020 contained in **Annexure 12**. Pertinent extracts are reproduced here.

On 21 December 1960 Hangklip Beach Company registered a Certificate of Registered Title (No. T20205/1960) to create Portion 133 of the Farm Hangklip No. 559. This was a large

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property comprising 587.1128 morgen in extent (\pm 502.9 hectares). Portion 133 was subdivided into a number of smallholdings as shown on Survey Diagram No. 2974/1960. An extract of this Diagram is depicted in **Figure 18** overleaf.

In April 1964 Hangklip Beach Company sold two of the smallholdings, namely Portions 141/133 and 142/133, to Mr. Archibald Collier Mayne and they were subsequently transferred to Mr. Mayne on 18 November 1964. Condition 'C' as it is now described in the current title deed was created in Annexure "A" to the Power of Attorney to pass transfer to Mr Mayne. The conditions contained in Annexure "A" were a combination of title conditions previously registered in other forms and new title conditions. Both properties were held by the same title deed and sold simultaneously.

Portions 141/133 and 142/133 were later sold together and transferred to QJ Ninaber on 14 May 1982. Portion 142/133 was then sold on its own and transferred to S Schreiber on 22 April 1983, and a year later Portion 141/133 was transferred to SBE Watson on 16 May 1984.

Upon inspection of the title deeds of neighbouring properties, it seems that the other subdivided portions of Portion 133 were registered with different title conditions. The title conditions created upon the subdivision of Portion 133 were therefore not uniformly created, even though there are some conditions that are the same. Moreover Condition "C" is registered in favour of a specific, identifiable entity, namely Hangklip Beach Company which was the transferor in the transaction and the owner of the Remainder.

It is significant to note that Condition "C" was imposed by Hangklip Beach Company for its "sole benefit", in its favour. The right was not reserved in favour of successors in title or in favour of other owners in the sub-divided Portion 133.

If the condition had been reserved for successors in title, or if the words "sole benefit" were omitted from condition "C", then it could have been concluded that a praedial servitude was created by this title condition. This did not occur and DHM Attorneys concluded that a praedial obligation was not intended.

Significant conclusions from DHM Attorney's investigation are:

- Portion 142 has exactly the same title condition "C" as portion 141, but this is because they were sold together when the condition was created.
- Even though portion 146 and portion 153 are also subject to conditions like condition "C", the preamble reads differently in these deeds (omitting the reference to "sole benefit") and the wording of the restrictions, although they have the same theme, are not exactly the same.
- Condition "C" is not reciprocal, it is a personal servitude, enforceable by Hangklip Beach Company against the owner(s) of Portion 141 (a portion of Portion 133).
- Should Hangklip Beach Company consent to the cancellation of this title condition or to its relaxation or suspension, this could be done.

Hangklip Beach Company has been approached and its consent has been granted to cancel Condition "C" save for a portion of clause C(13) relating to public garages and filling stations. Copies of documents relating to the removal of title deed conditions and consent granted by Hangklip Beach Company are contained in **Annexure 8**.

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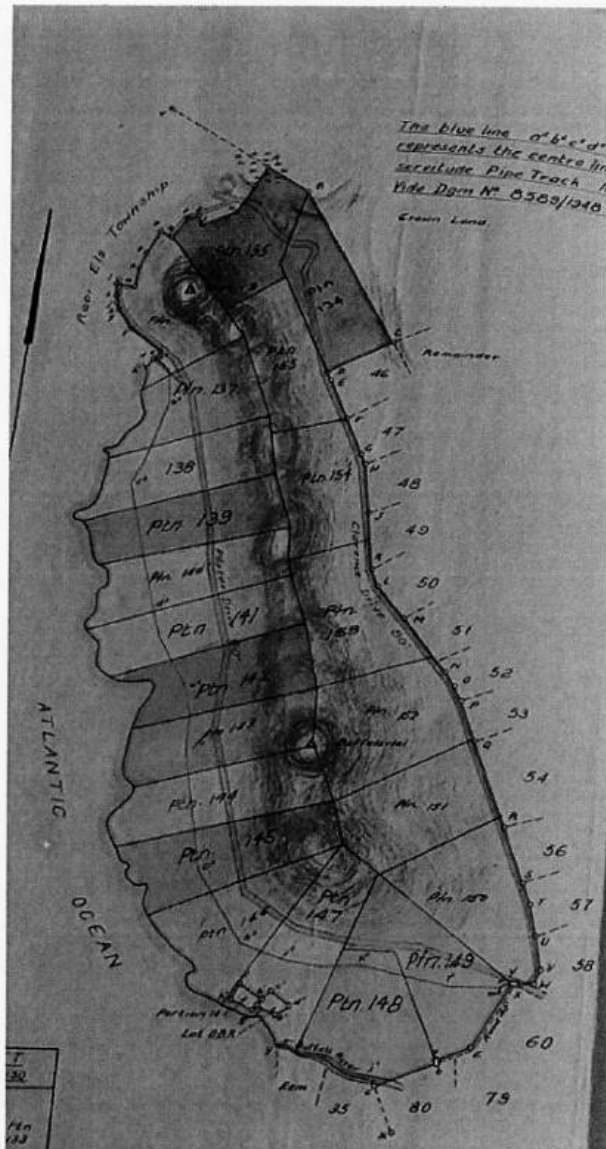


Figure 18: Extract of SG Diagram No 2974/1960

8.4 Motivation for Deletion and Amendment of Restrictive Conditions

Condition C contains restrictions relating to buildings and use of the land. These restrictions were imposed by Hangklip Beach Company for its sole benefit, prior to development of the property. At that time local government regulations and town planning controls were not well established in the rural areas. It is evident that the conditions were inserted by Hangklip Beach Company in order to protect its commercial interests as a developer. There are now very comprehensive environmental, planning and building regulations that govern the matters listed in the title deed conditions. Hangklip Beach Company has confirmed that it no longer wishes to enforce Condition C save for a portion of clause C13. For this reason, and also because the authorities have sufficient legal mechanisms to control buildings and the use of land, the conditions are no longer relevant and are not required. This is supported by the following statements in relation to the individual clauses of Condition C.

Deletion of Condition C and Associated Clauses

Clause No	Subject Matter	General Motivation for Deletion
1	Gives Hangklip Beach Estates Ltd. (HB) the right to convey electricity and water mains	HB does not intend to convey electricity and water mains across the Lot. HBEL does not intend to enforce this clause.
2	Relates to completion time for building works	National and Municipal laws now deal with building works. HB does not intend to enforce this clause.
3	Relates to wood and iron buildings	National and Municipal laws now deal with building works. HB does not intend to enforce this clause.
4	Relates to building restrictions from any road or boundary.	Municipal laws now deal with building lines. HB does not intend to enforce this clause.
5	Relates to design and sound construction	National and Municipal laws now deal with building works, including design and construction. HB does not intend to enforce this clause.
6	Relates to noxious trade or activity	National, Provincial and Municipal laws now deal with noxious activities. HB does not intend to enforce this clause.
7	Relates to brickmaking, quarrying and other activities	National, Provincial and Municipal laws now deal with the activities. HB does not intend to enforce this clause.
8	Relates to debris, scrap and unsightly material	National and Municipal laws now deal with such matters. HB does not intend to enforce this clause.
9	Clause previously deleted	Not applicable
10	Relates to access to public roads	Provincial and Municipal laws now deal with such access. HB does not intend to enforce this clause.
11	Relates to sewage disposal	National and Municipal laws now deal with such matters. HB does not intend to enforce this clause.
12	Relates to the use of land for agriculture	National and Municipal laws now deal with such matters. HB does not intend to enforce this clause.
13	Restricts a range of uses including public garages or filling stations.	National and Municipal laws now deal with such matters. HB wishes only to restrict public garages or filling stations.

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Section 35(4) of the Planning By-Law 2020 lists six criteria which need to be considered in relation to an application to remove or amend restrictive conditions of title. These are reproduced below and a response in relation to the proposed distillery is provided.

8.4.1 *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 the dominant tenement.*

The clauses in Condition C do not now have a direct quantifiable financial value for Hangklip Beach Company. These restrictions were presumably imposed when the company was active in the area as a developer, at a time when land use and building control regulations were not well established in rural areas. The clauses were presumably inserted to prevent a land use and built form which Hangklip Beach Company may have felt would adversely affect its commercial interests. This is no longer the case because the company is no longer active as a developer in the area and there are adequate national, provincial and municipal laws to govern land use, buildings and environmental impact.

The limitation of land use does have financial implications as it prevents the land owners from accommodating the proposed distillery and associated shop. This is in effect a restraint of trade prohibition against future types of development. When this condition was imposed there was no zoning scheme in operation, and it is presumed that Hangklip Beach Company wanted to exercise some control over use. Now that there is a zoning scheme, such control is unnecessary. Furthermore, the restriction serves to frustrate the Municipality's Development Framework which seeks to promote economic activities in the rural area.

The clauses of Condition "C" are in effect "catch all" restrictions that allow Hangklip Beach Company to control the form, extent and scale of development. It is an attempt to entrench its rights (which could have potential monetary value). However, 56 years have passed and the company no longer has any effective involvement in this area. It does nothing to maintain the infrastructure or environment and plays no part in monitoring development. Furthermore it has stated that it no longer wishes to enforce Condition (C) save for a portion of Clause C(13), namely that "No public garages or filling stations shall be erected on the land".

The proposed distillery, which constitutes business premises, is a very specific type of activity. The term "business premises" is generic and is normally understood to include a multitude of commercial uses. The proposal is not for a general business but for a boutique micro-distillery which is an appropriate activity in this rural area, in the same way that wineries and boutique breweries are accepted as part of the rural landscape.

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

There are no longer any personal benefits that accrue to Hangklip Beach Company as a consequence of Condition (C).

8.4.3 *The personal benefits which will accrue to the person seeking the removal of the restrictive condition, if it is removed.*

The removal of the restrictive conditions will permit the establishment and operation of the proposed micro-distillery. There are no reasons for the retention of C(4) as the structure was built decades ago in accordance with an approved building plan. It is

unknown why the title deed restriction was not enforced at the time of construction. There are no valid reasons to demolish a portion of the structure to ensure its compliance with C(4) now, which would highly unfair and prejudicial to the current landowner.

The removal / amendment of C(13) will be beneficial to the owners of the subject property because this will no longer prevent the establishment and operation of the proposed enterprise, and will facilitate an income stream for the owners of the distillery. Nonetheless, as motivated in this application, the proposed micro-distillery will not have a significant negative impact on neighbours, the communities of Pringle Bay or Rooi-Els or the Municipality. Furthermore, it will have a beneficial effect in that it will assist in strengthening the rural economy in a small, but appreciable way.

The proposed distillery is not in breach of the other clauses, but their removal will be beneficial to the owners of the property because this will simplify development control procedures. It will also be in the interest of good administration because the matters dealt with by these clauses are covered by national, provincial and municipal legislation.

8.4.4 *The social benefit of the restrictive condition remaining in place in its existing form.*

The term "social benefit" is understood to refer to the broader society, and not the rights of owners who may be entitled to enforce a restrictive condition. This is similar to the "public interest" consideration in SPLUMA.

C(4) and C(13) relate to building placement and land use. There is no social benefit of retaining C(4) as the structure has existed for decades, and if there had been any negative social benefit of the building's non-compliance with this clause, it would have manifested itself by now. The building is set back over 23m from the road and therefore has no negative implications for the rural sense of place or road safety.

There is no social benefit of retaining C(13) because this will prevent establishment of a legitimate and desirable small-scale enterprise that fits in well with the rural character of the area. If the condition is retained the benefits to the local economy and employment will not materialise.

There is no social benefit in retaining the other clauses of Condition C because these matters are covered by national, provincial and municipal laws that are administered by competent authorities in accordance with the Constitution. It is not necessary to have title deed conditions that overlap with these laws, and in fact such overlap does not constitute good or efficient administration.

It must be emphasized that Condition C is in the title deed for the sole benefit of Hangklip Beach Company and there is no social benefit for the retention of this condition and its sub clauses.

8.4.5 *The social benefit of the removal or amendment of the restrictive condition.*

The social benefit of removing of C(4) is marginal because the structure was built many decades ago and it has had no negative impact on the wider community. However, removal of this condition will remove the anomaly of non-compliance of the existing building.

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The amendment of C(13) will have a beneficial social impact as it will assist, albeit, in a small way, to strengthen the rural economy.

Condition "C" was inserted in the title deed for the sole benefit of the Hangklip Beach Company, and not for the benefit of the general public or community. Such private restrictions are no longer appropriate or in the public interest considering there are now town planning mechanisms such as zoning schemes and spatial development frameworks for the management of land use and development.

8.4.6 *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.*

The rights of Hangklip Beach Company will not be materially affected by the removal of Condition C. The company will experience no costs nor disadvantage and will be able to continue with its operations as normal.

All the properties that previously constituted Portion 133 are now constrained by the provisions of the Overstrand Municipality Land Use Scheme. This planning instrument deals *inter alia* with building placement and land use. It is more appropriate for these types of development parameters to be controlled by the zoning scheme than in title deeds. This will ensure that all properties are regulated in a transparent and legal manner, and not by means of restrictions imposed decades ago in favour a specific, private entity.

9. CONSENT USES

Application is submitted in terms of Section 16(2)(o) of the Planning By-Law 2020 to obtain Consent for the establishment of an "*agricultural industry*" and a "*farm shop/stall*" on Portion 141 of the Farm "Hangklip" No 559 Caledon, as provided for in Section 5.1.1(b) of the Land Use Scheme (2020).

Application is also submitted for Consent to permit "Commercial" activity and "Construction or placement of any permanent object, building, shelter, pathway or structure", as required by the Environmental Overlay Zone Regulations.

Motivation for the Consent is as follows:

- a) The property is zoned Agricultural Zone 1 and an agricultural industry and farm shop/stall are permitted in this zone by consent. The definition of Agricultural Industry includes a distillery and the Land Use Scheme therefore makes provision for distilleries in such a zone.
- b) The proposed agricultural industry is not a regular industry which is characterised by larger scale, commercial operations with greater power, water, and waste disposal requirements. This is an agricultural industry, run as a small family concern specialising in a high quality crafted product, making use of sustainable local resources such as solar energy, water from the well, wood from cut alien vegetation and flavouring from fynbos grown on the property. The enterprise will promote tourist-related activities.
- c) The proposed farm shop/stall is a small-scale ancillary use to the distillery. It will sell produce from the farm and mementos related to the distillery. The number and range of products will be limited, and the target market will be visitors on tour to the distillery. This is therefore not a retail node or magnet and will not attract customers in the way a conventional shop would do.

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- d) An agricultural industry and farm shop/stall are not automatic use rights in the Agricultural Zone 1 in terms of the Land Use Scheme, but it has been established that such uses, including a distillery, could in principle be granted if the scale and operation is appropriate for the site and context. This report has demonstrated that the proposed micro-distillery and ancillary sale of goods is appropriate for the site and context.
- e) The accommodation of the micro-distillery in the disused stables represents a "recycling" or repurposing of the structure to accommodate a more productive and appropriate use, while still respecting the rural character of the area.
- f) The micro distillery can be accommodated with minimal improvement to existing utility services and will not impose a burden on the Municipality. The small amount of waste will be disposed of in a sustainable manner and will not require municipal waste removal services.
- g) Porter Drive is classified as a municipal street or road, which means that all are legally entitled to use it without restriction. Nonetheless, the proponents of the distillery will respect the access control measures that they themselves have been instrumental to put in place. Tour groups will be shuttled to and from the distillery and raw material supplies will only require several deliveries per month with a bakkie. This means that the distillery and ancillary uses will have little impact in terms of traffic generation, road operations and road safety.
- h) The micro-distillery will strengthen, albeit in a small way, the rural economy. In these economically stressed times resulting from recession and the Covid 19 pandemic, individuals need to do all they can to stimulate the economy. All legitimate and desirable commercial activities should be supported and encouraged by the Municipality. In this case the land is a suitably zoned land unit and there are no reasons to refuse the application. A desirable and appropriate enterprise is proposed which will add to the economic sustainability of the area.
- i) The small scale of the micro-distillery and farm shop is appropriate for this relatively secluded area. The enterprise does not require a large staff complement nor land area. It is designed to produce relatively small quantities of premium products and the business model does not require ever increasing volumes to increase profitability. The sustainability of the micro-distillery is linked to the quality of the spirits produced and not the quantity.
- j) Based on the extensive information provided in this motivation report about the subject property and proposal it is clear this is a desirable and appropriate enterprise to be established on the property, and that granting of Consent is reasonable and desirable.

10. REGULATION DEPARTURE

Application is submitted in terms of Section 16(2)(b) of the Planning By-Law 2020 to obtain a regulation departure from Section 5.1.2(b)(i) of the Land Use Scheme (2020) to reduce the street building from 30m to 23.2m.

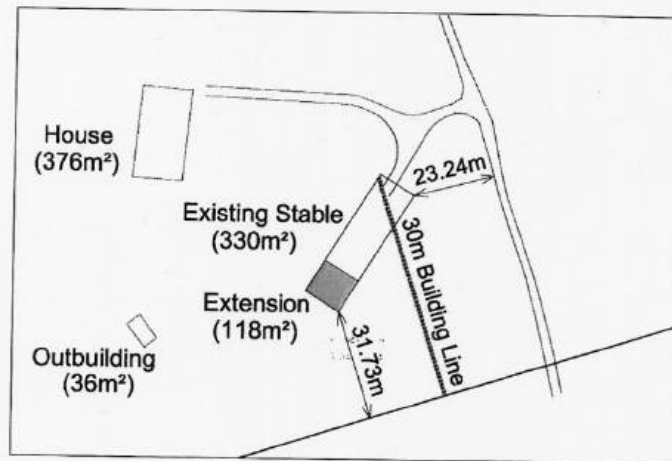
Motivation for the reduction of the Porter Drive building line from 30m to 23.2m is as follows:

- a) The regulation departure does not apply uniformly to the Porter Drive street boundary but only to a specific portion of the disused stable structure as indicated in the plan overleaf.

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- b) Only a relatively small portion of the existing structure is within the street building line. The remainder of the structure is positioned more than 30m from Porter Drive. Note that the planned extension to the structure is on the ocean side of the structure and unaffected by the street (or common) building line.
- c) As the footprint of the structure is not built parallel to Porter Drive the impact of the reduced building line is negligible.
- d) The structure was built in accordance with an approved building plan (refer to **Annexure 6**) and therefore presumably in accordance with the then applicable planning regime. It would be grossly unfair to the current owner if this departure is not approved for an existing structure that was built by a previous owner.
- e) The distance the structure has been setback from the road edge is more than sufficient to ensure the safety of road users (both vehicles and pedestrians) and continuity of a rural sense of place.
- f) There is no valid reason to require the landowner to demolish the triangular portion of the building that is situated within the building line.
- g) The proposed amendments will have no significant impact on the public, adjoining neighbours or the Overstrand Municipality.

Figure 19: Plan Showing the Required Departure



11. GENERAL MOTIVATION FOR THE APPLICATION IN TERMS OF THE BY-LAW ON MUNICIPAL LAND USE PLANNING

Section 66(1) of the Planning By-Law 2020 stipulates general criteria for the consideration of applications. The criteria are listed below, and compliance of the proposal is explained.

- (a) *The application submitted in terms of this By-Law*
The proposal complies with the requirements and is submitted in terms of the By-Law.
- (b) *The procedure followed in processing the application*
This is a new application submitted in terms of the Planning By-Law 2020 and land use scheme. The Municipality will follow the prescribed procedures and the applicant will co-operate as needed.
- (c) *The desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding the desirability of proposed land uses*
The provincial guidelines are reflected in the PSDF. This is a high-level strategic plan that applies to the province as a whole and has limited implications for the application. However, the application is consistent with the relevant policies of the PSDF. Additional policies are found in Municipal planning instruments such as the Overstrand Growth Management Strategy, Overstrand Municipal Spatial Development Framework and the Overstrand Municipality Land Use Scheme. The proposal is in general accordance with the overarching policies, objectives, and strategies of the authorities, such as encouraging economic growth and ensuring the surrounding natural environment is not negatively impacted. The establishment and operation of a micro-distillery is considered to be desirable for the reasons explained in this report.
- (d) *The comments in response to the notice of the application, including comments received from organs of state and internal departments*
The Department of Environmental Affairs and Development Planning have confirmed that the proposal does not require Environmental Authorisation in terms of NEMA. The Breede - Gouritz Catchment Management Agency has confirmed the landowner is entitled to abstract the required amount of groundwater. The application must still be advertised by the Municipality, whereafter any additional comments from organs of state and internal departments will be addressed.
- (e) *The response by the applicant to the comments referred to in in paragraph (d)*
At this stage, no response from the applicant is required.
- (f) *Investigations carried out in terms of other laws that are relevant to the consideration of the application*
Extensive legal, waste management, and planning investigations have been undertaken. No other investigations are required at this stage.
- (g) *A registered planner's written assessment, or a planner eligible for registration.*
The application is still to be assessed by the municipal planner.
- (h) *The Integrated Development Plan and Municipal Spatial Development Framework*
The proposal has been assessed in terms of the Municipal Spatial Development Framework and it is concluded that the proposal is consistent with this framework. Due to

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the small scale of the proposal, and the fact that the SDF follows on from the IDP, it was not considered necessary to assess the proposal in terms of the IDP.

(i) *Where applicable Local Spatial Development Frameworks adopted by the Municipality*

The proposal has been assessed in terms of the Overstrand Growth Management Strategy and Overstrand SDF and is consistent with these plans. The proposal assists in a small way in ensuring sustainable, appropriate economic activity commensurate with its surroundings, and strengthens the rural economy including tourism. The proposal will be an asset to the area.

(j) *The applicable policies of the Municipality that guide decision-making*

The policies that are known to guide the Municipality on decision-making have been considered and the proposal is consistent with these.

(k) *The Provincial Spatial Development Framework*

The PSDF has been considered and the proposal is consistent with this Framework.

(l) *Where applicable, the regional spatial development framework*

This is not applicable.

(m) *The policies, principles, planning and development norms and criteria set by national and provincial government*

Compliance with these principles are explained in the next section.

(n) *The matters referred to in Section 42 of the Spatial Planning and Land Use Management Act*

Section 42 of SPLUMA refers *inter alia* to development principles. The proposal is consistent with the development principles of SPLUMA as demonstrated in the next section. The proposal is designed to protect and promote the sustainable use of agricultural land. It considers the public interest, relevant facts and circumstances and impact of engineering services.

(o) *The principles referred to in Chapter VI of the Land Use Planning Act*

The proposal is consistent with the development principles of LUPA as demonstrated in the next section.

(p) *Relevant provisions of the land use scheme*

The proposal has been compared with the provisions of the Agriculture 1 zone, as well as the Coastal Protection EMOZ, and is in general accordance with these provisions. However, Consents from Council are required as well as a street building line departure. The application is motivated and submitted in accordance with the requirements of the land use scheme.

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12. MOTIVATION IN TERMS OF THE WESTERN CAPE LAND USE PLANNING ACT AND THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT

Section 7 of SPLUMA and Section 59 of LUPA establish five principles that are implemented by all organs of state and other authorities regulating the use and development of land. Each principle is summarised and applied to this application in the following section. It is concluded that the proposal complies with these principles and deserves support.

It must be noted that due to the limited scale, nature, location and extent of proposal, the Development Principles are of limited applicability and relevance. The subject property is not being subdivided or rezoned, and the proposed micro-distillery will be accommodated within an existing, but currently unused, building.

12.1 Spatial Justice

The legacy of apartheid spatial and administrative planning is to be redressed so that the previously disenfranchised have improved access to, and use of, land. Land use control mechanisms and planning tools are to be designed to include disadvantaged communities, and municipal management systems must include provisions that are applicable to those areas created by, or resulting from, the previous exclusionary political system. Provision for secure tenure and the incremental upgrading of informal areas must be included in land use management procedures. The potential devaluation of land or property cannot prevent a Municipal Planning Tribunal from achieving this principle when evaluating an application.

12.1.1 Applicability to this Application

The applicability of the spatial justice principle is limited as the proposal relates to the establishment and operation of a micro-distillery on privately-owned land and within an existing but disused structure. This application does not relate to the provision of housing.

12.2 Spatial Sustainability

Land development is to be predicated on sound financial, institutional, and administrative practices. Prime and unique farmland is to be protected, while the provisions of environment management instruments are to be implemented consistently. Land markets are to be fair and equitable, including giving consideration to current and future cost for all parties for the provision infrastructure and social services. Development is to be promoted in areas which limit urban sprawl, and result in communities that are sustainable and viable.

12.2.1 Applicability to this Application

An existing structure on the property, with a minor extension, will be used for the micro-distillery. The agricultural potential is limited and the former use of the building as horse stables combined with the kikuyu planted for grazing previously had a significant environmental impact on the natural environment. Re-use of the building with a productive enterprise that is well managed and appropriate for the site is consistent with the principle of Spatial Sustainability. No Environmental Authorisation is required to permit the activity and the proposal does not result in, nor promote urban sprawl.

12.3 Efficiency

The optimal utilisation of existing resources and infrastructure is promoted and decision making procedures are to be designed to minimise negative financial, social, economic and

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environmental impacts. The application procedures are to be efficient and streamlined and prescribed timeframes are to be adhered to by all parties to the development application.

12.3.1 Applicability to this Application

The proposal involves the recycling or repurposing of an existing structure to accommodate the micro-distillery. The use of water from the well, solar energy, wood from alien vegetation, fynbos botanicals grown on site, and sustainable waste management all contribute to a proposal that will make efficient use of existing resources.

12.4 Spatial Resilience

Spatial plans, policies and systems are to be flexible to ensure that the livelihoods of those communities most likely to suffer the impact of economic and environmental shocks remain sustainable.

12.4.1 Applicability to this Application

The consent use mechanism provides a degree of flexibility and allows the Municipality to exercise discretion in administering the Land Use Scheme. Refusal of this application will negatively impact on the livelihood of a number of people. No significant negative environmental impact is anticipated due to the small scale of the enterprise and the nature of its operations.

12.5 Good Administration

An integrated approach by all tiers of government is to be applied to land use management. When planning instruments are prepared or amended, government departments must provide their inputs, comply with the prescribed requirements, and include transparent public participation processes. All government departments must comply with the requirements of any law relating to land development and land use timeously. All land development and land use policies, legislation and procedures must be clearly set out to inform and empower the public.

12.5.1 Applicability to this Application

The application is submitted in terms of the Municipal Planning By Law 2020, and it is hoped that a timeous and sensible decision will be made that allows this project to proceed.

13. SECTION 42 OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT

Section 42 of SPLUMA provides guidance when an application is to be decided upon by a Municipal Planning Tribunal. Each of these criteria are reproduced and applied to this application below.

(a) *Be guided by the Development Principles set out in Chapter 2*

The Development Principles as set out in Chapter 2 have been considered in relation to the application and it is concluded that the proposal is consistent with these Principles.

(b) *Make a decision which is consistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land, National and Provincial government policies and the municipal spatial development framework*

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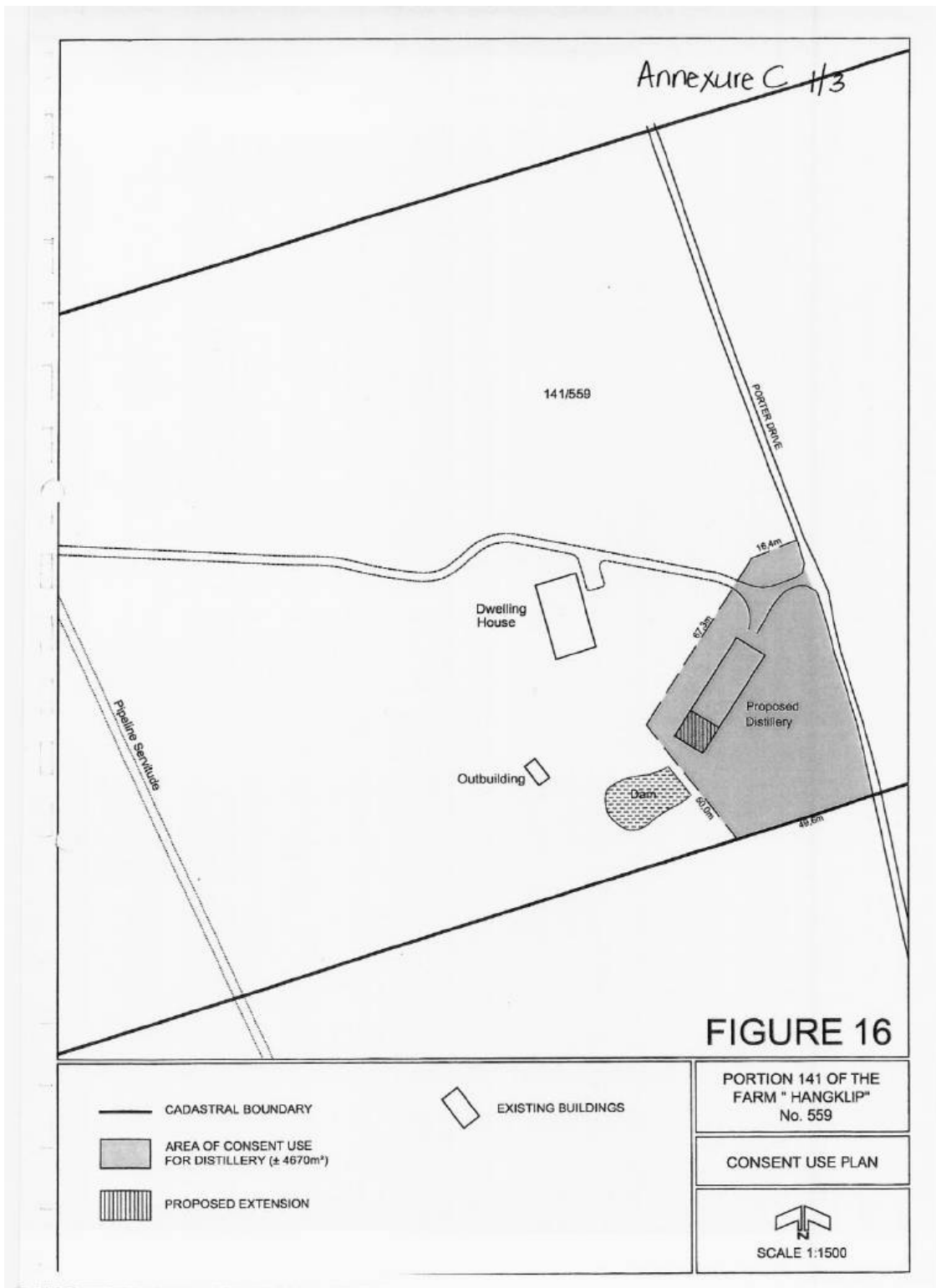
14. CONCLUSION

The proposed Pringle Rock Distillery is a land use that will achieve a good "fit" with the site and general surrounding. It represents an imaginative recycling of a disused stable building while still retaining the underlying agricultural character. The small scale of the proposed distillery and nature of distillation process means there will be little or no negative impacts for neighbours, local communities, or the Overstrand Municipality. By contrast a range of positive impacts can be anticipated such as employment, economic growth, and sustainable use of local resources.

The owners of the proposed micro-distillery are active members of their community and believe in "good neighbourliness". They are willing to undertake all necessary steps to ensure that the micro-distillery does not have any negative impacts.

The proposal is a desirable and appropriate use for the site, and it is requested that this application be processed as expeditiously as possible to a successful conclusion.

**FEBRUARY 2021
PLANNING PARTNERS (PTY) LTD**



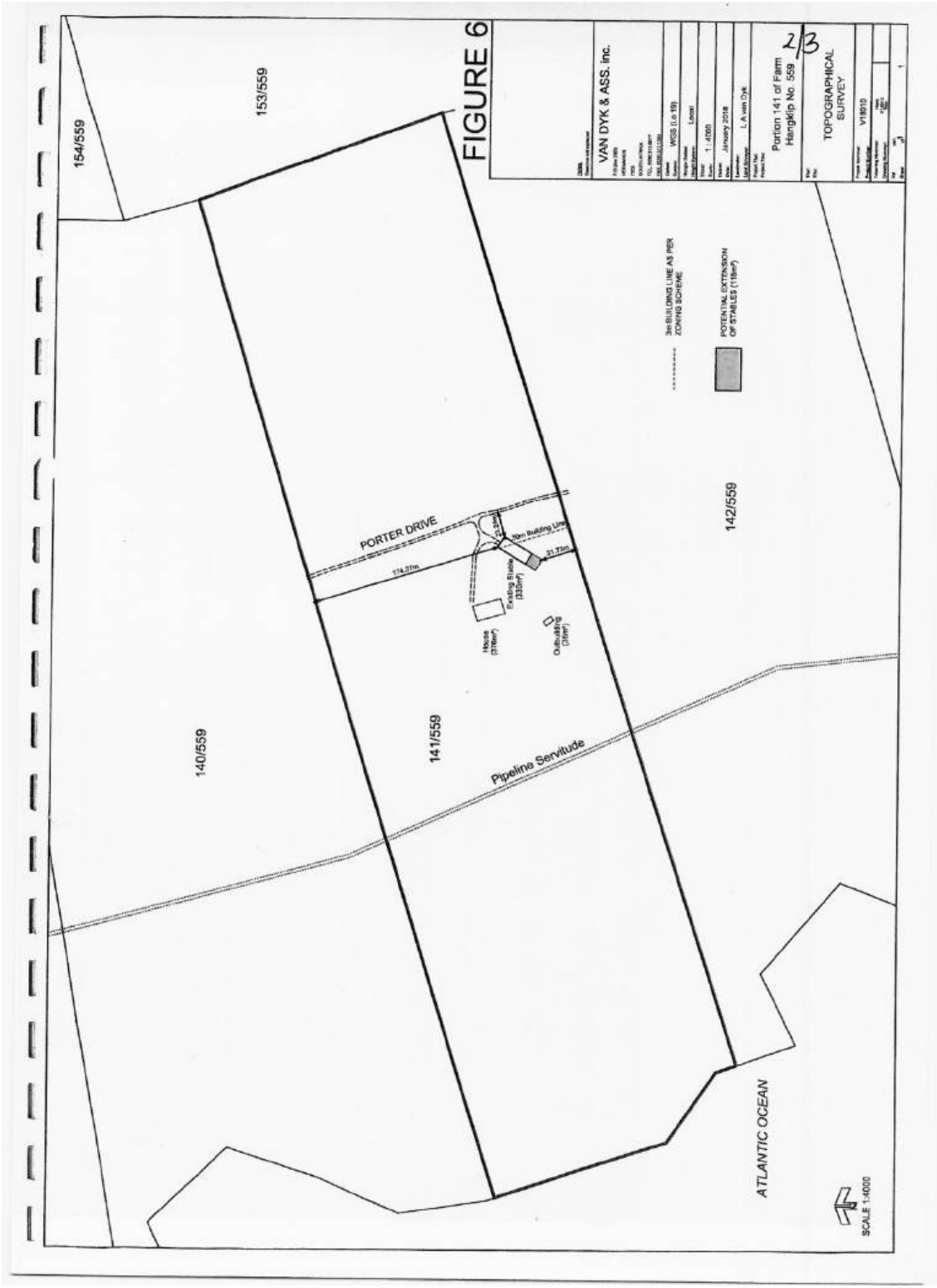


FIGURE 6

VAN DYK & ASS. Inc.	
PROFESSIONAL NO.	1000000000
REGISTERED	1000000000
PROFESSIONAL NO.	1000000000
REGISTERED	1000000000
NAME	M/S (L.O. B)
DATE	1:4000
SCALE	1:4000
DATE	January 2018
PROJECT	L. A. van Dyk
CLIENT	Partion 141 of Farm Hangklip No. 559
PROJECT NO.	2/3
TOPOGRAPHICAL SURVEY	
PROJECT NO.	V18010
DATE	1:4000
SCALE	1:4000
DATE	January 2018
PROJECT	L. A. van Dyk
CLIENT	Partion 141 of Farm Hangklip No. 559
PROJECT NO.	2/3

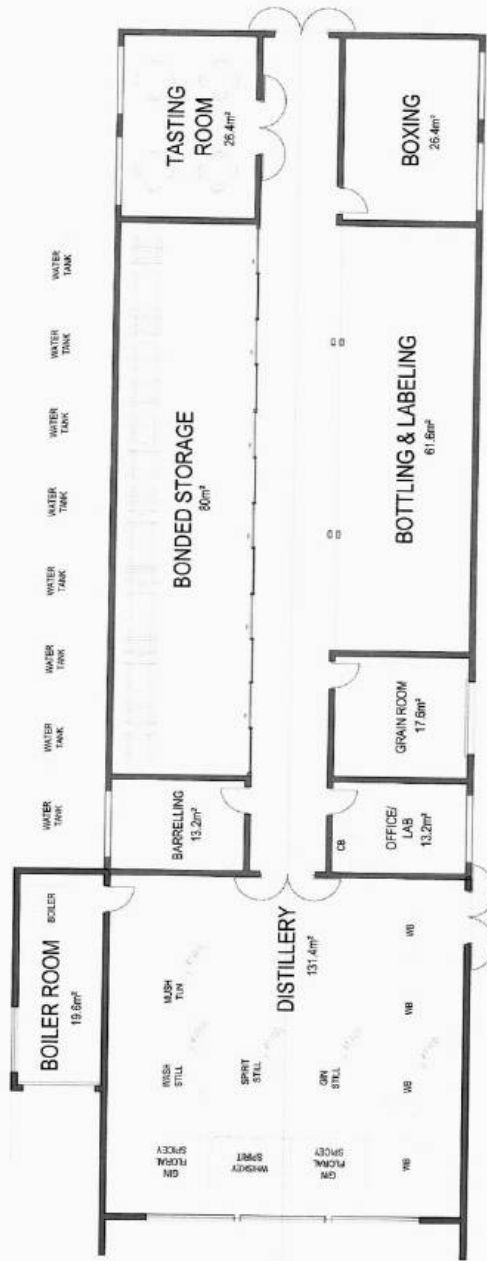


Figure 11: Conceptual Distillery Layout Plan

Annexure D 1/5

157
Kessler De Jager Inc./Ing.
171 Vaico Boulevard
Goodwood
7460

Prepared by me

[Signature]
CONVEYANCER
ABERNETHY C G

FEE
R. 650,00

VERBIND MORTGAGED
VR FOR R 2 000 000,00
B 000009855 / 2005
04 FEB 2005
[Signature]
REGISTRAR/REGISTRAR

T 000009920 / 2005

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT
CHRISTOPHER GERALD ABERNETHY

appeared before me, REGISTRAR OF DEEDS, at CAPE TOWN, the said
apparer being duly authorised thereto by a Power of Attorney which said Power
of Attorney was signed at Goodwood on 4 January 2005 granted to him by

ANGO-AFRIKA L.D.A. (PROPRIETARY) LIMITED
No. 1996/00651207

DATA / CAPTURE
25 FEB 2005
LARNEY F
[Signature]

Page 2

And the appraiser declared that his said principal had, on 23 November 2004, truly and legally sold by Private Treaty, and that he, the said Appraiser, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

**The Trustees for the time being of THE FREE LIFE TRUST
No. 177359/2001**

its Successors in Office or assigns, in full and free property

PORTION 141 (a Portion of Portion 133) OF THE FARM "HANGKUP"
NO. 559, SITUATE IN THE OVERSTRAND MUNICIPALITY,
CALEDON DIVISION, WESTERN CAPE PROVINCE.

IN EXTENT 21.9052 (TWENTY ONE COMMA NINE ZERO FIVE TWO)
HECTARES

FIRST TRANSFERRED by Deed of Transfer No. T 23786/1984 with
Diagram No. 1668/1980 relating thereto and held by Deed of Transfer No.
T90206/1999

- A. **SUBJECT** to the conditions referred to in Certificate of Registered Title
No. T20205/1980.
- B. **SUBJECT FURTHER** in so far as applicable to the conditions referred to
in Servitude Endorsement dated 8 April 1946, on Certificate of
Consolidated Title No. T3720 dated 17 April 1937, which endorsement
reads as follows:-

"By Notarial Deed No. T107/1949 dated 10 March 1949, the Administrator
of the Province of the Cape of Good Hope or his Nominee in Trust for
such Local Authority as may hereafter be constituted for the Rood Els
Township held under Certificate of Township Title No. T13367/1948 for
the benefit of erf holders and Local Authority has been granted certain
rights relating to (a) supply of water to erf holders and Local Authority (b)
delivery of the said water to the above mentioned Township by means of a
pipeline indicated on the servitude diagram No. 8585/1948 by the letters
a.b.c.d.e.f.g.h.j.k.l.m.n. annexed to the aforesaid Notarial deed (c) storage
of water and constructing the necessary impounding works and reservoirs
(d) access to and egress from present or future headworks site, pipeline,
reservoirs and purification of works; subject to the conditions as will more
fully appear on reference to the said Notarial Deed, a copy of which is
annexed hereto."

• Page 3

The entire line of which an aqueduct or servitude pipe track 3,15 metres wide is represented on the annexed Diagram No. 1688/1060 by the blue line lettered x.y.z.

- C. SUBJECT FURTHER to the conditions contained in Deed of Transfer No. T23786/1964 imposed by Hangkip Beach Estates Limited for its sole benefit as owner of the remaining extent of the Farm "Hangkip" measuring as such 1466,0427 Heclares and held by it under Certificate of Consolidated Title No. T3720 dated 17 April 1937, provided always however that if in the said Company's opinion it is expedient the Company may suspend or relax restrictions contained in any of such conditions and then subject to such conditions as the Company may impose:-
1. The owner of this Lot shall without compensation be obliged to allow electricity and water mains to be conveyed across this Lot if deemed necessary by Hangkip Beach Estates Limited and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the Lot at any reasonable time in order to construct, maintain, alter, remove or inspect any manhole, channel, conduct, or other works pertaining thereto.
 2. All buildings and other constructional works commenced shall be completed within a reasonable time and if not so completed shall be demolished.
 3. No wood and iron buildings or works of any description shall be erected without the consent in writing of the Hangkip Beach Estates Limited and if required the consent of the Local Authority.
 4. No building shall be erected within 25,19 metres of any road or within 6,30 metres of any other boundary of the land.
 5. All buildings and other constructional works including fences and garden or other gates shall be of good design and sound construction.
 6. No noxious trade or activity shall be carried on on the said land.
 7. The purchaser shall not have the right to make or cause to be made upon the said land for any purpose other than for use in his own buildings and/or bricks, tiles or earthenware pipes or other articles of such nature

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* Page 4

nor shall he have the right to dig or quarry any earth, gravel, lime or stone thereon other than for use in his buildings and/or works on the said land.

8. No debris, scrap, or other unsightly material shall be deposited on the said land.
 9.
 10. Access to public roads shall be limited to such points on the said boundary as may be approved by the Provincial or Divisional Council through its responsible Officers or by any other competent authority. It shall be the duty of the purchaser to obtain approval of points of access.
 11. No sewage shall be disposed of otherwise than by means of a properly constructed septic tank. No pit or bucket latrine will be permitted.
 12. The said land may be used for agriculture and the breeding or keeping of domestic animals, poultry and/or bees provided that no goats or pigs may be kept.
 13. No shop, public garages or filling stations, business premises, canteens, bioscopes, factory, or industrial buildings shall be erected on the land nor shall any such business or public entertainment be conducted on the land.
- D. SUBJECT FURTHER to the terms of a Servitude referred to in the Endorsement dated 18 November 1964, on Deed of Transfer No. T23786/1964 which endorsement reads as follows:-

"By Notarial Deed of Servitude No. 614/1964 dated 4 September 1964 Portion 141 = 21,9042 Hectares held under (Para.2) is subject to a Servitude right of way 6,30 metres wide from Porter Drive to the High Water mark of the Atlantic Ocean. The Northern Boundary of which is marked s.d. on diagram 1668/1960 hereto annexed to I.L.O. the General Public. As will more fully appear on reference to said Notarial Deed."

Page 5

WHEREFORE the said Appearer, renouncing all right and title which the said

ANGO-AFRIKA L.D.A. (PROPRIETARY) LIMITED
No. 1996/006512/07

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


The Trustees for the time being of THE FREE LIFE TRUST
No. IT7359/2001

Its Successors in Office 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 R3 500 000,00 (THREE MILLION FIVE HUNDRED 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 4 February 2004/5

In my presence


REGISTRAR OF DEEDS



Annexure E 1/630

L Gillion

From: gary isenberg < >
Sent: Friday, 04 June 2021 09:50
To: L Gillion
Subject: Fw: Portion 141 of th efarm Hangklip 559: Distillery:



TP - A Theart
(H v Id stoep)

Gary Isenberg
440 Diagonal Road
Pringle Bay

4 June 2021

Miss Loretta Gillion

Administrator, Town & Spatial Planning

Overstrand Municipality

By Email: loretta@overstrand.gov.za

FILE NO: Ptn 141/559
Hangklip
SCAN NO:
27
COLLABORATOR NO: 1547393

Application for the removal and amendment of restrictive title deed conditions, consent use for the establishment of an agricultural industry and departure on land use rights. Portion 141 (a portion of 133) of the farm Hangklip no 559, Division Caledon: Planning Partners (obo Free Life Trust).

I am a business owner in Pringle Bay and title deed holder of erf 440. I confirm I have no financial or legal interest in the success or failure of the above referenced application.

Carefully managed eco-tourism is key to the long term security of residents and to the preservation of the Kogelberg biosphere. I support initiatives which enhance the value proposition of our coastline, foster employment and increase awareness of the urgent need to protect our environment.

It is my understanding that in the course of this application the Department of Environmental Affairs & Development Planning has determined no Environmental Authorisation is required to permit the establishment and operation of the proposed micro-distillery within the buffer zone adjoining the biosphere. I understand this to mean that all waste management, particulate pollution, water use and fire hazard concerns have been appropriately considered by the Department. On this basis I would like to convey my support for the application.

TP - 4 JUN 2021

TP-A Theart
(H Vld Stoep) 2/630

L Gillion

From: John < >
Sent: Thursday, 13 May 2021 14:55
To: L Gillion
Subject: Application regarding Portion 141 of the Farm Hangklip No. 559



To: The Senior Town Planner
Overstrand Municipality
Hermanus

Attention: Ms H van der Stoep

Date: 13 May 2021

Subject: Application submitted regarding Portion 141 of the farm Hangklip No. 559

Comments:

1. I have permanently resided in Betty's Bay for a period in excess of 15 years.
2. The application for removal and amendment of restrictive title deed conditions, consent, use & departure relating to Portion 141 of the farm Hangklip No. 559, Division Caledon has come to my attention.
3. Comments are hereby submitted in terms of sections 51 & 52 of the relevant Municipal by-laws.
4. I have perused the well drafted & comprehensive application submitted on behalf of the registered owners.
5. I wish to emphasize that I do not have any interest in the application succeeding in that to date I have never even met either Mr or Mrs Elves.
6. My comments are thus completely objective.
7. I am of the opinion that the application should be granted in its entirety, especially bearing in mind the remote "out of town" situation of the property as well as that the current run down building will be renovated for conversion in to the proposed distillery.
8. In these economically tough post – lockdown period, attempts by local entrepreneurs should be actively encouraged in order to kick start our embattled local economy.
9. As pointed out in the report, the indigent local community will benefit socially & financially in that the distillery will make available much needed employment.
10. It is thus submitted that the proposed low key distillery would be an economic asset for the local Hangklip community.

Name: JH Carroll
Address: 4833 Satyrium Road
Betty's Bay
Tel:

FILE NO: Ptn 141 559
Hangklip
SCAN NO:
COLLABORATOR NO: 1539621

1

TP 13 MAY 2021

3/20

TP - A Theart
(H vld Stoep)



Town Planning Department
Overstrand Municipality Hermanus
loretta@overstrand.gov.za

Application for the removal and amendment of restrictive title deed conditions, consent use for the establishment of an agricultural industry and departure on land use rights. Portion 141 (a portion of 133) of the farm Hangklip no 559, Division Caledon: Planning Partners (obo Free Life Trust).

I, TEB Jacobs of Erf 162 Rooi Els have no objections to the application.
I believe that the establishment of a Whiskey Distillery will be a good thing for Rooi Els.
The quantities to be produced are small and the applicant is proactive in support of the environment.
I believe that the increased activity will improve the economy and job opportunities in the area.

Regards
TEB Jacobs

FILE NO: Ptn 141/559
Hangklip
SCAN NO: 19
COLLABORATOR NO: 1547552

TP - 7 JUN 2021

L Gillion

KHANG 141/559

TP - A Theart
(H vld Stoep)

4/630

From: Elaine Nayar <
Sent: Saturday, 05 June 2021 08:12
To: L Gillion
Subject: Support for distillery in rooi els



Good morning

We have read through the application for the proposed distillery and my husband and I welcome the application

Kind regards
Ajay and Elaine Nayar

FILE NO: Ptn 141/559
Hangklip
SCAN NO: 16
COLLABORATOR NO: 1547542

TP - 7 JUN 2021

TP-A Theart 5/630
(H v/d Steep)

L Gillion

From: Mike Christelis <
Sent: Friday, 04 June 2021 19:04
To: L Gillion
Subject: Portion 141 of the farm Hangklip 559



Loretta

My wife Fiona and myself are residents in Rooiels, erf 286 Porter Drive. With regards to the 3 permissions requested, we personally have no objections to the 3 requests in the format proposed in the application. The approval we give is predicated on the size of the business not being materially increased from what is proposed, as well as limited access through the Rooiels side of Porter drive, due to the potential impact on the endangered Cape Rockjumper.

There has been a lot of misinformation on this application, however having done considerable research personally on this we see no issues in this low impact activity which we believe can add value to the region

Regards

Mike Christelis

FILE NO: Ptn 141559
Hangklip
SCAN NO:
15
COLLABORATOR NO: 1547539

6/630

L Gillion

KHANG 141/559

From: Lakeside Chapel < >
Sent: Wednesday, 12 May 2021 15:30
To: loreta@overstrand.gov.za
Subject: Pringle Bay Distillery

We hereby give our full support to Leigh and Monique Elves with the proposed distillery
in Pringle Bay.
Mr. and Mrs. NJ Ackerberg
4824 Salvia Road Bettys Bay.
Blessings Neville.



TP-A Theart
(H vid stoep)

FILE NO: Ptn 141/559
Hangklip ✓
SCAN NO:
Ackerberg
COLLABORATOR NO:
1539316

TP

12 MAY 2021



KHANG 141/559 TP-A Theart (Hvidstoepe)



L Gillion

From: Elisabeth Ann Moss <...>
Sent: Wednesday, 12 May 2021 20:32
To: rera.chair@rooiels.org.za
Cc: L Gillion
Subject: Re application for removal and amendment of restrictive title deeds of erf 141 and conditions ,consent use and departure planning

Dear chairman and committee if the Rooiels rate payers association.. having read and tried to understand all 41 pages sent to me by the Overstrand municipality, having been an interested person on the previous application. And having read the summary of those pages condensed for those who do not read 41 pages I Elisabeth Moss - permanent resident and owner of Erf 172 have no objection to the micro distillery and a shop on ERF 141 and the erection of more building required for agriculture, as this property is already zoned agricultural. I do also understand that the tasting and tours will be by appointment, and that interested people will be collected in Pringle Bay and they will be taken along the Pringle Bay access.road to erf 141

T. My only concern is lifting all but the two restrictives - no garage and filling staion

1.As the road is a municipal rd, and as such a public road with controlled access at present - am I, we, going to see an increase in traffic along the road from the Rooiels side . I will be strongly opposed to the road from Rooiels to erf 141 being used for delivery trucks and bakkies. And in time to come tourists using that road at all times
2 if lifting of restrictive title deeds , except for garage and filling station - means under agriculture zone 1 all other activities will eventually happen , then I would like the assurance that Aquaculture and public entertainment will not be permitted., and not allowing 4 x 4 tracks - this is a sure way to damage the area..

Allowing the applicant to do what he has genuinely applied to do , micro distillery and shop - then I have no objections.
Kind regards.
Elisabeth Moss
12 May 2021
Cell 5
Email.

KRE 172

Sent from my iPad

FILE NO: Ptn 141/559 ✓
Hangklip
SCAN NO:
Moss
COLLABORATOR NO:
1539329

TP 12 MAY 2021

KHANG 141/559

TP-A Theart 8/630
(H vld steep)

L Gillion

From: Ken Meiring <
Sent: Wednesday, 12 May 2021 17:16
To: L Gillion
Subject: DISTILLERY Pringle Bay



Good day

I have been given the privilege of reading through the application for the planned distillery, Pringle Rock Distillery. I have also had the privilege of meeting the owners Leigh and Monique Elves, who are upstanding members of the Pringle Bay community.

I really believe that their application should be supported and approved as it will have a positive impact on the community and surrounding environment, with no negative impacts (as explained in the application). I am convinced that the Elves will adhere to all of the required conditions imposed by the existing legislation which governs the use of the land on which they live and wish to use for the distillery.

They have my full support for this initiative.

Regards
Ken Meiring

FILE NO: Ptn 141/559 ✓
Hang Klip
SCAN NO:
Meiring
COLLABORATOR NO:
1539341

TP 12 MAY 2021

9/626

L Gillion

From: Steven Peers < >
Sent: Wednesday, 12 May 2021 10:04
To: L Gillion
Subject: letter of support portion 141 of the farm hanglip no. 559

This email serves as an endorsement and support for the development of a distillery, tasting room and farm shop on the above property.

Yours sincerely

Desiree and Steve Peers
Owners : erf 113 Albatross Road, Pringle Bay



TP-A Theart
(H vld Steep)

FILE NO: Ptn 141 559
Hanglip ✓
SCAN NO: Peers
COLLABORATOR NO: 1538880

12 MAY 2021

TP-A Theart
(H vld stoep)



L Gillion

From: Willem Stiglingh < >
Sent: Tuesday, 11 May 2021 20:28
To: L Gillion
Subject: Support the Distillery

10/630

My wife and I have known Leigh & Monique for six years. They have lived on their farm for many years and anything they have done or started to do on this property was to first make sure of the impact or consequences of their project to the biosphere they live in .

They have gone to great lengths by travelling abroad and becoming qualified to international standards to establish run and maintain an eco friendly and non invasive distillery on their property.

My wife and I fully support their endeavour and wish them success in their endeavour.

Willem & Reggie Stiglingh
35 Penguin rd Pringle Bay
Mobile
Po Box :

Sent from my iPhone

FILE NO:	Ptn 141 559
	Hangklip ✓
SCAN NO:	
	Willem
COLLABORATOR NO:	
	538175

12 MAY 2021

L Gillion

KHANG 141/559

11/630

From: Ria Staegemann <[redacted]>
 Sent: Friday, 07 May 2021 20:45
 To: L Gillion
 Subject: Distillery Pringlebay

We would like to support Distiller Pringlebay.
 Thank you Ivan and Ria Staegemann
 1274 Caspar rd Pringlebay.



TP-A Theart
 (H vld Stoep)

Kind Regards
 Staegemanns

FILE NO: Pbn 141/559
Hangklip
SCAN NO: 02
COLLABORATOR NO: 1538239

TP 10 MAY 2021

L Gillion

KHANG 141/559

12/630

From: Charlene Maritz <>
Sent: Friday, 07 May 2021 19:56
To: L Gillion
Subject: Distillery RooiEls Pringle Bay



I think the distillery will bring more people/tourists to Pringle and Rooi Els and I am in total support of the initiative.

CHARLENE MARITZ
162 Hangklip
Pringle Bay

TP - A Theart
(H vld stoep)

FILE NO: Pbn 141/559
Hangklip
SCAN NO:
03
COLLABORATOR NO: 1538241

TP 10 MAY 2021

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L Gillion

KHANG 141/559

From: Christiaan V Geldenhuys <
Sent: Friday, 07 May 2021 19:44
To: L Gillion
Subject: Distillery Pringle Bay

TP - A Theart
(H vld Steep)



To whom it may concern:

I would like to express my support for the establishment of above-mentioned distillery:

First of all it goes about this specific initiative. It illustrates how something can be created in nature by enhancing the environment, without damaging the elements of nature.

It will inspire people that you can do something in nature, without damaging it.

It can serve as a point in nature, where the uniqueness of all the factors can be demonstrated.

I believe the level on which it is envisaged to be developed, will enhance nature and the community more, than causing any damage.

Don't stop good initiative, rather encourage and hold the individual accountable for their actions. That is positive!

Regards

Chris Geldenhuys

[Get Outlook for Android](#)

FILE NO: Pen 141/559
Hangklip
SCAN NO:
OH
COLLABORATOR NO: 1538246

10 MAY 2021

TP

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L Gillion

KHANG 141/559

From: mike/ilse meyer < >
 Sent: Friday, 07 May 2021 19:57
 To: L Gillion
 Subject: Pringle Bay Resident in support of the Distillery

Full support - erf 355 Pringle Bay!

Would benefit all round!

Mike Meyer

Sent from Yahoo Mail on Android



TP-A Theart
(H vld Steep)

FILE NO: Pkn 141/559
Hangklip
SCAN NO: 05
COLLABORATOR NO: 1538249

TP 10 MAY 2021

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KHANG 141/559

L Gillion

From: Joan De wet < >
Sent: Friday, 07 May 2021 20:38
To: L Gillion
Subject: Distillery Pringle Bay

TP - A Theart
(H vld Steep)



In our opinion, Leigh and Monique Elves are an asset to the community in every possible way. They are both passionate about conservation and in particular about this part of the Overstrand. We have helped clear alien vegetation from their property on several occasions. What they have in mind for their property (The Distillery)and for Pringle Bay will benefit the town and the area in so many ways , without any negative consequences.

It is our belief they should be granted the necessary land use application.

Piet and Joan de Wet
858 Jally Road
Pringle Bay
at from my iPhone

FILE NO: Ptn 141/559
Hangklip
SCAN NO:
06
COLLABORATOR NO: 1538251

TP 10 MAY 2021

16/630

KHANG 141/559

L Gillion

From: elizabeth marzo < >
Sent: Saturday, 08 May 2021 21:33
To: L Gillion
Subject: Distillery



Good evening Loretta. I Mrs Marzo fully support the distillery in Pringle Bay. Thanking you. MRS Marzo.

Sent from my Huawei phone

TP - A Theart
(Huld Stoep)

FILE NO: Ptn 141/559
Hangklip
SCAN NO:
01
COLLABORATOR NO: 1538237

TP 10 MAY 2021

17/630

L Gillion

From: Loriaan Isaacs
Sent: Monday, 03 May 2021 12:48
To: L Gillion
Subject: FW: Portion 141 of the Farm Hangklip No 559



From: David Blake <>
Sent: 03 May 2021 11:56 AM
To: Loriaan Isaacs <loriaanisaacs@overstrand.gov.za>
Cc: Paul Satz <Paul@planpart.co.za>
Subject: Re: Portion 141 of the Farm Hangklip No 559

TP-A Theart
(H vld stoep)

Dear Loriaan

For your attention.

Kind regards

David Blake
<http://www.dropinbase.com>

On Mon, May 3, 2021 at 11:39 AM David Blake <> wrote:

Dear Paul

Thanks for email, and for the detailed information about the proposed facilities.

I think our concerns have been addressed herein, although the concerns will always remain.
We trust the owners will always prioritize the conservation of this unique and beautiful area that we treasure so much.

We hereby retract our objections and wish them all the best with their endeavours as presented in your notice.

Kind regards

David Blake

On Thu, Apr 29, 2021 at 1:20 PM Paul Satz <Paul@planpart.co.za> wrote:

Dear Sir/Madam,

FILE NO: Ptn 141/559
Hangklip
SCAN NO: David
COLLABORATOR NO: 1535764

TP- 3 MAY 2121

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ERF 141 – letter of support

TP-A Theart
(Huid stoep)

Dr Ernst Thompson Jnr
PhD Fisheries Science and owner of micro brewery

150 Mimosa Road, Rooi Els

To whom it may concern

I would like to submit the following support for the distillery based on my environmental and brewery experience. I have been fortunate enough to consider all the objections raised by community members, and my response is thus geared to clear up misconceptions around the objections raised. I also want to make it clear that I have no interest in the distillery, other than the obvious benefits I think this can bring to the community.

I want to preface the following sections as additional knowledge/facts over and above those submitted in the objections raised. I cant submit that the objections wasn't largely factual, although in my opinion the conclusions could change given the additional facts presented below.

Furthermore, I would like each member of the community, as well as the OM to have an opportunity to decide for themselves whether issues raised have a "real" material impact on them, or is the issue one that infringe on a personal choice. This is a subtle distinction and I would like to give an example. The choice the remove fynbos to plant a lawn, the choice the feed the birds; we will never all agree on these topics, but it has very little to no material impact on a neighbour, and the individual's right should and must be maintained.

Understanding distillation

Distillation is a process by which alcohol is concentrated into higher alcohol levels to get a spirit. This is achieved by heating the liquid with alcohol in it and evaporating the alcohol off. (Alcohol has a lower boiling point than water) The alcohol vapour is then condensed down with cold water) to a liquid which is then captured. There are many ways of achieving this. The devil being mostly in the detail and the equipment used. The still itself must be a sealed unit, i.e., no oxygen can get in and must adhere to certain industry standards and then certified by an independent body. An empty still obviously have oxygen in it, but through the filling process this is displaced, generally with high carbon dioxide liquid during the stripping runs (fermentation gives off lots of CO2). For spirit runs, the alcohol is always diluted to about 30%, at which there is enough water to avoid combustion. The risk with alcohol vapour that can cause explosions in the atmosphere, comes from the still not cooling the alcohol vapour enough and some of the vapour escapes at the outflow of the still. This will explode as stated if ignited. This is a very well-known problem. But is also the reason why a closed looped capture system is mostly used these days. This is also the system that is being used in the proposed distillery. This means that all the escaped vapour from the cooling column on the still is being captured into a separate closed vessel until they turn to liquid again and does not escape into the atmosphere. See below for further comments.

- 4 JUN 2021

TP

FILE NO:	Ptn 141/559
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SCAN NO:	
	20
COLLABORATOR NO:	1547131

19/620

Fire Risk

I agree, distilleries can have a higher fire risk. But there are specific mitigation factors (in equipment design, but more importantly in adopted management strategies) to reduce this risk to acceptable levels as stated above. I also want to make anyone reading this aware that, while the energy contained in alcohol is as high as described in the objection, it is a false comparison as alcohol does not explode like dynamite does. This term "explode" is used throughout the objection and is an important point to call out. Barrels filled with alcohol are not bombs. (Empty barrels filled with vapour are a different story) Liquid Alcohol does not burn, but rather the alcohol vapour, i.e., like petrol. In addition to this, alcohol stored in a cool damp environment, like next to the sea, evaporates very slowly, and the alcohol that does evaporate quickly binds to any water in the atmosphere (high humidity) rendering it innocuous.

So, I would caution moving from describing an explosive atmosphere to explosive liquid, as it subtly moves from a true statement to a false one. These distilleries did not explode, they were just consumed by extremely hot fires.

1.2 Stating that fires at distilleries are not uncommon is a falsehood. Search as I may for evidence of this, it is a subjective statement. Would love see support for this statement. Considering the 10 000 odd distilleries out there, to quote 1 or 2 examples is not evidence. On this topic, one must consider the specific risk mitigation that was in place, the location of a distillery (environmental parameters) and more specifically being put in place for this proposal. See point 4.

1.3 explosive atmosphere...this is a management problem with open system stills, rather than the still itself. The proposed still for this facility eliminates this problem as it is a closed system still. That being said, many distilleries use open capture systems, and good management practices like good airflow/circulation (like a strong SE), no tourists during distillation, etc lowers the fire risk to acceptable levels even for "open" stills

1.4 I think the boiler room being separated room the stills this is a very important point. To have fire, one needs three things in close proximity, a fuel source, ignition, and oxygen. As explained, the proposed distillery removes both the ignition source by using an external heat source, completely removed from the stills, as well as the fuel source due to the closed circuit still. As for the barrel room next to the combustion chamber. Good point and I asked about this as the size of the room did not make sense given the production volumes (It will be very hard to put roughly 150 barrels in a 13 m2 room). I was informed that this is just a display room. The barrels will be stored in the bonded warehouse, where they should be according to law. The bonded warehouse room has a sprinkler system in place in case of fire, and all ignition sources are removed, so no electric wires going through it, nobody allowed in there etc.

The other points in section 1 I think have been answered above. There is a valid point made, however. This is regarding external fire dangers. This is a risk, but only for the owners themselves. If there is a fynbos fire, they could have a real problem.

Waste management

I think that waste management is rarely a problem with distilleries, having seen many and worked in a few. Given the scale of the proposed distillery, I have my doubts about the material impact on

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neighbours, so I don't have much to add. Note, I'm not arguing that there might or might not be a very localized impact to the property given the current management strategy suggested.

An important point was however raised about the size of the distillery, and "what ifs" when it gets sold. To this point, I can only say that it is not something worth worrying about, as the current distillery was designed to stay under certain thresholds to avoid triggering an EIA. This means that their production capacity is limited by space. For any expansion to take place in the future, the law dictates that a EIA will be triggered, which is a whole different "kettle" of fish.

To point 3 on the objections raised, I have nothing to add. Not familiar with the reality around these matters.

Point 4- qualifications

The point raised here by the objection letter is a crucial one. I think everyone can appreciate that more often or not, accidents are due to human error rather than equipment failure. This is also true for distilleries. So it "boils" down to a simple question:

Either you believe that the applicants are incompetent or they not.

The proposed distillery is incorporating all the necessary safety procedures, but if they are not followed one could have problems, however small or big they can be. This include many small things, not even considered by most, like barrel management.

To assist making a judgment call on this, some background on "master" distillers need to be provided
1) one needs to make a clear distinction between a qualification of master distiller and the job description of master distiller.

2) the job of a master distiller goes way beyond what was presented. On the contrary, a master distiller in big brands very seldom do the distillation. It is mostly automated and/or he has people under him, also with master distiller qualifications, that does this very time consuming job. The master distiller is primarily responsible for ensuring consistency of the final product. So, he makes the decision on whether a certain alcohol fraction coming of the still should be included for the final product, whether the spirit has been in the barrel long enough etc. Therefore, bigger companies have very few of these over time.

A master distiller as a job title can be seen as an artist and this craft is honed over many years.

3) in my opinion, having worked and befriended many distillers over the years in the field, most of which have the same master distillery qualifications as the applicants, I believe that they are suitable qualified to safely manage a distillery.

Regarding the Rock Jumper

The Cape Rock Jumper is listed as a near threatend species. The reason for the fall in numbers is however less clear and more complex to understand. The current hypotheses include

- 1) preferred habitat, mountain fynbos, is dwindling as a result of a warming climate.
- 2) predation on nests
- 3) feeding behavior linked to a possible low fire frequency to name a few.

Other factors to consider with regards to the distillery impact on the rock jumper is the large home ranges of these family groups, estimated to be around 20 ha. It is therefore very likely that there is

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only one family group on the mountain stretch between Rooiels and Pringlebay, and we know this group is predominantly found in Rooiels, the reason this is a prime location to spot them for birders. Given that the access road to distillery will be from the Pringlebay side, and that visitors to the distillery will be shuttled from Pringlebay, the family group should not see increased disturbance due to traffic to the distillery.

Another interesting point to note is this;

One of the prime spots to see cape rock jumper is right next to the N2 on the top of sir Lowreys Pass (well known spot to most birders). It is rather self explanatory that the amount of traffic through this area dwarves anything that a road between Rooiels and Pringlebay might have with the introduction of the distillery.

Given this, I struggle to see how the distillery could have any impact on the Rock jumper even if access from the Rooiels was asked for, but stand to be corrected.

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KHANG 141/559

L Gillion

From: Mareli Dreyer < >
Sent: Tuesday, 25 May 2021 11:02
To: L Gillion
Subject: Rezoning application: Hangklip



Hi Loretta, I know that Leigh and Monique Elves are busy with a rezoning application in order to be allowed to operate a distillery on their farm.

They are my neighbours. I know them to be ethical and after reading through the application myself I feel comfortable with their vision and would not object to it, but rather support it.

Regards,
Mareli Dreyer
Portion 145 of Farm 559, Hangklip
--
Mareli Dreyer

FILE NO: Ptn 141/559
Hangklip
SCAN NO:
12
COLLABORATOR NO: 1542449

TP2 5 MAY 2021

23/630

Donald Griffiths
Erf 510
Pringle Bay

3 June 2021

Miss Loretta Gillion
Administrator, Town & Spatial Planning
Overstrand Municipality
By Email: loretta@overstrand.gov.za

Application for the removal and amendment of restrictive title deed conditions, consent use for the establishment of an agricultural industry and departure on land use rights. Portion 141 (a portion of 133) of the farm Hangklip no 559, Division Caledon: Planning Partners (obo Free Life Trust).

I am a resident of Pringle Bay and title deed holder of erf 510. I confirm I have no financial or legal interest in the success or failure of the above referenced application.

Carefully managed eco-tourism is key to the long term security of residents and to the preservation of the Kogelberg biosphere. I support initiatives which enhance the value proposition of our coastline, foster employment and increase awareness of the urgent need to protect our environment.

It is my understanding that in the course of this application the Department of Environmental Affairs & Development Planning has determined no Environmental Authorisation is required to permit the establishment and operation of the proposed micro-distillery within the buffer zone adjoining the biosphere. I understand this to mean that all waste management, particulate pollution, water use and fire hazard concerns have been appropriately considered by the Department. On this basis I would like to convey my support for the application.

Yours sincerely,



Donald Griffiths

Attention:
 Ms **Loretta Gillion**
 Administrator, Town & Spatial Planning
 Overstrand Municipality
 Via email: loretta@overstrand.gov.za



TP: A. Theart
 (H.v.d. Stoop)

Objection to: Portion 141 (A portion of portion 133) of the farm Hangklip no. 559, Division Caledon: Application for removal and amendment of restrictive title deed conditions, consent use and departure: Planning Partners (obo Free Life Trust)

Names: Ruth Prescott
Address: 935 George Way, Pringle Bay
Contact details: Postal address: ?
 Mobile:
 Email:

Date:

Interest in the application: I am a resident of Pringle Bay, and member of Kogelberg Botanical Society and Custodians of Endangered Wild flowers

Reasons for comment: I wish to register my objection to the above application. I object to all three components of the application, namely: (1) Removal and amendment of restrictive title deed conditions, (2) Consent use, and (3) Departure.

I believe that a microdistillery is entirely unsuitable for the proposed site. The proposed application, if accepted, would be seriously detrimental to the site and surrounding area.

More specifically I object to the application on the following grounds:

1. It would constitute a very real fire hazard in a fire-prone area .
2. Product storage of highly flammable liquids in an area which has experienced regular fires.
3. High volumes of water usage from ground and surface water in a water-scarce area.
4. It would generate high volumes of contaminated waste products, going into the sea, with its highly sensitive coast, and ground water.
5. There is no adequate plausible strategy offered for the containment, treatment and/or management of the contaminated waste products.

FILE NO: FIN141 of Farm 559 Hangklip	2
SCAN NO: Ruth	
COLLABORATOR NO: 1548004	

- 8 JUN 2021

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6. Increased traffic volume and its impact on other individuals and on the environment,
7. Spillage of grain with unintended consequences such as the attraction of rodents, pests, and birds not endemic to the area.
8. All the above would negative impact the unique endemic flora and fauna ecosystems of this sensitive area.

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TP - A Theart
(Hvidstøep)



Attention:
Ms **Loretta Gillion**
Administrator, Town & Spatial Planning
Overstrand Municipality
Via email: loretta@overstrand.gov.za

Copies to: Fire Services & Disaster Management Manager lestersmith@overstrand.gov.za
Environmental Management Services senior manager ldevilliers@overstrand.gov.za
Comments on: Portion 141 (A portion of portion 133) of the farm Hangklip no. 559, Division Caledon: Application for removal and amendment of restrictive title deed conditions, consent use and departure: Planning Partners (obo Free Life Trust)

We wish to register our objection to the above application. We object to all three components of the application, namely: (1) Removal and amendment of restrictive title deed conditions, (2) Consent use, and (3) Departure.

Names: Dr Ian Lewis and Prof Alison Lewis
Address: Erf 65: Bathers Road, Rooiels
Contact details: Postal address: ?
Mobile:
Email: 1
Date: 26 May 2021

Interest in the application: We are the owners of 65 Bathers Road, Rooiels, which we purchased in 2003.

Reasons for comment: Having examined the application in detail and reviewed the scientific literature on distilleries. It is abundantly clear that a microdistillery is entirely unsuitable for the proposed site. The proposed application, if accepted, would place the fragile ecosystem and the surrounding area at an unacceptably high risk of (1) fire damage and (2) significant environmental degradation due to heavy demands on water and the production of toxic waste products. This in turn will be detrimental to the birds (including the rare Cape Rockjumper), animals and people living in Rooiels and the surrounding areas.

More specifically we object to the application on the following grounds:

1. Fire hazard.
2. Product storage of highly flammable liquids in an area which has experienced regular fires.

FILE NO: Ptn 141/559
Hangklip
SCAN NO:
11
COLLABORATOR NO: 1547525

1

TP - 7 JUN 2021

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3. High volumes of water usage from ground and surface water.
4. High volumes of contaminated waste products.
5. No adequate plausible strategy for the containment, treatment and/or management of the contaminated waste products.

These are discussed in more detail below. In addition, we raise the following concerns:

6. Increased traffic volume and its impact on other individuals and on the environment,
7. Spillage of grain with unintended consequences such as the attraction of rodents, pests, and birds not endemic to the area. This is a particular threat to the rare Cape Rockjumper for which this site is world-renown.
8. Smell from the distillery and discharged waste products. According to Mohana *et al.* (2009) "The distillery wastewater with its **characteristic unpleasant odour** poses a serious threat to the water quality in several regions around the globe".

Background

1. Ian and Alison Lewis have no direct experience in the distilling of spirits. Alison is a Chemical Engineer and is knowledgeable in the processes discussed in the application. We have compiled these comments in good faith.
2. Much of this application rests on the reassurances given by the applicant on issues such as road access, amount of traffic, fire safety and the production and disposal of waste. However, we recognise that the applicant will not be legally bound to keep to any of these reassurances.
3. In South Africa, microdistilleries are legally defined as distilleries with an **annual capacity of less than 2 million litres of spirits**. Again, there is no obligation for the applicant (or for future owners) to restrict spirit production to "eventually 1000 bottles per month" (or, if this is an error, 12 000 litres per month). Permission is being sought to allow any of a range of possible 'agricultural industries', including a distillery which will be entitled to produce in the region of 166 000 litres of spirit per month.

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4. In our opinion, the application contains examples of deception by concealing and/or misrepresenting critical information. These deceptions have the potential to harm the interests of other person(s) and/or the environment, while at the same time increasing the chances that this application will be successful, thus benefitting the applicant. Examples are seen in four main areas:

- 4.1. Concealing and/or misrepresenting the **fire risks** associated with the proposed distillery.
- 4.2. Concealing and/or misrepresenting a reasonably accurate estimation of the **quantity and quality of the wastewater** produced.
- 4.3. Concealing information on the considerable **building work that was already done on the proposed future distillery building**.
- 4.4. Falsely claiming that "Leigh and Monique are both qualified (Distillique) master distillers" [pg. 17].

1. Concealing and/or misrepresenting the fire risks associated with the proposed distillery.

- 1.1. Distilleries are at high fire risk. In an analysis of Scottish whisky distilleries, McNay (2016) writes "During distillation, the creation of high alcohol/flammable spirit provides a **significant hazard**." When fires in distilleries occur, they are often devastating. This is not surprising as a barrel containing 250 litres of whisky can release the energy equivalent of 510 sticks of dynamite¹ (calculations based on Koorsen Fire & Security 2019).
- 1.2. Fires in distilleries are not uncommon. As I write this, a few days ago on 15 May 2021, a distillery near Aberdeen, Washington was destroyed by fire (Degerman 2021) Figure 1. Three days before that a recently built distillery in Vancouver Island was gutted by fire (CTV News Staff 2021)

¹A single pound (0.45 kg) of whisky in a barrel if ignited "can release 4,269 British Thermal Units (BTUs) of energy - the equivalent to 4.5 sticks of dynamite" (Koorsen Fire & Security 2019). Therefore, a barrel containing 250 litres of whisky (i.e. 113.4 pounds) has a BTU equivalent to 510 sticks of dynamite.

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- 1.3. The high fire risk is reflected in legislation. For example, in the UK and EU, the Still House/ Distillery is "**classified as a hazardous area** and falls under [...] legislation to protect against **potentially explosive atmospheres** – anyone who has been on a distillery tour will notice **the vast majority of distilleries do not allow cameras into the Still House as a result of the potential spark**" (McNay 2016).



Figure 1: Distillery fire in Washington on 15 May 2021

- 1.4. "Ethanol vapour is highly flammable and is one of the main fire and explosion hazards at distilleries. Ethanol can be released from leaks in tanks, casks, transfer pumps, pipes and flexible hoses" (Dabic 2017).
- 1.5. The application does not address the real fire hazards: The only mention of any hazard at the distillery (fire or otherwise) is the following: "A water heater (in a separate room next to the distillery) that is powered by wood from alien vegetation will heat 1500 litres of water to a maximum of 98 degrees Celsius. The heated water flows through stainless steel pipes into the distillery and the hot pipes heat the equipment. This is called a closed-circuit hot water system and is **safe with no fire hazard**" [pg.16]. The application does not address the real fire hazards such as the wood burning fire, flammable vapours and liquids, but instead misdirects the reader's attention to hot water in pipes.

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- 1.6. "The tour will include taking the visitors into the 'Still House'/Distillery" [pg. 14]. To be clear, the Still House / Distillery is a "hazardous area" with a "potentially explosive atmosphere" - which could be ignited by a spark, never mind an open flame - and is designed (and probably already built) with an **internal door which opens directly to the Boiler room where there is a wood burning fire** (Figure 2).

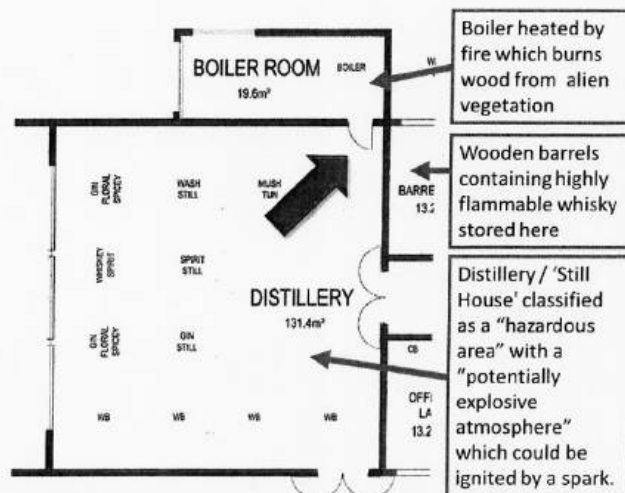


Figure 2: Lack of consideration of hazards is demonstrated by a design which allows highly flammable vapours to potentially come into direct contact with fire

- 1.7. "Since the Elves have lived in this area, they have experienced two fires" [p. 15]. Fires are frequent, and often have a devastating impact in our area. However, the frequency and impact of fires in this sensitive area provides a **very compelling reason not to place large quantities of highly flammable liquids in the path of a fire.**

Summary of Fire Risk

1. Rather than deal honestly with the real fire risks, the application addresses only the low-risk water heater which, not surprisingly, "is safe with no fire hazard". This misdirection appears to be designed to distract from the real fire risks of the "hazardous process" of distillation, the "potentially explosive atmosphere", the fire burning "wood from alien vegetation" and the dozens of barrels of highly flammable whisky.
2. However, the poor distillery design is not really the issue. Even well-designed distilleries which meet rigorous safety standards have burnt to the ground. **The high fire risk of the proposed distillery is not an issue which can be fixed by changing the design.**
3. Equally concerning is that, even if a fire starts elsewhere, the presence of thousands of litres of highly flammable liquids which may be in the path of a fire represents an **'unacceptable risk'**. By this we mean **a risk**, as determined by a risk management process, **which cannot be reduced to an acceptable safe level.**
4. This application should be rejected on the grounds that (1) a distillery (or similar agricultural industry) carries an unacceptably high risk of a fire arising from the distillery and associated operations, and (2) in the case of a fire from another source, the proposed distillery has the potential to intensify and exacerbate the destructive power and rapid spread of a fire.

2. Concealing and/or misrepresenting a reasonably accurate estimation of the quantity and quality of the wastewater produced. The problem of distillery wastewater is well described in the scientific literature. We will quote directly from three examples:

- 2.1. "Distilleries are among the most polluting industries because ethanol fermentation results in the discharge of **large quantities of high-strength liquid effluents with high concentrations of organic matter and nitrogen compounds, low pH**, high temperature, dark brown colour, and high salinity" (Mikućka & Zielińska 2020).

- 2.2. "The unwanted bottom product of distillation is called stillage or spent wash or alcohol distillery waste. **Distillery waste** in the form of "spent wash" or "stillage" is **one of the most complex, troublesome and strongest industrial organic effluents**. The polluting strength is very high due to the high content of biodegradable organic materials, such as sugar, lignins, hemicelluloses, dextrans, resins and organic acids"(Thakur 2010).
- 2.3. "Distillery spent wash is the unwanted residual liquid waste generated during alcohol production and pollution caused by it is **one of the most critical environmental issues**. Despite standards imposed on effluent quality, untreated or partially treated effluent very often finds access to watercourses" (Mohana *et al.* 2009).
- 2.4. In terms of the South African National Environmental Management: Waste Act, 2008 (Act No 59 of 2008), this distillery wastewater is classified as a "hazard" defined as "the intrinsic potential property or the ability of any agent, equipment, material or process to cause harm".
- 2.5. In contrast to the scientific literature, the application only mentions the apparently positive aspects of the problematic distillery waste, for example: "The two thirds of the liquid wash left is waste – it consists of dead yeast, grain sediment and more than 80% is water. The liquid is **very high in nutrients (especially vitamin B)** making it suitable as supplement feed for animals. It can be further processed for human consumption but because **the volume is so small** it is not feasible. **PRD will aerate this liquid and use it for animal feed and for irrigating the vegetable garden**" [pg.16].
- 2.6. In the application the polluting nature of these "high concentrations of organic matter and nitrogen compounds" is avoided and instead wastewater is characterised in the application as being "very high in nutrients" as though that is a positive attribute.
- 2.7. However, **this high nutrient value is precisely the problem**: Fynbos requires nutrient-poor soils. "The most diverse terrestrial plant communities in the world, i.e. those that are richest in species, occur on some of the most nutrient-poor soils.

The fynbos of the Cape Province of South Africa and the heaths of Australia are two such cases, and both occur on soils that are very poor in nutrients" (Tilman 1983).

- 2.8. These lower nutrient-soils are particularly vulnerable to "groundwater pollution, alien nitrogen-fixers or by accident: these **rapidly transform the ecosystem to a degraded state**" (Rebelo *et al.* 2011).
- 2.9. "Apart from high organic content, distillery wastewater also contains nutrients in the form of nitrogen, phosphorus and potassium that can lead to eutrophication of water bodies " (Patel 2018). Eutrophication is the accumulation over time of these 'nutrients' which typically results in the overgrowth of algae and alien vegetation, and the degradation of the natural ecosystem.
- 2.10. "The addition of nutrients (cultural eutrophication) to coastal marine areas, estuaries, rivers and lakes has consistently led to decreased species diversity" (Tilman 1983). Distillery wastewater "can result in depletion of dissolved oxygen in the receiving water streams and poses a serious threat to the aquatic flora and fauna (Kharayat 2012).

Quantities of distillery wastewater produced

- 2.11. According to the application: "The small amount of waste will be disposed of in a sustainable manner and will not require municipal waste removal services" [Pg. 34].
- 2.12. What is the quantity of wastewater, which in the application dismissed as being "so small" [pg. 16] or a component of "the small amount of waste"[Pg 34]? A reliable way of assessing the typical wastewater production from a distillery is the following: "For every litre of alcohol distilled, 11.9 litres of spent wash (distillery wastewater) is produced" (Mikucka & Zielińska 2020). Thus, for each spirit run, 250 litres of spirit and about 2975 litres of wastewater will be produced.
- 2.13. This estimation of 2975 litres is very close to 2750 litres of contaminated water that is calculated from the simplified process flow diagram (Figure 3). This wastewater is comprised of 75 litres mixed in the spent mash and 2675 litres distillery waste.

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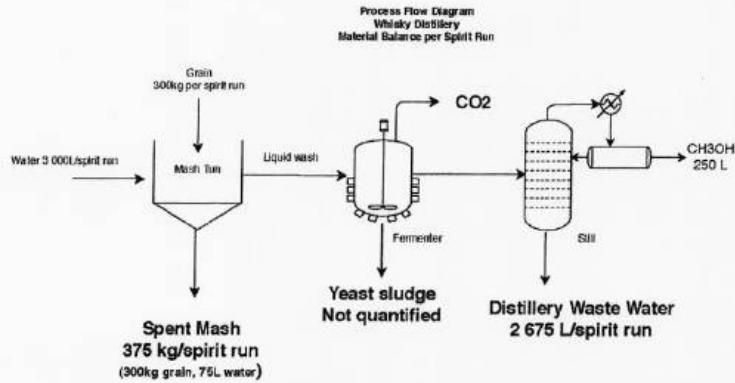


Figure 3: Process flow diagram of whisky distillery per spirit run

2.14. At full production the proposed distillery should produce about 12 000 litres of spirits per month. This differs from the claim on pg. 17 of "about 1000 bottles", in other words 750 litres, which could be produced in 3 days. Even using the lowest value for the waste production (2750 litres), **132 000 litres of contaminated water will be produced each month.**

2.15. In addition, based on data from Mikucka and Zielińska (2020), we estimate that more than 40 000 litres of water would be used each month for bottling and to clean the floor and equipment such as the Mash Tun and Fermenters. There is a dam 30m x 20m x 1m on the site which we are told will be used for irrigation and as a firepool. The wastewater produced will fill close to the equivalent of three dams of this size each month. This wastewater requires specialised treatment (not just aeration) and needs to be aggressively prevented from ruining the low-nutrient soil required for fynbos, seeping into the surface and groundwater, or reaching the sea at the edge of the property.

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Concealing and/or Misrepresenting the amount of fresh water that will be contaminated

2.16. The application addressed "Water" in 6.4.3.2 (Figure 4)

6.4.3.2 Water

Approximately 3000 litres of water are required for one spirit run. No municipal supplied water is required for the distillery and only ground and surface water will be utilised. The water used in the distillation process is required for cooling in a closed-circuit cooling system. The water will be piped into the distillery and then piped out again. The water remains in the pipe and does not decrease in quantity or come into contact with anything else.

Figure 4: The application implies that the 3000 litres of water required for one spirit run is used in the distillation process for cooling.

- 2.17. The claim above obfuscates and misrepresents critical information by implying that the 3000 litres of ground and surface water will simply "be piped into the distillery and then back out again". We are assured that "the water remains in the pipe and does not decrease in quality or come into contact with anything else". This would be very reassuring if it were true, as the claim implies that the proposed distillery can simply reuse this uncontaminated 3000 litres of water in a sustainable process.
- 2.18. However, this claim conflates two separate processes (a) the 3000 litres of water required per run and (b) water used for cooling in a closed-circuit.
- 2.19. This misdirection cleverly uses the term 'distillation process', which most of us non-specialist readers will understand and interpret to refer to the whole process of distillation from start to finish, as performed by a 'Master Distiller' in a 'distillery'. However, the applicant uses it in a narrow sense to mean only one specific part of the process, namely the 'distillation process'.

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2.20. This is illustrated in Figure 5 (modified from VectorStock 2021). The water used in the "distillation process" (blue rectangle, bottom left) is of little concern but is described in detail. In contrast, the 3000 litres (enough to fill more than twelve 240 litre standard wheelie bins) which is of real concern is addressed in one sentence.

WHISKEY PRODUCTION PROCESS

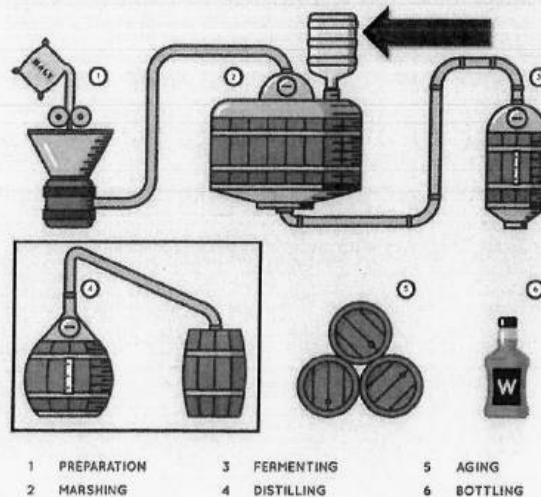


Figure 5: The addition of about 3000 litres of clean water (red arrow) is what is of real interest to the reader and not the water used to cool the 'distillation process' (Blue rectangle)

The red arrow (top right) shows the point at which around 3000 litres of clean water is mixed with the 300 kg malt and grain to form a mash. This 3000 litres of water is not "piped into the distillery and piped out again" but used in the process in which it is mashed with grain, heated, mixed with yeast, fermented and distilled. The water exits the whiskey production process as 250 litres of spirits and about 2750 litres of contaminated wastewater, high in phosphates and organic material.

Summary of threat from distillery wastewater

- We believe that the true scale and nature of the waste products is intentionally concealed and misrepresented. Large quantities (estimated at 132 000 litres per month at full capacity, but significant even if only a fraction of this volume) of high-strength liquid effluents with high concentrations of organic matter and nitrogen compounds are not accounted for or are misrepresented as a "small" amount of "liquid [which] is very high in nutrients (especially Vitamin B)". As a result, there is no plausible strategy in place to deal with polluted effluent.
- Even if the extent of the problem was fully recognised, the distillery would need a comprehensive wastewater treatment plant which would result in an additional unacceptable degradation of this sensitive environment.
- NEMA, the National Environmental Management Act (Act No. 107 of 1998), "places a duty of care on any person who causes significant pollution or degradation to the environment, requiring them to institute measures to prevent pollution from occurring, or to minimise and rectify the pollution or degradation where it cannot reasonably be avoided".
- The trick of shifting the reader's attention away from the real fire risk to something which is a trivial risk is employed here again. This time the application attempts to shift the reader's attention from the use of water which will be contaminated to the insignificant amount which can be recycled.
- This application should be rejected because it is not possible to adequately contain, treat and remove the large quantities of wastewater containing "high concentrations of organic matter and nitrogen compounds". As a result, a distillery (or a similar agricultural industry) will, over time, devastate this site as well as the surrounding vulnerable and highly interdependent fynbos biosphere area.

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3. Concealing and/or misrepresenting the building work that, at the time of submission of the application, had already been undertaken on the planned distillery.
- 3.1. The application states "Contingent on the approval of this application, a Site Development Plan, depicting both the extension to the existing structure and internal layout will be submitted to the Municipality for approval" [pg. 14].

Figure 12 is a photograph indicating (with an arrow) the side of the disused stable that will be extended to accommodate extensions to the distillery.



Figure 12: Side of Existing Stable that will be Extended

Figure 6: Outdated and misleading photograph from the application

- 3.2. The applicants stress that the current application should be seen as "a new application" [page 1] and yet they have used outdated photographs, obsolete plans and misleading phrasing, all of which do not honestly reflect the current situation or the situation at the time of submission of this "new application" (Figure 6).

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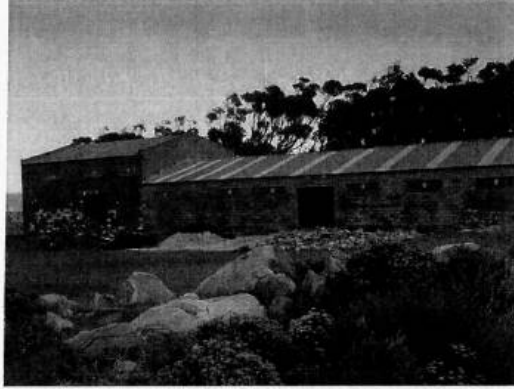


Figure 7: The stables extended to a "barn", which appears to perfectly match the 'proposed' distillery plans (photo: 16 May 2021).

- 3.3. The developers appear to have acted in bad faith. Their 2018 application for permission to build a distillery was met with just over 100 objections. In response they withdrew the application to build a distillery and later submitted plans to build an almost identical structure now claiming the structure to **a barn** on 24 July 2020. These plans for the barn were approved on 11 September 2020, and the building inspected on 18 January 2021. Given that this application was in Feb 2021 it is clear that the presence of "the barn" was concealed in the application and outdated distillery plans and photos included. Figure 7 shows that "the barn" appears to correspond exactly to the planned distillery and is likely to transgresses the existing building lines.

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- 3.4. Figure 8 shows that even the proposed "Boiler Room" adjacent to the distillery has already been built on the North West (sea) side of the "Barn". Again, this structure almost perfectly matches new section on the North West (sea) side of the Distillery on the 'Conceptual Distillery Layout Plan'.

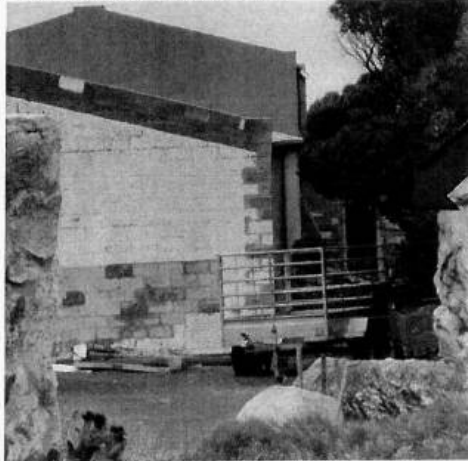


Figure 8: The proposed "boiler room" (doorway seen on the right in this photo) is shown on the distillery plan as a proposed future build but has already been built.

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Summary of concealing the building work in the Application

- The applicants appear to be conducting themselves in bad faith. When their application to build a distillery was not approved, they built essentially the same structure under the guise of building **a barn**.
- They attempted to conceal this subterfuge by using outdated photographs, obsolete plans and misleading phrasing.
- This is material to the application because the applicant has undertaken to abide by a number of conditions and restrictions in order to garner support for the application. However, this behaviour appears to demonstrate a disregard for due process.

We request that the municipality investigate what appears to be a breach of the building regulations.

4. Claiming that "Leigh and Monique Elves are both qualified (Distillique) master distillers"

4.1. The application claims that "Leigh and Monique Elves are both qualified (Distillique) master distillers" [pg. 17]. We raise this here because this claim is material to the application. The claim is likely to reassure those who may otherwise have opposed the application, that they are in safe hands and that the information contained in the application is reliable and accurate. Specifically, they may be reassured that their concerns regarding key areas such as the fire risk and the safe and competent management of distillery wastewater will be fairly and honestly addressed.

4.2. While there is no precise definition of a Master Distiller, this claim impressed us initially, and even more so given that "in the 150 year history of the Jack Daniel Distillery there have been only eight Master Distillers"(Fletcher 2021). It may be that the applicants have extensive distilling experience and that they are regarded by their peers as Master Distillers. If so, it would have been in their interest to have provided this information.

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- 4.3. The claim however is that they "are both qualified (Distillique) master distillers" is specific and easily verifiable. Either they have received the "(Distillique) master distillers" qualification or they have not.
- 4.4. We believe this to be false as it appears that no such qualification is offered by Distillique. According to the presenter on the Distillique website, their most advanced training course, "the Ferrari" of the course they offer, is the 'C10 Comprehensive Distilling Course'. The course is "now [presented] as an online video based course - previously a 5-day classroom based course" and consists of approximately 62 hours of online videos (Distillique 2021).
- 4.5. In the promotion / introduction video the presenter says that the 'C10 Comprehensive Distilling Course' is "what a lot of people refer to colloquially as our masterclass. Please note, just because they call it the master class doesn't mean you are entitled to call yourself a 'Master Distiller' after the completion of this course".
- 4.6. To clear up any confusion, on 3 June 2021 I spoke with the Training and Marketing Manager at Distillique, Hendré Barnard, who said "you cannot be a qualified Distillique master distiller because no such qualification exists".

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Figure 9: Distillique presenter: "Please note, just because they call it the master class doesn't mean you are entitled to call yourself a Master Distiller after the completion of this course"

Summary of the claim that "Leigh and Monique are both qualified (Distillique) master distillers"

- We raise this here because this claim is material to the application. The claim is likely to reassure those who may otherwise have opposed the application, that they are in safe hands and that the information contained in the application is reliable and accurate.
- Specifically, interested parties may be falsely reassured that their concerns regarding key areas such as the high fire risk and the safe management of distillery wastewater will be fairly and honestly addressed.

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Legal protection for biodiversity outside protected areas is erratic and outdated.

*With approximately 80 percent of the Cape Floristic Region's land privately owned, conservation will largely depend on the development and **enforcement of land use regulations.***

Existing mechanisms encouraging private protection of biodiversity are poorly applied, and there are few disincentives to destructive land use. (Critical Ecosystem 2021)

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TP-A Theart
(Hvd stoep)



BirdLife South Africa is a partner of BirdLife International, a global partnership of nature conservation organisations.
Member of IUCN (International Union for Conservation of Nature).
Reg No: 001 - 298 NPO
PBO Exemption No: 930004518

47/180

4 June 2021

Att. Loretta Gillion
Administrator, Town & Spatial Planning
Overstrand Municipality
Via email: loretta@overstrand.gov.za

Re. Application for removal and amendment of restrictive title deed conditions, consent use and departure for portion 141 (a portion of 133) of the farm Hangklip No. 559, Division Caledon

BirdLife South Africa appreciates the opportunity to comment on the proposed application and would like to raise the following concerns:

- The application's existing and proposed development footprint is bordered on all sides by Critical Biodiversity Area (CBA), including both terrestrial and wetland CBA 1. *CBAs are areas of high biodiversity and ecological value and need to be kept in a natural or near-natural state with no further loss of habitat or species. Degraded areas should be rehabilitated to natural or near-natural condition. Only low impact, biodiversity-sensitive land uses are appropriate*¹. While the application does not look to include any direct loss of CBA, indirect impacts on both the surrounding flora and fauna must be considered, including increased disturbance from human activities on and off site, particularly of the bird life, degradation of adjacent habitat through increased foot and vehicular traffic (e.g.: trampling, dust deposit etc.), as well as possible increased noise and light pollution.
- A better understanding of the impacts of increased vehicular traffic along Porter Drive is required. The potentially higher frequency of heavier vehicles at irregular intervals (transporting deliveries, waste materials etc.) could cause greater disturbance to the bird life of the area, as well as increased dust pollution (leading to habitat degradation) and deterioration of road condition, particularly as these vehicles do not tend to travel at speeds employed by tourists and bird watchers.
- In a changing climate, water use necessitates close enquiry. The water use requirements for this property need to be evaluated against the most recent Water Resource Classes and Resource Quality Objectives for the Breede-Gouritz catchment. The change in use (from domestic to industrial) and the

¹ Western Cape Biodiversity Spatial Plan Handbook (2017)

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FILE NO: Ptn 141/559
Hangklip
SCAN NO: 18
COLLABORATOR NO: 154-7547

TP - 7 JUN 2021

48/630



Giving Conservation Wings

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Member of IUCN (International Union for Conservation of Nature).
Reg No: 001 – 298 NPO
PBO Exemption No: 930004518

corresponding Water Usage License Application require further attention (and approval), before proceeding.

- The question arises as to the fire risk posed by having a distillery in such an environmentally sensitive area; an area that is also subject to frequent fires. Fire risk has not been addressed in this application.

The property forms part of the developing Key Biodiversity Area (KBA) network, specifically the Boland Mountain Complex KBA (as proposed by the draft South African KBA spatial dataset, dated June 2020). KBAs are the most important places in the world for species and their habitats. BirdLife South Africa would point to importance of this area for threatened, and biome and range-restricted bird species, as well as being a nationally-recognised avitourism hotspot, as highlighted by BirdLife Overberg in their objection; furthermore, BirdLife South Africa would like to express their support for many of the concerns raised by BirdLife Overberg.

An overarching consideration should be for the appropriateness of such a development in this landscape. Given that the properties along this stretch of coastline support little, or no, development (i.e.: occasional single residential dwellings), the relative quiet of this area should be appreciated, especially when coupled with the area's unique avitourism value. Although the title deed conditions may have been put in place with different objectives in mind, they do speak to the more environmentally sensitive character of the immediate area and temper the allowances of agricultural (Agriculture Zone 1: Agriculture) zoning, bringing it more in line with the Rural Zone 2: Conservation Usage and Undetermined zoning of all the other neighbouring coastal properties between the Rooiels and Pringle Bay centres.

If this application were to be approved, mitigation should be sought through the formal protection and conservation of the remainder of the property (including all Critical Biodiversity Area) through the declaration of a Protected Area (PA) or Other Effective Area-based Conservation Measure (OECM), using biodiversity stewardship, or other conservation models.

Please do not hesitate to get in touch if you need any more information at this stage.

Kind Regards,

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Isiphepheli Fokisi, iMizisiyo Fuphi Di Focosa Mafu Mafuphi. In 2004, iMafu Fuphi



TP - A Theart
(Huldstoep)

49/630
27 May 2021

Overstrand Municipality
16 Paterson Street
Hermanus

Email: loretta@overstrand.gov.za

COMMENT: OVERSTRAND MUNICIPALITY PORTION 141 (A PORTION OF PORTION 133) OF THE FARM HANGKLIP NO. 559, DIVISION CALEDON: APPLICATION FOR REMOVAL AND AMENDMENT OF RESTRICTIVE TITLE DEED CONDITIONS, CONSENT USE AND DEPARTURE: PLANNING PARTNERS (obo FREE LIFE TRUST)

Municipal Notice No. 70/2021

BirdLife South Africa is a non-governmental organisation that strives to conserve birds, their habitats and biodiversity by, *inter alia*, encouraging people to enjoy and value nature. Our Avitourism Project is involved in supporting avitourism (or tourism related to birds and birding) throughout South Africa. Our comments on the above-mentioned application are therefore intended to ensure that this application's potential impacts on avitourism receive adequate attention during the decision-making process. Our comments are as follows:

Before the COVID-19 pandemic, avitourism was regarded as the fastest growing niche tourism market in South Africa. As per a Department of Trade and Industry Report¹ in 2010, avitourism contributed up to R2.25 billion to the economy per annum. The Western Cape is a popular region for both local and international avitourism due to the several fynbos-endemic species that are restricted to the Cape Floristic Region. The Cape Rockjumper is one such endemic species, and is arguably the most prized bird in the province.

Because of the Cape Rockjumper's typically steep and rocky preferred habitat, there are very few accessible sites for birders to see this species. Rooi Els, in particular the extension of Porter Drive that this application pertains to, is the best site in the Western Cape (and by extension the world) to visit to see these birds because of the easy road access, the proximity to Cape Town, the fairly flat and wide walking area on the gravel road, and the presence of between four and six family groups of Rockjumpers on the slopes which are reliably seen and also relatively habituated to foot traffic. This locality is a fixture on most international birding tour itineraries for South Africa, as well as being popular on more localized tours that target the Cape's endemic birds. This is also a favourite destination for local bird clubs and birders to visit due to the easy access and general good birding in the area.

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Secretary: Patricia Mx; Governor: Keesel, Dr / Vesilike Mela/Meloye, Mr Mark Stoffberg

TP 28 MAY 2021

FILE NO: Ptn 141/559 ✓
Hangklip
SCAN NO:
Andrew
COLLABORATOR NO: 1544806



Giving Conservation Wings

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If developments were to compromise the avitourism value of this site by disturbing birds (with foot or vehicular traffic), disrupting nests and breeding activity, or encroaching on habitat, we would lose one of South Africa's premier fynbos birding destinations. While other fynbos species are relatively easy to see elsewhere, the other sites for Cape Rockjumper with a couple of hours of Cape Town are either inaccessible to many because of rough, steep terrain and long hiking trails, or are considered unsafe because of a history of muggings and car break-ins. The replacement value of Rooi Els as a birding site and avitourism asset is therefore extremely high.

In light of the above, it is crucial that the avitourism value of this site be considered when deciding the application in question. Moreover, in order to ensure that the proposed development does not have an undesirable impact on avitourism, BirdLife South Africa strongly urges that no decision is made on this application until such time as the potential impacts of the proposed development have been assessed, and potential mitigation measures identified, by an avifaunal specialist.

Thank you for your consideration of these comments and please do not hesitate to contact us should you have any queries in respect thereof.

Yours sincerely,

Andrew de Blocq
Avitourism Project Manager
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References

¹The DTI. 2010. *Avitourism in South Africa*. Available at <https://tkp.tourism.gov.za/Documents/Avitourism%20in%20South%20Africa%20-%20Information%20booklet.pdf>

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MEMBER OF
BIRDLIFE INTERNATIONAL



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The Municipal Manager
Overstrand Municipality
16 Paterson Street
Hermanus
7200



51/630

01 June 2021

TP-A Theart
(Hvid stoep)

Dear Sir

OBJECTION AGAINST THE REMOVAL OF TITLE DEED CONDITIONS, CONSENT USE AND DEPARTURE APPLICATION PORTION 141/559 MN 70/2021

Inappropriate

As residents of Rooi Els (108 Priestleya Rd, Rooi Els), we are totally dismayed at the idea of a distillery in the area. It will be producing strong alcohol in the Buffer Zone of an internationally proclaimed Biosphere Reserve, which is as unacceptable as it is inappropriate. In addition it is inappropriate for people to consuming said strong alcohol at a tasting venue in this area. This is not in the best interests of the Overstrand Municipality, South Africa or the International Community, all of whom have an interest in this Biosphere.

Removal of title deed conditions are not in the public interest

We are opposed to the removal of the title deed conditions as it is clearly not in the public's interest to have a noxious industry which can produce up to 2 million litres of hard alcohol in this exceptional, critical biodiversity and buffer zone area. If anyone should suggest that a distillery is not a noxious industry, why is it necessary to apply for a removal of this condition?

Rezoning is required, not consent use

We are opposed to the consent use application. This appears to be a contrived attempt to avoid rezoning the property, **which is necessary in the circumstances.**

Agricultural industry is defined as an enterprise for the processing of agriculture-related products "on or close to the land unit where these agricultural products are grown, harvested and raised where processing in such proximity is necessary due to the nature, perishability and fragility of such agricultural products". These legal requirements have certainly not been met as the barley for distilling will have to be transported from a significant distance away. There is also no necessity for a distillery to be in this area "due to the nature, perishability and fragility" as substantially all the ingredients that will be used will have to be brought in by transport from quite far away.

Not sustainable and not environmentally friendly

Given the massive amounts of unnecessary transportation involved, this distillery is without any doubt not ecologically friendly and is not ecologically sustainable. This is not acceptable activity in the buffer zone of an international Biosphere. Rooi Els is particularly vulnerable in this respect as the traffic passing through this very small village may increase detrimentally as the distance to the proposed distillery through Rooi Els is much shorter than from the Pingle Bay side.

Risks

The risks of having a small to medium industry in this particular area, hidden far away from proper controls and policing, are also unacceptable. This is simply not the right place for the establishment of this type of manufacturing enterprise. The relevant risks include fire, dust, air pollution, soil contamination, water pollution, depletion of underground water sources by the light industrial use of a

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borehole.

We trust that the aforementioned factors will receive due consideration.

Yours faithfully

Pieter and Wilna Swart

53/630

Estelle Raymond



4 June 2021

Municipal Manager Overstrand Municipality
PO Box 20
HERMANUS
7200

TP - A Theart
(Huid Stoep)

Email: loretta@overstrand.gov.za

MN 70/2021

OBJECTION TO REMOVAL OF RESTRICTIVE TITLE CONDITIONS, DEPARTURE
AND CONSENT USE PORTION 141 OF THE FARM HANGKLIP 559

1. I received notice of the above application as an Interested and Affected Party as owner of erven 278 and 282 Rooiels.
2. I objected to substantially the same application in 2018, which was poorly drafted. It has now been replaced with a slick and cleverly worded application for exactly the same thing. I am struck by the way the actual impact that this distillery will have is subtly minimised, disguised and manipulated to mislead the reader.
3. The degradation of a unique ecosystem of immense biodiversity and tourism value for the benefit of the applicant, is an existential risk for all of Overstrand. There is absolutely no social benefit to be gained from this endeavour. The stated economic contribution and employment offered by the applicant is miniscule when compared what will be lost to the economy due to the degradation of this invaluable eco-tourism and nature experience amenity. Although the applicant is trying to argue that the eco-tourism can happily co-exist with the distillery, the public outrage clearly illustrates that these two uses are not reconcilable.
4. My property faces towards the proposed distillery with Hangklip in the distance. Porter Drive runs directly behind my house (within 8 meters thereof). Over the past few months I have watched the many heavy construction vehicles and concrete mixers constantly driving up and down past my property. (See attached photograph). I have been disturbed by their noise and breathed their exhaust fumes and dust.

I accordingly find it hard to believe and trust the applicant's "undertaking" that once the distillery is approved all vehicles will use the other gate, when the applicant has shown us no consideration to date. The applicant also controls who has access through the gates. On numerous occasions I have found that both the Rooiels gate and Pringle Bay gates were standing open completely. The noise and dust caused by heavy vehicles on my doorstep is most unpleasant. I really do not believe that things will change at all for the better once the applicant is allowed to operate a distillery – to the contrary I believe it will become much worse.

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5. Porter Drive is unable to accommodate the numerous heavy vehicles making deliveries of bottles and raw materials, removing sewerage and industrial effluent, carting away toxic waste material, etc. This is both from a structural and road safety point of view. Because of the rough unmade surface of the road, it is furthermore not safe for heavy vehicles. There will inevitably be accidents, trucks overturning and spills of hazardous waste in this critical biodiversity area. It will spoil this special sense of place that my home here at the end of Oceanview Drive has always had and will undoubtedly also devalue my property.
6. The distillery building is visible from my home. The daily sight of an industrial-type building with smoke and vapour emissions polluting the air will severely impact my enjoyment of my property as well as the value thereof.
7. I use Porter Drive on a regular basis to walk to Pringle Bay and back. There are often paying groups of eco-tourists / bird watchers along this route. Many were visitors from overseas.

The surface of Porter Drive is the only place for pedestrians to walk as there is no sidewalk or foot paths. It is a narrow track, no more than the width of an ordinary car and is vegetated with natural fynbos vegetation on either side.

It is inevitable that the distillery with its delivery vehicles, will effectively destroy the attraction of this route for eco-tourism / birders and other pedestrians, making it both unpleasant and unsafe. Walking along a remote dirt road to view birds, and having trucks transporting bottles, barley, smelly and toxic waste products is not conducive to the eco-tourism experience.

8. The argument by the applicant that the Pringle Bay entrance will be used, holds no water, as the whole stretch of this unique track is used from gate to gate and the vegetation and fauna are equally important on the Pringle Bay side of the applicant's property.
10. The distillery which may start out small, will grow over time if successful, increasing inputs and output. The incremental effects caused by its various impacts (which may seem small if viewed in isolation) will irrevocably and undoubtedly degrade this landscape over time.
11. It should be clear to all that the distillery is not ecologically sustainable. Many articles have been written about environmental pollution and health hazards from distillery wastewater. The Waste Management Report does not deal adequately with this issue and does not inspire any confidence. It states that hazardous water will go into the septic tank! But elsewhere it indicates that the waste water will be pumped out by the Municipality. Then there is also reference to irrigating the fynbos with the waste water. (This will of course be devastating to the fynbos and the soil.) Hence, there are three different and conflicting options given. It appears that the applicant has really not given its waste water management any serious thought and that its insubstantial "plan" is no more than window dressing. I find this irresponsible.

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There is furthermore the issue of the unacceptable transport and carbon footprint; plus the issue of the location of highly flammable material (alcohol and ethanol fumes) in a high fire danger area. Allowing this to occur does not seem conducive to Overstrand's climate change responsibilities.

12. The fire risk to my property is greatly increased by the distillery which processes and stores highly flammable material. During the previous fire, four fire-fighting teams were on standby at the applicant's property (due to the presence of the many alien gum trees). As a result these teams were unable to assist when my home caught fire and was extensively damaged. Approving the development of a fire hazard in a high fire danger area is very short-sighted.
13. The applicants may argue that their application is advantageous from a tourist perspective but the many objections from people most closely associated with the main tourist industry in this area, clearly indicates that this is most definitely not true. The stretch of land is something unique and special, it should be nurtured and protected by all concerned. The development of a distillery in this place is most definitely not desirable and not in the public interest.

Yours faithfully

Estelle Raymond



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TP - A Theart
(H vld stoep)

(Erf 89, 9 Gull Road, Pringle Bay, 7196)

Cell no

The Town Planning Department
Overstrand Municipality
Hermanus
loretta@overstrand.gov.za

Date 01/06/2021

**OBJECTION AGAINST PORTION 141 (PORTION OF PORTION 133) OF THE FARM HANGKLIP 559:
APPLICATION FOR A DISTILLERY AND REMOVAL OF TITLE DEED RESTRICTIONS**

1. MY INTEREST IN THE APPLICATION

My husband and I are property owners in Pringle Bay, and we are in the process of relocating there permanently. We are retiring to Pringle Bay because we care deeply about the environment and in particular, the pristine areas of critical biodiversity around us in the Kogelberg Biosphere (and World Heritage Site). **I wish to register my objection against the application for a distillery and farm stall and proposed total removal of title deed conditions on Portion 141**, for the reasons as set out below.

1. Removing title deeds or rezoning an area in a UNESCO Biosphere can lead to major destruction of critical biodiversity, and indeed when changing it to accommodate a commercial venture like a distillery, will NOT contribute to the preservation and protection of the natural environment. Title deed conditions cannot be removed if it is not in the "public interest" (as legally defined to) to do so. There is no compelling reason why the application is in the public interest. **Most importantly it will be setting a negative precedent.** Changing the status quo will impact on the existing use and enjoyment of the area by the general public and specifically the birders coming from all over the country and world to this specific area for the numerous sought-after and endemic species such as the Cape Rockjumper, Cape sugarbird and Orange-breasted Sunbird and many more. Note that access from both the Rooiels and Pringle Bay entrances applies here in that many of these sought-after of South Africa's top bird-watching destinations.
2. The fragile biodiversity of the area does not lend itself to be rezoned from currently Agriculture 1 to Agriculture 2: Agriculture Processing. It is well known that distilleries are major sources of environmental pollution owing to the high volume of waste water. A septic tank is not a sustainable option for this volume of waste water, and the trucks that empty the septic tank(s?) will contribute to additional traffic and wear on the road. The distillery will not get enough water from the dam: how much will be used per year, and where will it come from? For this particular area it might not be sustainable!

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3. All the other smallholdings in the area are zoned Rural Area 2: Conservation or undetermined (undetermined only permits existing use which is a single dwelling or no development at all on most of the erven). It makes no sense to have an agro-industry in this remote location with limited access. The conversion requires that the farm process the materials that it grows. This property does not produce barley or other grains and would have to buy that in, and there is surely not enough fynbos on the property to be farmed as an ingredient.
4. It is deceptive to claim that the traffic on the gravel road will not affect the natural environment or the neighbours – visitors over the weekends will not be the only traffic – what about all the large delivery trucks going back and forth during the week? The wild animals and birds will be severely affected. What about the inconvenience to all other smallholdings with this traffic? The impact of traffic into this fragile area, especially by large trucks on this single lane dirt road, will be unsustainable; will the applicant finance regular maintenance on the road?
5. Fire hazard. We all are aware of the vulnerability of our area with veldfires and strong winds. Distilleries produce alcohol. Both the process and product are known fire hazards. Historically, the area has had many devastating fires. Apart from the limited advantages of some fire to certain fynbos, there are many animals and plants that have been eradicated by recent human-caused fires. Fires in this area can very easily spread by the strong winds, and can easily destroy inhabited areas close-by.

I would like to be registered as an interested and affected party for further developments.

Kindly acknowledge receipt of this objection.

Yours faithfully,

Suzelle Kruger
04/06/2021

Attention:
Ms Loretta Gillion
Administrator, Town & Spatial Planning
Overstrand Municipality
Via email: loretta@overstrand.gov.za

TP-A Theart
(Huidstoeep)



59/180

Objection to: Application for removal and amendment of restrictive title deed conditions, consent use and departure of Planning regulations, Portion 141 (A portion of portion 133) of the farm Hangklip no. 559, Division Caledon Advertisement Municipal Notice 70/2021.

Name: Alison Scott owner of number 4, erf 66 Lover's Walk, Rooiels
Email: alison.e.scott@gmail.com **Mobile:** 0713988192

My Interest in the application:

I am a Rooiels home owner and have lived here for over 10 years. Over that time I've come to appreciate the restrictive conditions that come from living so close to nature in a community that values conservation over commercial activities with an infra structure that supports low impact living.

Personal and community sacrifices have been made to alter habits like waste management, planting, boundary fencing, light and sound pollution and expectations of generating income from our property in the endeavour to live in harmony with nature.

Thus any changes to title deeds that would support a business with potential for growth, which carries a high fire risk, increased footfall, road usage, increased disturbance to wildlife, and produces large quantities of highly contaminated distillery wastewater whilst relying on ground water for production must be more thoroughly investigated, researched and discussed for me to have confidence in it's long term benefits.

Rooiels is unique and as a gateway to the Biosphere, and should be exemplary in it's defence of a delicate eco system and turn it's attention toward welcoming botanists, birders and wildlife experts for the education of future generations rather than the proposed boutique experience linked to the production and sale of alcohol to the possible detriment of the environment.

I record an objection to this application on the basis that the research into micro-distillery operations, the possible legal scale of production, and the work already underway by the applicant, belie some of the assurances given in the application. For example:

- A. The proposed extension has already been built with trucks using the Rooiels entrance and the road pot holes from the Rooiels side filled with not very eco friendly cement stone throws into doubt their sensitivity toward the environment and their adherence to what they say they will do or not do. It's not certain how these infringements without permissions will be monitored and regulated by the municipality.
- B. Considering the lifting of restrictions will exist in perpetuity, the "small scale, family run distillery" yet opens the land to future owners for industrial scale development since a factory will be allowed. Otherwise as a public entertainment venue which could impact not only on daytime wildlife activity but night time too.

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- C. Others who have researched the Distillery process have cast aspersions about the facts and figures given :
1. The implications are that the effects to fynbos soil of the high concentrate of minerals in waste water is dubious, and suggests it will not be beneficial to the environment and the delicate eco system that has put Rooiels on the map .
 2. Although the applicant states that "the wetlands have been mapped to the south and north of the site(pg 11), yet maps of the area show that if a wetland area is within the 500 metre radius from a boundary, no water may be taken. It appears no heed has been taken of this law.

I agree with the statement included in my husband's objection that "An environmental assessment needs to be done by a specialist regarding the effect of irrigation and that of increased phosphates on the fragile natural fynbos ecosystem in which Portion 141 is situated. The effect of such a system on the seepage areas and run off into the sea should also be studied by a specialist".

To conclude: there are too many open-ended assurances given by the applicant that, on further investigation and research by much more conscientious inhabitants, would suggest it's not as clear cut as it's presented . To clear up these grey areas that give rise to doubts in my own mind about the benefits to all if restrictions are removed, I implore you to turn down the application until further assurances, checks and balances are in place.

Yours Sincerely

Alison Scott



04/06/2021

61 | 630

L Gillion

From: Kirsten, GF, Prof [L] <[redacted]>
Sent: Friday, 04 June 2021 07:20
To: L Gillion
Subject: Objection to the building of a distillery at Rooi Els by Prof GF Kirsten

Attention:
Ms Loretta Gillion
Administrator, Town & Spatial Planning
Overstrand Municipality
Via email: loretta@overstrand.gov.za

TP - A Theart
(Hvd Stoep)



Objection to: Portion 141 (A portion of portion 133) of the farm Hangklip no. 559, Division Caledon: Application for removal and amendment of restrictive title deed conditions, consent use and departure: Planning Partners (obo Free Life Trust)

Names: Prof GF Kirsten
Address: Plot 3371
Albertyn rylaan
Sunny Seas
Bettysbaai

Contact details: Postal address:
Mobile:
Email:

Date: 3rd June 2021

Interest in the application: The environmental impact to a unique, fragile biodiversity system

Reasons for comment: I wish to register my objection to the above application.

I object to all three components of the application, namely:

- (1) Removal and amendment of restrictive title deed conditions,
- (2) Consent use, and
- (3) Departure.

I believe that a microdistillery is entirely unsuitable for the proposed site. The proposed application, if accepted, would be seriously detrimental to the site and surrounding area.

More specifically I object to the application on the following grounds:

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1. Fire hazard.
2. Product storage of highly flammable liquids in an area which has experienced regular fires.
3. High volumes of water usage from ground and surface water.
4. High volumes of contaminated waste products.
5. No adequate plausible strategy for the containment, treatment and/or management of the contaminated waste products.
6. Increased traffic volume and its impact on other individuals and on the environment,
7. Spillage of grain with unintended consequences such as the attraction of rodents, pests, and birds not endemic to the area.
8. This portion of Porter Drive between Rooiels and Pringle Bay is such a special and unique area to view many of the Cape endemic birds – but especially the iconic Cape Rockjumper. Birders travel from all over South Africa and all over the world to see these birds. This brings valuable eco-tourism to this area with many positive economic spin offs for the Overstrand.
9. There are also a number of birding tour operators that use this area, providing employment. Sadly, this kind of eco-tourism is not compatible with any increase in vehicular traffic along this dirt road which likely to be caused by the proposed distillery.
10. **Overstrand Municipality is urged to have regard to the precautionary principle. It should not risk the potential or inadvertent destruction of a landscape and eco-system which can never be replaced. As an organ of state it should do all it can to honour South Africa's obligations in terms of the International Biodiversity Convention.**

Yours sincerely,

Prof GF Kirsten.

Emeritus Professor, Faculty of Medicine, University of Stellenbosch.



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63/620

OBJECTION TO THE APPLICATION FOR REMOVAL OF RESTRICTIVE CONDITIONS, CONSENT USE AND DEPARTURE

(MUNICIPAL NOTICE 69/2018 PORTION 141 OF THE FARM HANGKLIP NO 559)

Name: Nicolette Louw
Address: 37 Lawrence rd, Pringle Bay
Contact nr: ()
Interest in application: Resident of Pringle bay and the KBR

TP-A Theart
(Huld stoep)



I object to the establishment of the proposed distillery as it would be in the buffer zone of the Kogelberg Biosphere.

Allowing one industrial project would set a precedent for more to follow.

The dustroad is a favourite walking route and not suitable for increased traffic.

FILE NO: Ptn 141/559
Hangklip
SCAN NO:
04
COLLABORATOR NO: 1547511

TD - 7 JUN 2021

L Gillion

KHANG 141/559

TP-A Theart
(Huidstoeper)

64/630

From: Riel Tredoux <
Sent: Saturday, 05 June 2021 18:59
To: birding@overberg.co.za; L Gillion
Subject: Objection to proposed Gin Distillery: Pringle Bay area



TO WHOM IT MAY CONCERN

This mail serves as an objection to the proposed construction of a distillery in the area of Pringle Bay/Rooiels, concentrating on the technical aspects of distillation and beverage production. By way of introduction, I am a retired industry professional with 30 years' experience in the alcohol industry, having worked for KWV and Distell in Product Development/R&D as well as Quality and I am still employed part time by an alcoholic beverage company in the Helderberg.

The operation of a distillery requires an inbound supply chain of raw materials such as fuel for the boilers/stills, water (not only for product but mostly for cooling), alcohol or sugar source for fermentation, packaging materials and chemicals for cleaning. Production of alcohol has some outbound process streams. Apart from the output of alcohol, distillation creates large amounts of waste with high concentrations of components that are responsible for extreme levels of COD in the waste.

Process water requires to be purified to ensure stable product. The purification process (usually Reverse Osmosis) demands high concentrations of caustic and sulphuric acid, adding to the waste stream.

All these inbound and outbound process streams have to be provisioned for. The inbound raw materials have to be trucked in, the outbound products equally so. The road infrastructure leading to the proposed site is surely not suited for traffic of even light industrial scale. Equally so, the waste removal of the distillery will be problematic if the site is not connected to a municipal sewerage treating system that can carry the capacity of high loads of COD and BOD.

All of these factors named above will have an effect on the surrounding environment, the most obvious being the endemic bird species like the Cape Rockjumper and Rock Thrush. Heavy traffic in and out of the area will undoubtedly affect the breeding patterns of these species and could affect their viability. I am not even thinking of the environmental impact that untreated waste could have on the sea life around the proposed site.

I trust that a thorough Environmental Impact Assessment will show up the flaws in such a proposal to the effect that it be scuppered. Please stop this project before a very sensitive ecological area is destroyed.

Regards

HG Tredoux

FILE NO: Ptn 141/559
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SCAN NO:
29
COLLABORATOR NO: 15471457

65/630

Robert McCreath

Email:



TP-A Theart
(H Jld Stoep)

THE MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY
EMAIL: loretta@overstrand.co.za

NOTICE OF OBJECTION TO THE PROPOSED DEVELOPMENT OF SMALLHOLDING 141 OF THE FARM HANGKLIP 559 – MUNICIPAL NOTICE 70/2021

I am a member of the Somerset Striders Running Club and do regular runs in the Rooiels / Pringle Bay area.

The most beautiful run is along Porter Drive, the small holdings roads between Rooiels and Pringle Bag.

I understand that a Developer wishes to establish a gin distillery and house shop on the smallholding 141 (right in the middle of these smallholdings).

This proposed Development would be contrary to the unique fynbos character of the area and would destroy the unique ecological integrity of the area.

Distilleries are industrial activities which should not be allowed here. Even a small scale distillery would destroy this unique area.

I request that the application for a distillery be dismissed.

Please acknowledge receipt.

Yours faithfully

R W McCREATH

FILE NO: Ptn 141/559
Hangklip
SCAN NO: 30
COLLABORATOR NO: 1547459

- 7 JUN 2021

L Gillion

66/630

From: Heather Morkel <
Sent: Friday, 04 June 2021 23:59
To: L Gillion
Subject: MUNICIPAL NOTICE NO. 70/2021



Russell and Heather Morkel
 803 (House 10) False Bay Road
 Pringle Bay

TP - A Theart
 (Huid stoep)

PORTION 141 (A PORTION OF PORTION 133) OF THE FARM HANGKLIP NO. 559, DIVISION CALEDON: OBJECTION TO THE APPLICATION FOR THE REMOVAL AND AMENDMENT OF RESTRICTIVE TITLE DEED CONDITIONS, CONSENT USE AND DEPARTURE FOR THE RELAXATION OF A STREET (ROAD) BUILDING LINE

Dear Madam,

We refer to the above matter and tender our comments and objections as follows:

- The removal of the restrictive title conditions and zoning of the land in question allows for a precedent which will accrue to all "farms" of the area and will be detrimental to the rural, scenic and unspoilt character of the coastline which is a buffer/transition zone within a declared UNESCO World Heritage Site
- Although the Applicant presents an option for *sustainable* development of the property he currently owns, owners and neighbouring owners who will follow, will be entitled to the precedents accruing from the removal of the restrictive title deed conditions and could have undesirable consequences for the area.
- The Applicant claims that he will be providing the area with a destination, an area which "lacks amenities", and a sustainable development, which will contribute to the growth of the villages (specifically Pringle Bay).
- We contend that Pringle Bay, with its natural beauty, scenic, unspoilt coastline is an attraction in itself and it questions the desirability of this distillery. We attract eco-tourist and holiday makers, offering plenty of activities and amenities that make it a successful holiday destination and village and does not necessitate a distillery.
- A distillery as contemplated by the applicant has a range of attractive sites which exist within a 40km radius, within the correct commercial/industrial zones allocated but the Municipal SDF in Kleinmond and Hermanus from which to choose.

A good idea, but in the wrong place. In addition, there are a few undertakings made in the application which are vague and not quantifiable.

- Waste water and other byproducts of the distillation process : at the minimum of distilled alcohol produced, 132 000 litres of waste water will be produced per month (based a various production runs mentioned in the application)
- The production and distilling of gin and whiskey sounds almost romantic, but it remains a noxious process, which produces a highly flammable product. flammable fumes and noxious waste
- We also question the following:

1

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- o fuel load : as detailed in the application, the whiskey distilled will require ageing for 3 years, in barrels, packed in the bonded storage area (80sqm in 250 litre barrels).
- o This effectively means a significant amount of ethanol will be stored on the premises at any given time. A highly flammable and dangerous substance within a fire ecology. We are wondering why the application has left the restrictive title around a filling station or garage, as this equates to the same fuel risk and potential pollution for the area
- anecdotal evidence provided by friends with historical ties in the area going back 40 years, speaks to a productive spring in the area. We believe the applicant has illegally dammed this spring within a significant wetland.

The applicant has continued to build on this property, without the relevant permissions, and one is left wondering whether this is merely a rubber-stamping exercise, as what has changed since the initial application in 2018?

Please register us as an interested and affected party in this matter.

Thank you.

Kind Regards

Leather and Russell Morke

TP - A Theart
(Hild Stoep)

68/630

L Gillion



From: Mike Schalit < >
Sent: Friday, 04 June 2021 17:03
To: L Gillion
Cc: Sue Schalit
Subject: Pringle Bay Ratepayer Objection to removal and amendment of title deed for Portion 141 of the farm Hangklip No. 559 for Micro Distillery

Name: Susan and Michael Schalit
Address: 13 Bell Road North, Pringle Bay, 7196
Contact Details:
 Date : 4 June 2021

Interest in Application + Reason for comment:

We have had a peaceful, quiet residence across the bay in Pringle Bay for the last 24 years (from 1997 – 2012 at 96 Albertross Rd and from 2009 to the present at 13 Bell Road North)
 We literally live right across, looking towards this potential development, which is currently just pristine fynbos, mountains, ocean and rocky coastline.
 Although we see that they are already building a huge triple volume barn, even before this application has run its course.

We are now living here fulltime because of the tranquility and peace it offers, especially in a Post Covid world, and can see how many more people are being attracted here , both tourists and residents, understanding why this area attracts so many people. It is and always has remained quiet, undeveloped and natural with very few homesteads or lights - that is its value and reason for being,

Why does it need to be developed now and set a dangerous precedent that will affect future generations.

There is not even a proper road for deliveries ... it is a rough gravel track which is currently only enjoyed by the few owners who have blocked it off to normal traffic to be appreciated only by mountain cyclists, walkers, joggers, nature and bird lovers.

There is no need or place for tourism in this zone, a micro distillery will impact on the environment, no matter how small.

Be it building/construction, waste or increased traffic on the road, all will have a negative impact – which a few extra tourists will never add enough benefit to make up for.

Both Pringle Bay and Rooiels have more than enough attractions and tourists not to be subject to one of our more pristine areas being degraded by one property owners selfish commercial interests. At the end of the day, it is a commercial development for the owner's benefit . In reality it can have very little positive economic impact on Pringle Bay but will most certainly have a negative ecological and environmental impact on the surroundings. Adding both noise, smell, waste and intrusive traffic pollution to what is a pristine and unspoiled natural location with fynbos, mountains, rocky coastline and ocean. There is more than enough commercial and industrial space that has been put aside for these kind of commercial enterprises in the business/commercial zones of Pringle Bay or Kleinmond without having to destroy natural beauty and aesthetics of the protected biosphere.

People are attracted to this area by the beauty and tranquillity of unspoiled nature , this is the value that needs to be retained for future generations and should never be compromised at the expense of any commercial or industrial enterprise .

That is why these restrictions were put in place to begin with, and we cannot afford to erode this by creating dangerous precedents that will effect the very reason for attracting people here in the first place .

And there are so many other concerning elements:

1

FILE NO: Ptn 141/559
Hangklip
SCAN NO: 3
COLLABORATOR NO: 1547461

TP - 7 JUN 2021

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What about drinking and driving after tourists have visited this distillery? Another real concern is flammable material being stored? And the use of water will most certainly effect the water table if they are using their "own" water, and then what about the waste water? And what if the owner sells and new owners want to develop further? Let us not forget the pine trees on this property that are alien and a fire hazard? What if current owner changes their mind further down the line and stops using hacked alien material to burn for the process?
What does this say to neighbours who want to start their own commercial or industrial enterprise, where do you draw the line?

That is why we overwhelmingly OBJECT to this application.

Thanking you
Yours Sincerely
Susan and Michael Schalit

13 Bell Road North , Pringle Bay, 7196.

TP- A Theart
(Hvd stoep)



PRINGLE BAY RATEPAYERS' ASSOCIATION

PRINGLEBAAI BELASTINGBETALERSVERENIGING

SARS Reg. 9101/138/16/3
NPO Reg. 214-205
www.pringlebayratepayers.co.za
P O Box 409, Pringle Bay, 7196 / Postbus 409, Pringlebaai, 7196
Chairman / Voorzitter: chairman@pringlebayratepayers.co.za / Tel: 083 460 3694

3 June 2021

THE MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY
HERMANUS
7200

ATTENTION: SENIOR MANAGER: TOWN AND SPATIAL PLANNING
Ms. H van der Stoep
hvdstoep@overstrand.gov.za

PER EMAIL: loretta@overstrand.gov.za

Dear Madam

**MUNICIPAL NOTICE NO. 70/2021 PORTION 141 (A PORTION OF PORTION 133) OF THE
FARM HANGKLIP NO. 559, DIVISION CALEDON:
OBJECTION TO THE APPLICATION FOR THE REMOVAL AND AMENDMENT OF
RESTRICTIVE TITLE DEED CONDITIONS, CONSENT USE AND DEPARTURE FOR THE
RELAXATION OF A STREET (ROAD) BUILDING LINE**

ORGANISATION

1. The Pringle Bay Ratepayers' Association (PBRA) was started in the late 1960s by the first residents of Pringle Bay to represent the interests of ratepayers and residents. Today it is a registered Non-profit, Public Benefit Organisation.

One of its primary functions is to liaise with the Overstrand Municipality, with whom it enjoys a close relationship, and to support local environmental conservation. The PBRA represents the community on the local Ward Committee and other consultative bodies. It maintains close contact with local authorities and service providers, particularly on matters affecting ratepayers and residents.

The PBRA represents the rate payers within the declared Urban Edge. This currently constitutes approximately 1,800 properties (erfs) of which approximately 1,000 are developed (thus having a

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13
COLLABORATOR NO: 1547531

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habitable structure erected on it either for residential or business purposes).

As such, we are registering as an interested and affected party, and will accept notice and service of documents via email at chairman@pringlebayratepayers.co.za, and secretary@pringlebayratepayers.co.za. Having considered the subject application, we wish to comment and object as follows:

BACKGROUND

2. The above application is the second by the current owner of the above farm for essentially the same approvals that it sought in 2018. The first application was withdrawn on 23 June 2020 because the applicant intended "... to prepare and submit a further application in due course, so as to effect service as required by Section 35(3) of the Planning By-Law, and to provide further written motivation for the Applicant based on the required criteria / principles which need to be taken into consideration."
3. Since the last application was made, the owner of the above farm has further extended the "disused stable" on the property that had always illegally encroached over the street building line without the consent that is the subject of this application having been granted, as well as used that stable as a micro-distillery in contravention of the restrictive conditions of title that are also the subject of this application. Accordingly, the "modest addition" to which the Application refers in paragraph 1 of the Introduction has already been built. PBRA has been informed that the building plans for this addition have already been approved despite the fact that the consent use application and departure must still be considered.
4. In addition, the owner of the farm, in alleged contravention of the provisions of the National Environment Management Act 107 of 1998 ("NEMA") has allegedly unlawfully constructed a dam on the farm, damming the spring that rises on it and flows into the natural wetlands on the neighbouring farms. The alleged unlawful construction of the dam and the existence of a wetland on the farm are dealt with in paragraphs 43 to 46 and 52 and 53 below.
5. It is submitted that this application must be considered in the context of this alleged unlawful conduct by the owner of the farm.
6. As will be demonstrated below, notwithstanding this application, before the Applicant is entitled to lawfully use the stable on the farm for the production of Whiskey and Gin in the micro-distillery, it requires to obtain a number of other approvals in terms of our environmental, water, agricultural, and liquor laws. If this application is considered by the Municipality and approved before any of the other requisite approvals have been granted, and any of them are refused, the use by the owner of the stable on the farm as a micro-distillery will be unlawful. Despite

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this, a decision by the Municipality approving the removal of the restrictive conditions of title, the consent uses and building line departure that has been sought will stand, and constitute a precedent for the uses by all of the properties in Rooi Els, Pringle Bay and Bettys Bay that are encumbered by the same restrictive conditions, in breach thereof.

7. It will, accordingly, be submitted that, should the Municipality not agree that the application should be refused, it should at least decide that they should not be considered until the other approvals that the Applicant requires having been sought and obtained.

LOCATION OF THE PROPOSED MICRO-DISTILLERY

8. It is located within the boundaries of the Biosphere as shown in the Environmental Potential Atlas of South Africa as provided for in the current Municipal Spatial Development Framework.
9. The Biosphere has been proclaimed in terms of international legal conventions.
10. It is located on a farm outside of the urban edges of Pringle Bay and Rooi Els that had been proclaimed in terms of the SDF, on the coastal road, a proclaimed scenic route between Pringle Bay and Rooi Els, within the Conservation – Agricultural buffer zone of the reserve and within a one kilometer radius of its core or Formal Protected Area (SANBY 2010).
11. There are at least two other more suitable and appropriate sites zoned Industrial within a 40 kilometer radius of this proposed site.
12. No other light industrial micro-distillery is located on the designated scenic routes, Porter Drive, or the R44 between Gordons Bay and Kleinmond.

IS THE EXISTING ZONING AS AGRICULTURAL 1 CORRECT?

13. Following the decision of the Western Cape High Court in 2007 in the matter of *HEAG v. MEC for Environmental Affairs and Development Planning and Others* in relation to Farm 559/95, the Municipality conceded that it had erred in zoning the Hangklip Farms and smallholdings outside the urban edge of towns as Agricultural Zone 1, and re-assigned either a zoning of Undetermined or a Rural Zone 2: Conservation Usage to them. A copy of a letter from the Municipality evidencing this is attached at "A".
14. Accordingly, before the consent use that is the subject of this application can be considered, the Municipality must determine whether the recordal of the zoning of the Applicant's farm on the zoning maps as Agricultural Zone 1: Agriculture is correct, and determine whether or not it should in fact be zoned Undetermined or Rural Zone 2: Conservation Usage.

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15. *Agricultural industry* is not a consent use that is permissible on farms zoned Undetermined or Rural Zone 2: Conservation Usage.
16. However, for the reasons given in paragraph 34 and 35 below, even if the Applicant's farm is rezoned, the use of it as a micro-distillery, where he does not process any agricultural products farmed by him, does not fall within the definition of "agricultural industry", as defined in the Municipality's Planning by-laws.

RESTRICTIVE CONDITIONS OF TITLE

17. It is trite law that restrictive conditions of title, like praedial servitudes may not be removed without the consent of the owners of the dominant tenements in whose favour the restrictive conditions exist.
18. The PBRA is aware that there is a dispute between HEAG and the other objectors to the development and the Applicant that was aired in HEAG's objection to the Applicant's previous, virtually identical application in 2018. As referred to in paragraph 2 above, this is one of the reasons why the 2018 application was withdrawn by the Applicant's attorney on 23 June, 2020.
19. The dispute is not about whether consent is required before restrictive conditions of title may be removed, but who are the beneficiaries of those conditions.
20. The Applicant contends that there is only one beneficiary of all of the restrictive conditions of title contained in its title deed, namely the original creator thereof, Hangklip Beach Estates Limited ("HBE Ltd").
 - 20.1. From 1937 HBE Ltd established townships in Rooi Els, Pringle Bay and Bettys Bay, comprising hundreds of erven and subdivided the Hangklip Farms into over a hundred portions and, in each instance imposed virtually identical restrictive conditions of title on the owners of those erven and farms as are contained in the restrictive conditions of title of the Applicant in this matter.
 - 20.2. The restrictive conditions that prohibit the proposed use of the Applicant's farm as a micro-distillery and shop are restrictive conditions that have been imposed by HBE Ltd as the developers of the townships in Rooi Els, Pringle Bay and Bettys Bay as well as of the Hangklip farms on all of the owners of those erven in those townships and the owners of the Hangklip farms. In the case of the Applicant, they are those conditions recorded paragraph C, 6, 11 and 13.

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- 20.3. In the title deeds of some of the erf and farm owners it is recorded that the restrictive conditions have been imposed for the "sole benefit" of HBE Limited and in others for "its benefit."
- 20.4. The restrictive conditions of title in the Applicant's title deed were imposed by HBE Ltd *"for its sole benefit as the owner of the remaining extent of the Farm "Hangklip" measuring as such 1466,0427 Hectares and held by it under Certificate of Consolidated Title No. T3720 dated 17 April 1937 provided always however that if, in the said Company's opinion it is expedient that the Company may suspend or relax restrictions contained in any of such conditions and then subject to such conditions as the Company may impose:-"*
21. The question of the identity of the beneficiaries of restrictive conditions of title imposed on the owners of erven and farms developed by HBE Ltd was considered in the matter of *Ex Parte Kirsten* and pronounced upon in an Order by a Judge Davis of 18 November 2018 under Western Cape High Court case number 17268/2008 and was held to mean service on all "... property owners (who) have or may have rights by virtue of the title condition which he seeks to have removed, and (who) are the owners of the (properties) immediately surrounding (the Applicant's farm.)" A copy of this Order is attached at "B".
22. In a similar application for the removal of restrictions in relation to farm 559/2003, when the Western Cape government thought that the power to remove restrictive conditions of title vested with it, it was of the view that:
- "... the above restriction against the title deed constitutes a praedial servitude established over the Servient Tenement for benefit of the Dominant Tenement, namely the Remainder of portion 45 of the farm "Hangklip" number 559, Caledon ..."*
- and consequently the Province agreed that-
- "... the successors in title to the Remainder of Portion 45 of the farm "Hangklip" number 559, Caledon are the relevant parties required to be notified of the application."*
- The Western Cape government confirmed that it intended instructing the Applicant in that case to identify and serve Notice of the application in these parties. A copy of the Province's letter to this effect is attached at "C."
23. It is submitted that, by the Province requiring the Applicant, in the case of Farm 559/203 to serve notice of the application on the successors in title of the Remainder of Portion 45 of the farm "Hangklip" No. 559, it required the applicant in that case to obtain the consent of those parties.

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24. The Applicant contends that it is only for it to seek and obtain consent from HBE Ltd and that it has sought and obtained the consent of Hangklip Beach Properties CC from Mrs. E.P.E Wallis, its only member, on its behalf, which close corporation it alleges is the successor of HBE Ltd. It will be noted, with reference to the application in respect of Farm 559/203 that the Western Cape government, in paragraph 9 of "C", has noted that HBE Ltd "... no longer exists as a legal entity."
25. PBRA contends that the Judgment of Davis in the *Ex Parte Kirsten* matter should be applied, and notice of the application should be served on all of the successors in title of the remaining extent of the Farm Hangklip held by Certificate of Consolidated Title No. T3730 dated 17 April 1937 on whom restrictive conditions of title were imposed by HBE Ltd and their consent obtained. Alternatively, the owners of the farms immediately surrounding the Applicant's farm must be served with the application and their consent obtained.
26. As the Applicant thus made no attempt to identify these persons and obtain their consent, the application should be refused.
27. PBRA is aware that the owner of Farms 559/142, the immediate neighbour of the Applicant's farm refuses to consent to the removal of the restrictive conditions of title.
28. It is submitted that this refusal precludes the Municipality from approving this application. Accordingly, the only recourse available to the Applicant is to approach the Courts for an appropriate Order.

COMPLIANCE WITH THE PROVINCIAL AND MUNICIPAL SDF's and THE MUNICIPAL ZONING SCHEME PROVINCIAL SDF

29. The following guiding principles of the Provincial SDF apply to the application:
- 29.1. the land development should be compatible with the scenic landscapes and should not compromise eco-systems;
 - 29.2. the Western Cape's unique cultural, scenic and coastal resources should be safeguarded and celebrated; and
 - 29.3. urban growth should be located within the urban edge of existing urban nodes.
30. In paragraphs 7.1.1 to 7.1.3 of the application, the Applicant submits that the proposed micro-distillery and farm shop complies with the policies contained in the Provincial SDF. The reasons that are given are the following:

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- 30.1. DEA&DP, in 2018 informed the Applicant that no environmental authorization was required for the use of the farm as a micro-distillery. In 2020 a public participation process was advertised to deal with the allegedly unlawful construction of a dam on the Applicant's property. This is dealt with in paragraph 42 below. Nevertheless, it is submitted that the DEA&DP decision in January 2018, in the context of this subsequent development on the farm, is not evidence of compliance with the Provincial SDF. There is no need to locate this industry in the buffer zone and coastal protection zone of the Biosphere Reserve.
- 30.2. The Applicant claims that the development "... will not constitute urban sprawl ... (and the) ... activity ... is consistent with the rural character of the site ...," and that this is evidence that the proposal is consistent with the Provincial SDF. On the applicant's own version, the use of the building on the site will be an industrial use that is noxious and outside the urban edges of both Rooi Els and Pringle Bay that requires the removal of a restrictive condition of title that prevents this. With respect, this evidences a proposal that contradicts the policy guidelines of the Provincial SDF.

MUNICIPAL SDF

31. The following guiding principles of the Municipal SDF apply to the application:
- 31.1. transformation of the Conservation-Agricultural Buffer areas must be prohibited;
 - 31.2. the distinctive landscape of the area should be protected;
 - 31.3. only the sustainable use of agricultural land in the Conservation-Agricultural Buffer must be promoted;
 - 31.4. no transformation of natural areas which provide connectivity between protected and threatened eco-systems within and beyond the municipal boundary should be permitted;
 - 31.5. land along the coast from Rooi Els to Pringle Bay must be retained for agricultural purposes;
 - 31.6. development decisions should also be informed by the existing development and function of the towns;
 - 31.7. the ideal location for industrial uses is within an existing industrial zone such as Kleinmond or Hermanus, and the location of industrial or business uses outside the existing industrial or business areas must be prohibited.
32. It is submitted in paragraph 7.3 of the application that "(t)he proposal is in general accordance with the spirit and intent of the (Municipal SDF) as it will, albeit in a small way, assist with land use diversification and stimulate appropriate economic activity." That which is stated in paragraphs 10 and 11 above illustrate the illogicality of the statement.

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MUNICIPAL ZONING SCHEME

33. The Applicant submits that the proposed use of the farm as a micro-distillery and farm shop, with consent, will be in compliance with the Municipal Zoning Scheme.

Definition of "Agricultural Industry"

34. The Applicant regards this activity as a noxious industry, hence the need for the removal of the restrictive condition of title that prevents this, and for the need for consent because the industrial activity allegedly falls within the definition of *agricultural industry* contained in the zoning scheme.
35. The Applicant misrepresents the definition of agricultural industry by conveniently omitting reference to the words "*... on or close to the land unit where these agricultural products, ... are grown, harvested and raised where such proximity is necessary due to the nature, perishability and fragility of such agricultural products:*" The agricultural products necessary for the production of whiskey and gin are neither grown on or in close proximity to the farm, nor are they highly perishable or fragile. As the grain products must be imported from elsewhere, there is no reason why they could not be delivered to a light industrial building located either within the light industrial areas of Kleinmond and Hermanus.

Parking arrangements and access

36. Porter Drive is a single track gated at both ends. It is suitable for 4 x 4 and high-clearance vehicles. It is gated at both ends to prevent vehicular traffic other than that which is necessary to access the 20 or so smallholdings whose street-frontage is on Porter Drive, as well as the dwellings that have been constructed on 8 of those smallholdings.
37. The Applicant clearly recognizes the negative impact of tourist vehicles accessing his proposed micro-distillery on his farm in addition to the impact of vehicles bringing bottles and the raw materials necessary to distil the whiskey and gin and remove the final products and solid waste.
38. To address these negative impacts the Applicant represents that it is in the process of purchasing No. 16 Central Road in the business zone of Pringle Bay and using the warehouse on that property as well as the remainder thereof to park some 18 vehicles which the Applicant envisages will be the private vehicles of persons who participate in tours to and of the micro-distillery.
39. Business Zone 3 of the local business zoning applies to this property. Its use as a parking

garage or a warehouse is neither a primary right nor a consent use.

40. The application is silent on the parking of vehicles that do not belong to prospective customers such as delivery of service vehicles or the vehicles of staff. These vehicles parking at No. 16 Central Road would have the effect of limiting the number of customer parking to less than 12. If the Municipality is to properly apply the parking regulations in the zoning scheme, it would not allow street parking as this would deprive the customers of other businesses to access to their business premises.
41. Should the municipality not refuse the applications for the reasons stated in this objection, it should not consider them in the absence of an appropriate application for approval by the Applicant to use No. 16 Central Road as a parking garage and for outside parking.

NEGATIVE ENVIRONMENTAL IMPACTS

42. The Applicant's contention that an environmental authorization is not necessary to enable it to use the farm as a micro-distillery is based on a letter by the Provincial Department of Environmental Affairs and Development Planning ("DEA&DP") dated 26 January 2018 that, in paragraph 4 thereof, gives the reason, why DEA&DP was of the opinion that an environmental authorization is not required. The reason given is that- *"... the proposed conversion of existing stables and extension thereof will not result in the triggering of any listed activities in terms of the NEMA EIA Regulations, 2014 (as amended), as the development footprint within 32m of identified wetlands does not fall within the core area of the Kogelberg Biosphere Reserve and is below the applicable threshold."*
43. It is submitted that, in 2018 the DEADP must have only been informed about the extension of the disused stable, and not about the other activities on the farm that the Applicant considers to be necessary for the stable to be used as a micro-distillery. Had the DEADP been informed of these other activities, namely the damming of the spring and the use of the well-water it is submitted that it would have informed the Applicant that an environmental authorization was in fact necessary.
44. The Municipality has been informed that there is a wetland on the farm, and, as the use of the disused stable is an activity occurring within 32 metres of a wetland, an environmental authorisation is necessary. The letter of Ms. Johns, an environmental expert, of 2 June 2021 that informs you of this, together with the attached wetland map and aerial photographs is attached at "D."
45. The DEADP appears to have been informed of the damming of the spring after it had issued its letter of 26 January 2018. Upon being informed of this alleged unlawful activity by the Applicant,

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DEADP required it to apply to "legalise" this unlawful activity in terms of Section 24(G) of NEMA. Evidence hereof is the Public Participation Process Notice that was published in the Overstrand Herald of 12 November 2020, a copy whereof is attached at "D."

46. Accordingly, since 26 January 2018 the DEADP has clearly identified negative environmental impacts of using the disused stable as a micro-distillery on the farm.
47. As it is a trite and basic principle of planning, heritage, and environmental legal regimes that approvals for land uses regulated by these laws must be integrated, it would be irregular for the Municipality to consider this application without knowing the attitude of DEA&DP at the present time to the proposed activity on the farm.

WASTE

48. The Applicant represents that a great deal of the solid waste produced by the use of the stable as a micro-distillery will be fed to farm animals. This requires the issue of permits from the Department of Agriculture. If the permits are not granted, on the Applicant's own version, the solid waste will have to be dumped on the farm on environmentally sensitive fynbos, in the buffer zone of the Biosphere where it will attract wildlife exacerbating the problems that already exist.
49. It is accordingly submitted that it would likewise be irregular for the Municipality to further consider consenting to these applications until the attitude of the Department of Agriculture is known regarding the Applicant's intention to feed solid waste to farm animals.

THE USE OF ALIEN WOOD ON THE FARM AS FUEL

50. The Applicant's intention to use the alien wood on the farm as fuel with the operation of the micro-distillery is cited as a positive effect on the environment.
51. The alien vegetation on the Applicant's farm is finite and will be utilized within a short period of time, whereafter alternative fuel must be brought to the micro-distillery. No information is furnished as to either the nature of this alternative fuel, where it will be sourced, how it will be transported and delivered to the farm, and where and under what conditions it will be stored on site. The Applicant has not addressed the fire hazard that this will create.

WATER

52. The letter by the Breede-Gouritz Catchment Management Agency ("CMA") attached to the

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application is not a water use licence. It simply informs the Applicant of the maximum volume of ground water that may be extracted from the farm and used for industrial purposes. It directs the Applicant to apply for a water use licence, and informs it that – *"Should any activities take place within the regulated area of a water course, application will have to be made for (a) Section 21(c) and (i) water use which must include the Risk Matrix and a Fresh Water/Wetland Impact Assessment Report."*

53. As the Applicant intends using the water from the natural spring that flows into a wetland on the farm that it has dammed, it will require a Section 21(c) and (i) authorization. It is also highly likely that the damming of the well by the Applicant is also unlawful in terms of our national water legislation.
54. Accordingly, it would be irregular for the Municipality to consider this application before the Breede-Gouritz CMA has considered applications by the Applicant for a water use licence and Section 21 Consent, as, should either be refused, this application should also be refused.

LIQUOR LICENCE

55. The Applicant's contention in the last paragraph on page 14 of the application that a liquor licence was granted but has since lapsed is not true. The liquor licence application was in fact refused. A copy of the refusal is attached at "E." If the Municipality grants this application, a liquor licence may still be refused. As pointed out in paragraph 6 above, the Municipality's decision will still stand as a precedent for other inappropriate applications.
56. In terms of our liquor licencing laws a micro-distillery is permitted to produce up to 2 million litres per annum. If a liquor licence were to be granted, and if the Municipality approves these applications, the production, storage, and transport of nearly 2.7 million bottles of alcohol to and from the Applicant's farm will have major adverse planning and environmental impacts.

THREAT TO ENDANGERED BIRD SPECIES

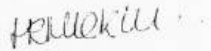
57. PBRA supports and endorses the objection submitted by Birdlife Overberg as one of its grounds of objection.

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CONCLUSION

58. On the basis of the above grounds of objections, PBRA submits that the application for the removal of the title deed restrictions, consent use and departure should be refused.

Yours faithfully,



H R Morkel
Secretary of the Pringle Bay Ratepayers' Association
for and on behalf of the Chair and Vice Chair

From: H van der Stoep <hvdstoep@overstrand.gov.za>
Sent: [REDACTED]
To: [REDACTED]
Subject: RE: PORTION 134 (A PORTION OF PORTION 133) OF THE FARM HANGKLIP NO 559

"A"

More [REDACTED]

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Case Number: 7139/03. Then in July 2001 the Overberg District Municipality handed the administration of farms and small holdings which were outside the urban edges of towns, but within the boundaries to the Overstrand Municipality.

In the mentioned case, the Municipality did an allocation of Portion 95/559 as Agricultural 1 zoning due to the Title Deed conditions. The court found that it is incorrect, LUPO 1986 at that stage indicated that Council should have

determined what the utilisation of the subject property was at 1 July 1986 (the date when the Land Use Planning Ordinance, Ordinance 15 of 1985, came into effect), Section 14. (1) of the mentioned Ordinance.

Due to the abovementioned a category was created Rural Zone 2: Conservation Usage to accommodate the holdings zoned Undetermined at that stage. The Department of Agriculture should give an indication whether the properties were excluded after 1994. The Municipality deals with this holdings as Undetermined and give the Rural Zone 2: Conservation Usage on request.

Regards

hanneen

Hanneen van der Stoep
Senior Town and Regional Planner
Overstrand Municipality
e-mail; hvdstoep@overstrand.gov.za
Tel: 028-3138906

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"B"
X

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO.: 17268/2008

CAPE TOWN: TUESDAY, 18 NOVEMBER 2008
BEFORE HIS HONOURABLE JUSTICE DAVIS

In the *ex parte* application of:

GERHARD FRANCOIS KIRSTEN

Applicant

(Application for the removal of a title deed restriction)

DRAFT ORDER

The Court having read the documents filed of record and having heard representations from counsel:

IT IS ORDERED THAT:

1. The application is postponed to 26 January 2009.
2. The applicant is directed, if he desires to pursue this application, to supplement his papers by filing an affidavit and/or conveyancer's

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2

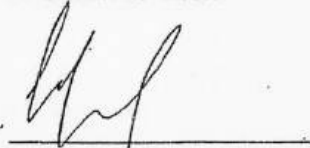
certificate by no later than 2 December 2008 which serves to fully inform the Court about;

- 2.1 which property owners have or may have rights by virtue of the title condition which he seeks to have removed, and
 - 2.2 which of the property owners contemplated in sub-paragraph 2.1 above are the owners of the erven immediately surrounding erf 3371, Betty's Bay, in the Municipality of Hangklip/Kleinmond, Division Caledon, Western Cape Province, and
 - 2.3 which ratepayers organisation(s) represent the property owners contemplated in sub-paragraphs 2.1 and 2.2 above.
3. A copy of the Notice of Motion filed of record in this application, together with a copy of this order, is to be sent by pre-paid registered post to the owners of all the erven contemplated in sub-paragraph 2.2 above at the address to which their rates accounts are sent by the Overstrand Municipality.
 4. A copy of the Notice of Motion filed of record in this application, together with a copy of this order and the affidavit or certificate mentioned in paragraph 2 above, is to be served on the ratepayers' organisation(s) contemplated in sub-paragraph 2.3 above
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5. A copy of the Notice of Motion filed of record in this application together with a copy of this order is to be published, by no later than 19 December 2008 in both English and Afrikaans;
- 5.1 Once only in the Government Gazette, and
- 5.2 Twice, with an interval of one week, in the Overstrand Herald newspaper.
6. That the applicant shall obtain, and cause to be filed prior to the hearing of this application, the Report from the Registrar of Deeds, Cape Town.

BY ORDER OF COURT



COURT REGISTRAR

Barry Nortje Attorneys
GORDON'S BAY
c/o 42 Fairbridge Arderne & Lawton Inc
CAPE TOWN

/ec



**Western Cape
Government**
Environmental Affairs and
Development Planning

86/630 "C"
Head of Department
Mr. P van Zyl

REFERENCE: 15/3/1/4/E2/31/Farm 559/203, Pringle Bay
ENQUIRIES: G. Williams

Mr. G. E. Williams
Chennells Albertyn
Attorneys, Notaries & Conveyancers
P.O. Box 78
Newlands
7725

Dear Mr. Williams

OVERBERG DISTRICT: OVERSTRAND MUNICIPALITY: REMOVAL OF RESTRICTIONS ACT, 1967 (ACT 84 OF 1967): FARM 559/203, PRINGLE BAY

1. Your letters dated 9 and 10 May 2017 refer.
2. We were requested to instruct the applicant to search the records of the office of the Register of Deeds, to identify all owners of properties that were developed by Hangklip Beach Estates, and serve a notice of its intention to apply for the removal of the relevant restrictive conditions.
3. We note in this regard that the applicant submitted an application in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967) ["Removal of Restrictions Act"], and the provisions applicable to that Act apply to the application. The applicant has not applied to the Western Cape High Court for it to remove the relevant title deed conditions.
4. The Western Cape Provincial Minister of Local Government, Environmental Affairs and Development Planning ("the Minister") is the competent authority in terms of the Removal of Restrictions Act for pending applications.
5. The relevant title deed condition in this matter provides as follows:

"SUBJECT to the following special conditions contained in Deed of Transfer No. T.35725/1969 imposed by Hangklip Beach Estates Limited for its benefit and for its Successors in Title as owner of the remainder of the said Portion 45 of the farm "Hangklip" No. 559, Caledon: Extent 127,3693 morg and held by Certificate of Registered Title No T. 5789/1957: ..."
6. We note your request for each property owner in each settlement developed by Hangklip Beach Estates Limited to be identified and served with a notice of this application.

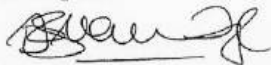
8th Floor, 1 Dorp Street, Cape Town, 8001
tel: +27 21 483 4790 fax: +27 21 483 3016

Private Bag X9086, Cape Town, 8000
www.westerncape.gov.za/eacp

87/1630

7. The Department of Environmental Affairs and Development Planning, which advises the Minister in terms of the Removal of Restrictions Act, is not in agreement with the above interpretation. In this regard, we submit that it is clear from the wording of the title deed condition that it was imposed in favour of the company, Hangklip Beach Estates Limited, and any successors in title, specifically as owner, for the remainder of Portion 45 of the farm "Hangklip" No. 559, Caledon. To interpret the above condition as being in favour of each development developed by Hangklip Beach Estates Limited no matter where such development occurs within South Africa would be illogical and a legal absurdity. Further to the above, we are of the view that the above restriction against the title deed constitutes a praedial servitude established over the servient tenement for the benefit of the dominant tenement, namely the remainder of Portion 45 of the farm "Hangklip" No. 559, Caledon.
8. Consequently, we are in agreement that the successors in title to the remainder of Portion 45 of the farm "Hangklip" No. 559, Caledon are the relevant parties required to be notified of the application. In this regard, we confirm that we intend instructing the applicant to identify and serve a notice of the application on such parties.
9. We note further that Hangklip Beach Estates Limited no longer exists as a legal entity.
10. We will, nevertheless, ensure that your correspondence is brought to the attention of the Minister when he executes his mandate.
11. We trust that you will find the above to be in order and be guided accordingly.

Kind regards



P VAN ZYL
HEAD OF DEPARTMENT

DATE: 14.07.2017

88/630

ENDORSEMENT

The Municipal Manager
Overstrand Municipality
Hermanus Administration
P.O. Box 20
HERMANUS
7200

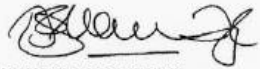
For attention: H. van der Sloep
Your reference: PIn 203 of 559, KHANG (2965)

Copy for your information.

ENDORSEMENT

I.C. @ Plan
Private bag X15
Somerset West
7129

For attention: Ingrid Germishuys



HEAD OF DEPARTMENT

DATE: 14.07.2017

89/630 "D"

58 Seventh Str.
KLEINMOND
Cell: 073 810 0695
amidajohns@gmail.com

02 June 2021

Overstrand Municipality
16 Paterson Str.
Hermanus
Tel: 028 3132093
loretta@overstrand.gov.za

Attention: Loretta

RE: PORTION 141 (PORTION OF PORTION 133) OF FARM HANGKLIP No.559, CALEDON DIVISION: APPLICATION FOR REMOVAL AND AMENDMENT OF RESTRICTIVE TITLE DEED CONDITIONS, CONSENT USE AND DEPARTURE: PLANNING PARTERS (obo Free Life Trust).

As a former Environmental Impact Assessor and Botanical Consultant within the Kogelberg Biosphere Reserve area I would like to draw your attention to a potential misrepresentation of the wetland area on Portion 141 of Farm Hangklip 559 with respect to the on-site dam and proposed distillery development activity.

As seen on the National Freshwater Ecosystems Priority Areas (NFEPA) and updated National Wetland Map 5 (NWM5) map Attachment 1, the wetland mapping has excluded the transformed area of Portion 141 from the natural continuation of a depression wet zone. This exclusion is mostly likely an error due to the removal of the natural indicative vegetation cover and the water uptake from the planted Eucalyptus trees. It is unlikely to have been ground truthed with soil sampling which may have indicated that this as a continuous wetland area. The filling of the new dam with fresh water would also indicate it is a wetland with surface or near surface water.

It would thus seem prudent to request the further investigation of this area as a potential wetland by a freshwater specialist in light of the ongoing and proposed development activities and the relevance of NEMA regulations Listing Notice 1 as well as Point 7 of the 2018 comments by the Breede-Overberg Catchment Management Agency (BOCMA) that states " *should any activities take place within the regulated area of a watercourse, application will have to be made for Section 21 (c) and (i) water use which must include the Risk Matrix and a Freshwater/Wetland Impact Assessment Report*". The National Water Act of 1998 defines a watercourse to include wetlands.

Further, considering the NFEPA/NWM5 as it is presently mapped the new building activities, as seen on google maps 2021 attachment 2 below, appear to be occurring within 32m of the wetland and thus triggering NEMA regulations.

Your consideration of the above comments would be appreciated.

Regards

Amida Johns

90/630 " E "

Overstrand Herald

12 November 2020

Bladsy 15

PUBLIC PARTICIPATION PROCESS: NOTICE

Application property: Portion 141 of the farm Hangklip no.559, Pringle Bay

Location: Farm portion 141, Hangklip Road, Rooi Els

Applicable legislation:

Section 24G application in terms of Section 49A (1) (a) of the National Environmental Management Act, 1998 (Act 107 of 1998) ("NEMA").

Listed activity: The unlawful construction of a dam.

A Public Participation Process is required.

Applicant: Mr. L. Elves

Invitation to interested and affected parties:

Contact the consultant if you require any further information about the application or if you wish to register as an interested and affected party.

Please submit initial comments by 30 November 2020.

Public meeting Thursday 10 December 2020 at 11am at farm shed.

Contact details of the environmental consultant: Green Africa Group, PO Box 49, Somerset West, 7129.

Office contact 087 153 1736. Email: info@greenafricagroup.com / www.greenafricagroup.com

GREEN AFRICA GROUP

OVERSTRAND

TENDER NO. SC2153/2020	TENDER NR. SC2153/2020	UQIKELELO- XABISO NO.SC2153/2020
<p>Tenders are hereby invited for the Supply and Delivery of Swimming Pool Chemicals for a Contract Period Ending 30 June 2023.</p> <p>Tender documents, in English, are obtainable from Wednesday, 11 November 2020, at the offices of the Supply Chain Management Unit, Overstrand Municipality, Magnolia Avenue, Hermanus from Ms Rita Neehling, Tel. 028 313 8084, between 06h30 and 16h30 upon payment of a tender documentation administration fee of R207-00 per set. Alternatively the document may be downloaded free of charge from the website: www.overstrand.gov.za.</p> <p>Sealed tenders, with "Tender No. SC2153/2020: Supply and Delivery of Swimming Pool Chemicals for a Contract Period Ending 30 June 2023" clearly endorsed on the envelope, must be deposited in Tender Box No. 4 at the offices of the Overstrand Municipality, Magnolia Avenue, Hermanus. Bids may only be submitted on the bid documentation issued by Overstrand Municipality.</p> <p>The closing date and time of the tender is on 11 December 2020 at 12h00 and tenders will be opened in public immediately thereafter in the Supply Chain Management Committee Room, Hermanus Administration.</p> <p>Please refer enquiries to Ms. B Plaattjes at e-mail: bplaattjes@overstrand.gov.za and/or telephone number: 028 313 8921.</p>	<p>Tenders word hiermee ingewag vir die "Supply and Delivery of Swimming Pool Chemicals for a Contract Period Ending 30 June 2023".</p> <p>Tenderdokumente, in Engels, is verkrygbaar vanaf Woensdag, 11 November 2020, by die Vorsieningekantoor alreestuurseenheid, Overstrand Munisipaliteit, Magnolielaan, Hermanus vanaf Me Rita Neehling, Tel. 028 313 8084 tussen 06h30 en 16h30 na betaling van 'n tender dokumentasie administrasie fooi van R207-00 per stel. Alternatiewelik mag die dokument gratis afgelaai word vanaf die webblad www.overstrand.gov.za.</p> <p>Versaëde tenders duidelik gemerk "Tender Nr. SC2153/2020: Supply and Delivery of Swimming Pool Chemicals for a Contract Period Ending 30 June 2023" op die koevert, moet geplaas word in Tenderbus Nr. 4 by die kantore van die Overstrand Munisipaliteit, Magnolielaan, Hermanus. Tenders mag slegs ingedien word op die tenderdokumentasie uitgereik deur Overstrand Munisipaliteit.</p> <p>Die sluitingsdatum en -tyd van die tender is 11 Desember 2020 om 12h00 en tenders sal onmiddellik na afloop van die sluitingstyd in die openbaar oopgemaak word in die VKB Komiteekamer, Hermanus Administrasie.</p> <p>Navrae kan gerig word aan Ms. B Plaattjes by e-pos adres: bplaattjes@overstrand.gov.za en/ of telefoonnommer 028 313 8921.</p>	<p>Kucelwa izinkhi-xabiso: "Supply and Delivery of Swimming Pool Chemicals for a Contract Period Ending 30 June 2023".</p> <p>Amawebhu, abhalwa ngesiNgesi, ayalumanaka ukusikelela NgoLwesithathu 11 Novambha 2020, kwi-ofisi yoLawulo Lwentango ku-Masipala we-Overstrand, eMagnolia Avenue, ku Nkszn. Rita Neehling eHermanus; Nombolo. 028 313 8084, phakathi ko 06h30 no 16h30, usakuhlalwa indawulo yokuthatha imxaxheba kwisinkhi-xabiso eyi R207-00 iseti. Kungenjalo, amadwebhu ayafumaneka kwi webhusayithi edl: www.overstrand.gov.za.</p> <p>Izinkhi-xabiso esitywiniweyo kwabhalwa, izinkhi-Xabiso "No. SC2153/2020: Supply and Delivery of Swimming Pool Chemicals for a Contract Period Ending 30 June 2023" ibhalwe ngokucacileyo kwirwulophu, mayifakwe kwi Bhokisi yeZinkhi-maxabiso 4 kwi-ofisi zika-Masipala wase-Overstrand, eMagnolia Avenue, Hermanus. Izinkhi-maxabiso zingafakwa kumawebhu akhulshwe ngu Masipala wase-Overstrand.</p> <p>Umhla nexesha lokuhlala kwezinkhi-xabiso yi 11 Desemba 2020 ngo 12h00 kwaye ziya kuvulwa ngokukhawuleza kwiGumbi laKomiti, loLawulo Lwetyathango Lwentango, kuLawulo lwase Hermanus.</p> <p>Uceda unxibelelana no Nkszn. B Plaattjes kulo ameyithi lthi: bplaattjes@overstrand.gov.za kunye okanye inombolo yomxeba 028 313 8921</p>
<p>INBEPHAKA: COMMUNITY SERVICES</p>	<p>INBEPHAKA: GEMEENSKAPDIENSTE</p>	<p>UMONGAMELI: WENKONZO ZOLUNTU</p>



WESTERN CAPE
LIQUOR AUTHORITY

Physical: 3rd floor | Sunbel Building | 3 Old Paarl Road | Bellville | 7530
Postal: Private Bag X6 | Santlambhof | Bellville | 7532
Email: Liquor.Enquiries@wcla.gov.za
Tel: +27 (0) 21 204 9700 | www.wcla.gov.za

91/630

" F "

Reference number: 2017/1603/
Enquires: Kullwano Maphike

Date: 20 August 2020

Saunders Attorneys
P.O. Box 1742
CAPE TOWN
8000

APPLICATION IN TERMS OF SECTION 36 OF THE LIQUOR ACT, ACT 4 OF 2008:

PREMISES NAME: The Pringle Rock Distillery

MAGISTERIAL DISTRICT:

Dear Sir/Madam

Your application lodged 27 October 2017 refers.

The said application was **REFUSED** by the Liquor Licensing Tribunal for the following reasons:

- A) licence applications has to satisfy the requirement set in section 36(1)(b) that a zoning certificate or a copy of a planning application submitted to the municipality concerned in terms of applicable planning legislation. There is no proof of the correct zoning or proof that a land use application is in place.

In terms of the provisions of the Western Cape Provincial Liquor Act, Act 4 of 2008, and the Western Cape Liquor regulations amended 01 June 2017, you are hereby informed that you may apply to the Western Cape Liquor Authority to request further reasons for the decision taken by the LLT to refuse the said application, by following the procedures as stipulated in Regulation 34(1) to (2).

Regulation 34(1) to (4) stipulates the following:

- (1) A person who has lodged -
(a) an application;
(b) an objection; or
(c) representations.

In terms of the Act any person who feels aggrieved by a decision made by the Liquor Licensing Tribunal or the Presiding Officer in connection with that application or objection or those

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representations, referred to as the appellant for the purpose of this regulation, may request the Liquor Licensing Tribunal or the Presiding Officer, as the case may be, to furnish reasons for the decision.

(2) The Presiding Officer or the Licensing Tribunal, as the case may be, must within 21 days after receipt of the request for reasons, furnish the reasons for the decision, as contemplated in subregulation (1).

Furthermore in terms of the provisions of the Act, Act 4 of 2008, you may also apply to the WCLA to either appeal or review the decision taken by the LLT by following the procedure as set forth in Regulation 34 (5) (a) to (b) which stipulates the following:

(5)(a) An appellant must lodge with the Authority a notice of appeal or an application for review in the form of Form 29 in Annexure 3 within 20 days of receipt of the reasons for the decision being communicated to him, her or it in writing or, if during those 20 days reasons are requested in terms of subregulation (1), within 21 days of the reasons having been furnished in terms of subregulation (2).

(5)(b) An appellant must, simultaneously with the lodging of the notice referred to in subregulation (5) serve copies on each interested party affected by the notice of appeal or application for review and provide the Authority with proof that the notice or application has been so served.

Any enquiries with regards to this correspondence can be forwarded to the Secretariat of the LLT, Mr Johan Dreyer, Tel: (021) 204 9802.

Yours faithfully



Western Cape Liquor Authority



WESTERN CAPE
LIQUOR AUTHORITY

93/630
Physical: 3rd floor | Sunbel Building | 3 Old Paarl Road | Bellville | 7530
Postal: Private Bag X6 | Sunlamhof | Bellville | 7532
Email: Liquor.Enquiries@wcla.gov.za
Tel: +27 (0) 21 204 9700 | www.wcla.gov.za

Reference number: 2017/1603 /

Date: 20 August 2020

Enquiries: Kuitwano Maphike

SA Police Services (Kleinmond)
P.O. Box 12
KLEINMOND
7195

APPLICATION IN TERMS OF SECTION 36 OF THE LIQUOR ACT, ACT 4 OF 2008:

PREMISES NAME: The Pringle Rock Distillery

MAGISTERIAL DISTRICT:

For attention: ADJ. OFF. CB Lakey

Dear Sir/Madam

Your application lodged 27 October 2017 refers.

The said application was **REFUSED** by the Liquor Licensing Tribunal.

Yours faithfully

A handwritten signature in black ink, appearing to be 'C. Lakey', written over a circular stamp or seal.

Western Cape Liquor Authority

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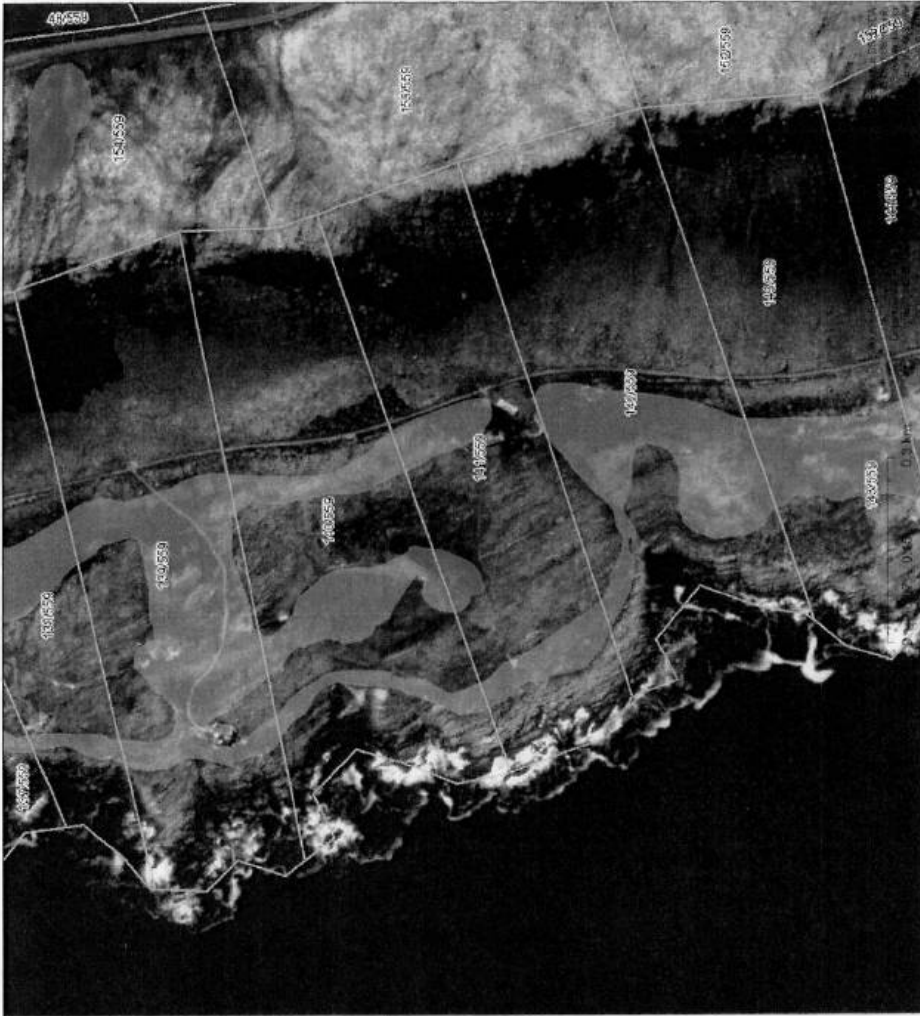
Wetland Map - 141/559

Legend

-  Farm Portions
-  Wetlands (NWMS)
-  Depression wetland
-  Floodplain wetland
-  Seep wetland

Scale: 1:9 028
Date created: June 2, 2021

Committed with Capri Farm & Agriplan





3 June 2021

TP- A Theart
(Hild Stoep)

Municipal Manager

P O Box 20
Hermanus
7200Email: Loretta@overstrand.gov.za

FILE NO: Ptn 141/559
Hangklip
SCAN NO:
12
COLLABORATOR NO: 1547527

**Removal of Restrictive Title Deed Conditions, Departure and Consent Use –
Portion 141 of the Farm Hangklip 559: MN 70/2021**

I wish to strongly object to the above application.

I am a resident of Porter Drive, Rooiels and have lived here for the past 3.5 years. I purchased a residence here because of the quiet nature of the village, and the natural beauty that surrounds us. I also took note that I am located a long way from infrastructure such as industrial areas and large commercial complexes.

The residents of Rooiels value the serenity that the village offers.

Access to Portion 141 of the Farm Hangklip is directly in front of my house, being Porter Drive. Although the applicant claims that access to the distillery will be via the Pringle Bay side, this is **not law enforceable and is meaningless.**

The increased traffic flow will certainly have a negative impact for the Residents of Porter Drive. Even more concerning, is that the distillery will have a Gin and Whiskey tasting facility, and we will experience, without doubt, inebriated drivers passing through Rooiels. This is of major concern as children and many elderly folk walk the quiet streets of the village.

Other Concerns

- **Fire Hazard:** The prevailing summer South Easterly winds are surely a concern for everyone here. We do not want a repeat of the devastating wild fires experienced here in the past. Distilleries are a known fire hazard due to the production of alcohol products. The distillery property is also covered in large alien trees, again a huge fire hazard.
- **Agriculture vs. Industry:** A distillery is not an agricultural activity, utilising the products of this farm. This is an industrial operation, requiring the raw materials to be driven in, and product to be driven out. It is totally inappropriate for this location.
- **Pollution and Waste:** If not properly handled, this will have a devastating impact on our very sensitive and unique fauna and flora and wetlands in the area. Waste water

- 7 JUN 2021

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management needs a robust plan, with law enforcement. How would this be undertaken? Where is the waste water management plan?

- **Noise:** The distillery lends itself to being a venue for tastings, parties, weddings and the like. This comes with noise in a very quiet and pristine area. Sound travels great distances in this area with our summer South Easterly winds carrying the sounds towards Rooiels.
- **Nature Lovers and Birders.** The increased traffic along the **single lane** access road through the smallholdings will disturb our wildlife and birdlife and result in a reduction of tourism to this beautiful and biodiverse area of South Africa. After all, the tourists I have met here, are nature loving people and are here to enjoy our biodiversity.
- **Smell:** Wood burning is the fuel for the distillery according to the application. This will no doubt have an impact on the surrounding area, in terms of smoke fallout and gaseous odours. Once again, with our prevailing winds, the smell emanating from distillery production and its waste will adversely affect residents and tourists to this area. There will be long term detrimental effects to the local fynbos.
- **Traffic:** As stated, there will be through traffic using Porter Drive in Rooiels. It is a public road that the distillery cannot control, hence the assurances from the proposed distillery are meaningless.
- **The assurances made by the applicant are baseless and cannot be enforced.**
- **Sale of the Distillery** If the applicant sells the property, the new owner would not be obliged to maintain the baseless assurances made by the proposed developer.
- **Capture of the local Rate Payers Association (RERA) and Rooiels Conservancy (REC)** The applicant has for the first time ever suddenly been elected onto both of the committees in Rooiels. There was a huge campaign to get him elected (one wonders why?) and this has resulted in the individual committee members now having to recuse themselves to objecting to the application.
- **Wetlands.** Attached below is a letter which shows compelling evidence that further studies need to be undertaken
- **Building extension to the "barn":** The applicant submitted planning permission to extend the existing barn. Approval was given by OM. This now appears to be part of the distillery, and will not be a barn. This requires a new approval for the building plan. Also, the new addition has already been built and it appears to be a tasting venue, being double story with views of the ocean. A barn?
- **Oversized Dam:** I visited the premises of Portion 141 on an open public participation appointment, where a presentation was provided to regularize an illegally built, larger than legal dam. During the presentation, no mention of the distillery was made. The dam has very scenic views and lends itself to functions entertaining large crowds. This is alarming and must be considered. I attach a more detailed account of the visit below.
- **Alien Vegetation:** I noted during my site visit, many large alien trees and kikuyu grass, all being allowed to flourish in an ecologically sensitive biosphere.

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- **NB The majority of the Rooiels Ratepayers Association (RERA) members have objected to the proposed distillery in a census undertaken by the association.**

To conclude, the approval of a distillery in an ecologically sensitive area such as this would be a huge oversight by the Overstrand Municipality, and would bring no benefits to the majority of residents living in the Kogelberg biosphere.

It brings risks in terms of fire, and possible liability claims against the OM should losses occur.

In view of the above, this application must not proceed.

Sincerely,
Gavin Lundie
295 Porter Drive
Rooiels

99/630

Appendix A**Below is supplementary information on the site visit to the illegal oversized dam.**

Attention the Town Planner.

This objection is supplementary to the objections already lodged individually by each of us separately. It is sent to you because we have only recently been made aware of the legislation with respect to wetlands when building a dam and is in respect of the retroactive approval of the dam on Portion 141 of Portion 133 of Farm Hangklip no 559.

On 30th November Gavin Lundie and Kathleen Leresche responded to a public invitation to attend a presentation on the unlawful construction of a dam that had been built without approval and was now applying for retroactive permission. We were the only two members of the public that attended.

It was made very clear to us that the dam was drawing all its water from seepage. It was obviously not on a stream and they stated that they would not be drawing water from underground to fill the dam even in dry summers. It was obvious that the area is surrounded by wetland and that seepage was coming from under the kikuyu grass surface.

The distillery was never mentioned in respect to the dam. We were told that the dam was constructed because it had been an unsightly old rubble dump. It was portrayed as part of their efforts to beautify their surroundings and that the water was there for birds and animals and would be used to water the vegetable garden but had no other purpose. We queried the problem of vegetables being grown without extensive protective fencing but were advised that they already had a large garden and that they are not troubled by baboons as neither the Rooiels nor the Pringle Bay troop ranges reach them. We pointed out this could become a problem and that they should avoid creating such a situation. We also queried how close the dam bordered on what was obvious wetland to the south east but were assured it is not drawing from there and that the dam is not affecting the wetland.

It is only now that we learn from maps of the area that, in fact, the entire area is probably a wetland, with the kikuyu and gum trees draining the surface water and making it less obvious that it is a wetland. We were ignorant and assumed that the Environmental consultant was presenting the facts. Furthermore we were not aware that this dam is constructed almost on top of the boundary line.

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At no stage were we advised that this dam was to be used as a 'fire pool' for a distillery. In fact we were the first to raise the issue of the distillery when we explicitly stated that we were most definitely not in any way condoning a distillery which had been applied for in the past. But we were not inclined to object for the sake of objection and that as we were not aware of any reason to object to the dam we would not object provided it was otherwise in compliance with national, provincial and municipal regulations. The owner then asked us why we were so against a distillery and we said that we were not going to start discussing that issue in this setting and the environmental consultant also quickly deflected the owner from that line of questioning.

We have already submitted our objections to the application for removal of title deed restrictions and consent use for a distillery. We did not see the point of objecting just to be obstructive and so indicated we did submit this additional information because we were very disturbed to learn

- a) that it is against the regulations for the dam to be so close to what is clearly a wetland which is the source of the seepage for the dam
- b) that this dam is actually to be used as the fire pool for the distillery and we were not told the truth at the meeting.

Yours sincerely,

Kathleen Leresche and Gavin Lundie

101/630

Appendix B
Letter from Amida Johns regarding Wetlands.

58 Seventh Str.
 KLEINMOND
 Cell: 073 610 0666
amidajohns@gmail.com

02 June 2021

Overstrand Municipality
 16 Paterson Str.
 Hermanus
 Tel: 028 3132065
loreba@overstrand.gov.za

Attention: Loretta

RE: PORTION 141 (PORTION OF PORTION 133) OF FARM HANGKLOP No.559, CALEDON DIVISION: APPLICATION FOR REMOVAL AND AMENDMENT OF RESTRICTIVE TITLE DEED CONDITIONS, CONSENT USE AND DEPARTURE: PLANNING PARTERS (obo Free Life Trust).

As a former Environmental Impact Assessor and Botanical Consultant within the Kogelberg Biosphere Reserve area I would like to draw your attention to a potential misrepresentation of the wetland area on Portion 141 of Farm Hangklop 559 with respect to the on-site dam and proposed distillery development activity.

As seen on the National Freshwater Ecosystems Priority Areas (NFEPA) and updated National Wetland Map 5 (NWM5) map Attachment 1, the wetland mapping has excluded the transformed area of Portion 141 from the natural continuation of a depression wet zone. This exclusion is mostly likely an error due to the removal of the natural indicative vegetation cover and the water uptake from the planted Eucalyptus trees. It is unlikely to have been ground truthed with soil sampling which may have indicated that this as a continuous wetland area. The filling of the new dam with fresh water would also indicate it is a wetland with surface or near surface water.

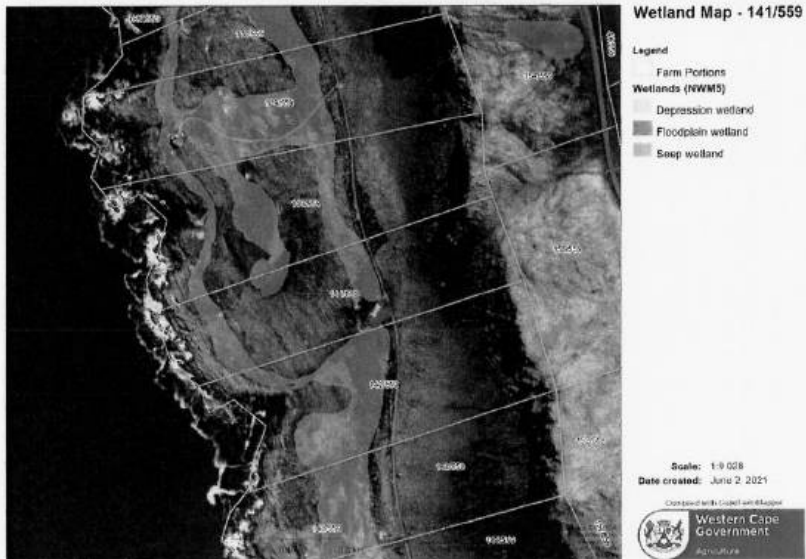
It would thus seem prudent to request the further investigation of this area as a potential wetland by a freshwater specialist in light of the ongoing and proposed development activities and the relevance of NEMA regulations Listing Notice 1 as well as Point 7 of the 2015 comments by the Breede-Overberg Catchment Management Agency (BOCMA) that states "... should any activities take place within the regulated area of a watercourse, application will have to be made for Section 21 (c) and (i) water use which must include the Risk Matrix and a Freshwater/Wetland Impact Assessment Report". The National Water Act of 1996 defines a watercourse to include wetlands.

Further, considering the NFEPA/NWM5 as it is presently mapped the new building activities, as seen on google maps 2021 attachment 2 below, appear to be occurring within 32m of the wetland and thus triggering NEMA regulations.

Your consideration of the above comments would be appreciated.

Regards
 Amida Johns

102/630



The Biodiversity Conservancy

biodiversityconservancy@gmail.com



The Municipal Manager
Overstrand Municipality
Hermanus

Attention: loretta@overstrand.gov.za

Dear Sir



TP-A Theart
(Hvd Steep)

**OBJECTION TO REMOVAL OF TITLE DEED RESTRICTIONS, CONSENT USE AND DEPARTURE:
PORTION 141 OF THE FARM HANGKLIP NO 559
Your reference Municipal Notice 70/2021**

The Biodiversity Conservancy has recently bought the erf 324 Rooiels which comprises 23 ha including part of Klein Hangklip. We are presently awaiting registration in the Deeds Office.

The fynbos biomes of the Biosphere Reserve (encompassing Portion 141) have been deemed important enough to be given international, national and provincial protection status.

Accordingly, very special considerations must apply when considering an application such as the present one for a distillery, shop and on-consumption facility.

1 The Proposed use of the Property (Portion 141) does not align with the Land-use character of the area

The Portion 141 falls within an area that is highly protected and worthy of conservation on a number of levels, making this development highly undesirable and extremely risky.

- 1.1 There are no adequate measures which will protect from the danger of severe environmental harm caused by accidental spillage, fumes, smoke, explosion, contamination of soil, pollution of groundwater and other accidents.
- 1.2 The "mitigation measures" proposed in an attempt to ameliorate the detrimental effect of increased vehicular traffic on the amenity value of the area, are simply impractical, inadequate, unworkable, unrealistic and unenforceable.

It is fallacious believe that the use of the Pringle Bay gate would significantly mitigate environmental damage. Such environmental damage will simply be more severe on the Pringle Bay side.

FILE NO: Ptn 141/559

Hangklip

SCAN NO:

10

COLLABORATOR NO: 1547522

1

- 7 JUN 2021

In any event, it appears that applicant has been unwilling to apply such mitigations to itself while undertaking extensive construction work on Portion 141. Applicant has almost exclusively used the Rooiels entrance during this time. We find it hard to believe, that once a distillery has been approved, that the applicant will magically become more environmentally conscious and considerate towards its neighbours.

- 104/630
- 1.3 The noise and drinking of hard liquor at the on-site consumption facility is in conflict with the character and ethos of this area and will detrimentally affect the sense of place of Rooiels and surrounds.
 - 1.4 The Property falls within nearly pristine stretch of land between Rooiels and Pringle Bay, comprising both *critically endangered* Kogelberg Sandstone Fynbos vegetation and *endangered* Hangklip Sand Fynbos. This forms an open green area demarcating the two villages and preventing both urban and industrial sprawl. A distillery has an industrial nature, notwithstanding where it is located.
 - 1.5 The Agricultural 1 Zoning of the Property is a historical anomaly and totally out of keeping with the rest of the smallholdings in this area. No *bona fide* farming activities have ever taken place on this property, nor is it suited for farming. The small size, soil, topography and nutrient poor fynbos simply cannot sustain any *bona fide* farming activity. A previous owner stabled its riding horses for a while, when the Agriculture 1 Zoning was erroneously obtained. No horse farming ever occurred on Portion 141. Horse feed had to be transported in for these animals. The anomalous zoning of Portion 141, which is already out of keeping with its surrounding area, should not be expanded and made worse, by allowing Agricultural Industry thereon.

Fragmentation has been proven to have an irrevocably negative impact on the environment. There are numerous scientific studies in the public domain to support this statement.

- 1.6 The area between Rooiels and Pringle Bay where the Portion 141 is situated has been designated as of "*Critical Biodiversity importance*" by the South African National Botanical Institute (SANBI).

Of particular importance is the fact that the area comprises a self-contained catchment system from the top of the mountain range to the sea. This presents the possibility (which has been nearly completely been lost elsewhere) of maintaining an entire intact gradient of plant communities. This is very important since the adaptation of fynbos to the low-nutrient status of the soils, makes fynbos particularly vulnerable to enrichment by fertilizers and any form of pollution.

The whole area below Porter Drive is furthermore of conservation significance due to the fact that it is an extensive seepage area / wetland. Very rare plant communities are present in a nearly continuous zone of *Erica-Osmitopsis* seepage fynbos on the area below Porter Drive between Pringle Bay and Rooiels.

Portion 141 is no exception, the area below Porter where the house and barn is located and the area around it, is a particularly clear manifestation of this large wetland.

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- 1.7 The Property falls within the Buffer zone of the Kogelberg Biosphere. The purpose of the Buffer zone is to buffer and protect the Core zone which is absolutely pristine.

It goes without saying that this is clearly not an appropriate area in which to locate an Industry - especially a particularly "dirty", noxious and hazardous Industry. It is actually acknowledged in the Provincial Spatial Development Framework Rural Areas that distilleries do have a nuisance impact.

- 1.8 The development of an Industry on Portion 141 does not fit in with Overstrand's Environmental Overlay Zoning.
- 1.9 The development of an Industry of Portion 141 does not fit in with Overstrand's Heritage Overlay Zoning and will detract from the unspoilt beauty and amenity value of the area.
- 1.10 The area in which the Property is situated is recognised in the SDF and other planning documents as an Ecological Support area. It does not make sense to locate a potentially polluting and hazardous activity in an Ecological Support area.
- 1.11 The considerations listed in 1.1 to 1.11 above, point to the fact that this is indeed an area which is widely considered of high conservation significance. It is essential that this entire area be kept as natural as possible, both for its unique conservation significance, as well as for its amenity value.

2 Applicant endeavors to circumvent the Rezoning process for its own ease and benefit.

- 2.1 In the greater scheme of things, the different types of procedures (rezoning, consent use, departure) have each been designed for a specific purpose and set out facts.
- 2.2 In this application the applicant is doing its utmost to use the consent use provision which is not at all suitable or legally applicable in these particular circumstances. (See para 3)
- 2.3 Using the wrong process has a number of unfortunate consequences for society at large (while of course benefitting the applicant). One of these unfortunate consequences is that of inadequate information regarding the land use sought and inadequate information on the potential environmental impacts. In decision on something with far-reaching consequences, the public and the Municipal Planning Tribunal simply do not have the proper facts required (as they would in the case of a rezoning).
- 2.4 Applicants should not be encouraged by town planners to try to circumvent the appropriate procedure, in this case, rezoning. The Municipal Planning Tribunal is requested not to turn a blind eye to this abuse of an inappropriate procedure. This is not only to the detriment of the environment but also to the detriment of Overstrand and all its inhabitants.

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2.5 We are saddened to see that this application contains so many misrepresentations and attempts to downplay and obscure pertinent facts. It also seems like building plans for the distillery building were applied for and approved under false pretenses. Why have they not been included in the Annexures?

3 **The proposed Distillery on this Property is clearly not allowed in terms of the definition of "Agricultural Industry" and constitutes a clear abuse of this provision.**

3.1 The definition of "Agricultural industry" refers to an enterprise for the processing of agricultural related products "*on or close to the land unit where these agricultural products are grown, harvested and raised where processing in such proximity is due to the nature, perishability and fragility of such agricultural products*". This Application falls foul of the definition of Agricultural industry in at least three respects:

3.1.1 The main component of the end products (grains) are not produced "*on or close to*" the Property, nor can this Property ever produce such products given its topography and soil. In fact, these products will have to be transported from Caledon to the Property. Any mention of "fynbos flavouring" being added on the Property is pure sophistry and has nothing to do with the essence what is proposed on the Property. Even if a little fynbos is actually used as "flavouring", this is a miniscule, arbitrary and discretionary additive. This is clearly not what has been intended in the consent use provision allowing agricultural industry.

3.1.2 To the best of our knowledge no permit has been issued by CapeNature for the industrial harvesting of fynbos on the Property, nor is it likely to be given in the light of many threatened and near threatened species occurring on the Property; e.g. *Protea compacta*, *Diastella thymeriades*, *Erica brachialis* to name but a few.

3.1.3 The definition of "Agricultural industry" furthermore requires that processing "*in such proximity*" [which it is clearly not], must be due to "*the nature, perishability and fragility of such agricultural products*". None of the products used in the Distilling process, including any so-called "fynbos flavouring" are of such fragility or perishable nature that they cannot be transported to an appropriate industrial facility. These are all products known for their long shelf life. Grain and ethanol in particular can be stored for years and fynbos is robust and lasts for weeks to no ill effect.

4 **Application for Removal of Title Deed Conditions**

4.1 **Removal of these title deed conditions are not in the public interest**

Because these title deed conditions (or at least most of them) are applicable to **all** the properties in the green belt between Rooiels and Pringle Bay, any removal of conditions would create imbalances and injustices and create spatial and environmental fragmentation. Such removal will certainly not be to the public benefit and nor in the public interest.

Section 47 of the Spatial Planning and Land Use Management Act (SPLUMA), specifically stipulates that due regard must be given the **public interest** as opposed to merely the owner's interest. There is widespread opposition to the removal of any of these title deed conditions.

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4.2 The *ad hoc* nature of this particular development is not in keeping with spirit of SPLUMA

As stated above the Agriculture 1 Zoning of the Property is already an anomaly and out of sync with the surrounding properties. This inequality and injustice will be made much worse by the removal of the title deed conditions in question while the remaining area remains subject to the very same title deed conditions.

There is no doubt that a distillery, bottling plant and tasting facility will create fragmentation of this area.

4.3 Lack of greater Social Benefit accruing and detrimental effects on Eco-tourism and economy

4.4.1 The open natural area between Rooiels and Pringle Bay is extensively used for eco-tourism purposes and is frequented on foot by various birding and botanical groups and tour groups (some of which are from overseas), which support local businesses and B&B's.

4.4.2 The area is also frequented by hikers, cyclists and runners - all who use Porter Drive on foot.

4.4.3 A potentially dangerous and noxious Industry with heavy duty delivery vehicles will greatly detract from the present eco-tourism use of the area and the amenity value of retaining the pristine and natural "sense of place" of the area.

5 Increased Fire Risk

Alcohol is a highly flammable substance and the fire risks associated with micro distilleries have been well documented - as any internet search will show. The area in which Portion 141 is situated is particularly vulnerable to fire.

As a result, the fire risk of the whole surrounding area is likely to be raised due to the proximity of the distillery with insurance premiums likely to increase for neighbouring properties.

6 Carbon Dioxide and Ethanol emissions

We are concerned about the effect of carbon dioxide and ethanol emissions by the Distillery in this sensitive area and its unforeseen detrimental effects on this Critical Biodiversity Area.

It is known that ethanol emissions cause a black fungus harmful to plants, humans and other animals. This is not mentioned in the application.

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7. Water

Distilleries are water intensive industries. This is a water scarce area. We are concerned about the long term effect on the ecology of the area of ground water being extracted from the well point and borehole on Portion 141.

It appears likely that this borehole/ well point is in the wetland which surrounds the property.

It also appears likely that the extension to the stables constitute building work within 32 m of a watercourse requiring

8. EIA Applicability Checklist

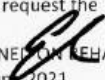
It is requested that Overstrand Municipality direct the applicant to appoint an INDEPENDENT environmental consultant (not anyone previously involved) to submit an EIA Applicability Checklist to DEA&DP.

9. The Precautionary Principle

This entails that the utmost caution should be applied by any decision making authority before authorizing something which may have irrevocable, unintended or unknown environmental outcomes. This is even more so in respect of Portion 141 where possible authorisation in terms of NEMA appear to be required. The area is of critical conservation and ecological importance.

The **incremental effect** of the distillery on the environment **over time** is another important consideration supporting the need for more studies. There is likely to be more future transformation around the distillery building which may also trigger authorization.

We request the Tribunal to **refuse** this application.


SIGNED ON BEHALF OF THE BIODIVERSITY CONSERVANCY
4 June 2021

L Gillion

109/630

From: Melinda Kitshoff SAOTA < >
Sent: Friday, 04 June 2021 15:56
To: L Gillion
Subject: Objection Letter from Karen Quested Khagram (Erf879, Anne Rd, Pringle Bay)
Attachments: ADVERTISEMENT - KHANG 141_559 (Removal Amendment Consent Departure).pdf

SAOTA

TP - A Theart
(Hvd Stoep)

Attention: Municipal Manager
 verstrand Municipality
 Email: loretta@overstrand.gov.za

Objection letter in respect of the following application:

Portion 141 (a portion of portion 133) of the Farm Hangklip No. 559, Division Caledon: Application for removal and amendment of restrictive title deed conditions, consent use and departure: Planning Partners (obo Free Life Trust)

Objection made by: Msr Karen Quested Khagram

Address: Erf 577, Anne Road, Pringle Bay
 Email: / Tel:

Interest in the application and reason for commenting:

I am the landowner of Erf 879, Anne Road, Pringle Bay.

I believe the following applications will have a negative effect on the surrounding area:

- 1) Relaxation of street building line from 30m to 23.3m towards Porter Road
- 2) Application in terms of Section 16(2)(o) of the By-Law for an Agricultural Industry to accommodate a distillery, tasting room and a farm shop/stall

Please take into consideration my concerns with regard to the specific aspects highlighted below.

Building line setback

- Setbacks are defined by the municipality for specific reasons and kept for specific benefit to the environment and the adjacent properties. Modifying the setbacks undermines the fragile ecosystems that exist against the perimeters of the property, specifically towards the water's edge, as is the case for this application.
- Although the application advises the setback is required to keep an existing building from being demolished, adjusting the building line will not prevent the owners from erecting any new structures within this new adjusted building line area.
- Seeing as construction is already envisioned the small part of the disused stable can easily demolished and set back to be within the current building line parameters.
- Allowing further buildings closer to the coastline increases general pollution, including noise and light pollution on the fragile ecosystem.

Environmental impact:

- Increased Traffic: The entrance/exit points for transport and delivery to this distillery will be the quiet, rural, gravel track between the ocean, fynbos and mountains currently used by the few homeowners in this undeveloped zone

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COLLABORATOR NO: 1547505

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(Porters Road). The fact that the area remains underdeveloped is the main reason for being so attractive for walkers, joggers, bird lovers and cyclists.

- Deliveries and access to the property for additional staff, visitors, etc. will take place via Porter Road. Porters Road not only has an impact on the environment but runs through the adjacent erven and along the Buffels River. The increase in traffic will affect all the individual property owners along this road.
- Increased traffic will have the effect of increased pollution with regard to gas emissions, general littering and light and noise pollution which all have an impacting on the pristine environment and adding a burden to the municipality with regard to assigning resources to keeping these areas litter free and protected.
- Seasonal impact
A substantial influx of foreign and local tourists especially during summer season will double the traffic impact and the impact on sewage, refuse and pollution along this fragile eco system along Porters Road and the position of the planned distillery on the coast.
- Sewage distribution and services:
Requirement for increased utilities adds a burden to the infrastructure. It needs to be considered how they would deal with onsite sewage and if the additional waste and use of sewage tanks will create additional maintenance problems for the municipality. Access for pump sewage on a farm with such remote access will not be desirable.
- Setting a precedent: The municipality should consider whether granting this application will set a precedent in having to grant similar applications to erven along the coastline adjacent to this applicant. Additional applications will have even more devastating consequences for a sustainable future, and which will be difficult if not impossible to try and prohibit or reverse.

General objections:

- The addition of a distillery will give rise to a change to general character of the coastline between Pringle Bay and Rooi Els.
- The changes brought about will impact along the full length of Porter Road and all the owners of the properties affected by Porter Road.
- The general character of Pringle Bay as a very sleepy coastal towns will be irreversibly changed where every effort has been made thus far as to not have commercial activities in this area.
- Although the owners undertake to protect the fynbos, etc they have not comprehensively explained what the benefit of their application will be to the area in general except for personal gain.
- The owners need to consider approaching their development intent with a way that could actually contribute to everybody's enjoyment, as opposed to simply upgrading this island in the middle of nowhere.
- The developer does have alternatives and it's not prudent to develop right on the coastal edge in the middle of the sensitive, fynbos environment.
- They have the option to build the distillery and develop in the new Gordon's Bay area, there's a bigger pool of population, it's less invasive, it's more of a commercial kind of area. They could also rather develop in the in the town of Betty's Bay, Pringle Bay or Rooi Els, which will at least has the effect of consolidating commercial activity, contributing to the town scape and contributing to the commercial activity of the town.

Specific comment with regard to the Removal and Amendment of restrictive title deed conditions:

- C2: This clause does not need removal; half-built structures left unattended over a period and give cause to the possibility of unwanted squatter situations.
- C3: There is no need to remove the clause for building consent if it falls with in municipal laws. It provides and added deterrent for building without the necessary consent.
- C4: As above – enforcing the building line requirements is a must with regard to the upkeep of the sensitive eco system.
- C5: Specifically in a rural area and agricultural setting it is important that the clause remain for all buildings to be of and fences to be of good design and sound construction to enforce the standards and character the original owner envisioned for the small holding. There is no reason to remove it other than to think the new owner would want to build structures of inferior quality.
- C6: I do not see what the new owners' reason could be for wanting to remove the clause with regard to the prohibition of noxious activity. Specifically, with a planned whiskey distillery this clause should remain in place.
- C8: The owner should give a more comprehensive reason for wanting to remove the clause stating that no debris, scrap, or other unsightly material shall be deposited on the land. If already enforced as a municipal law, there should be no reason for the owner to need to remove this clause other than the fact that he is planning to act in a manner prohibited by it.
- C10: The approval needed for the creation of additional points of access I believe is in staying with the protection of the surrounding fynbos and ecosystem and should remain in force.
- C11: In a rural setting this clause prohibiting the use of pit of bucket latrines is very important and should not be removed for the protection of the workers on the farm and for hygienic purposes.

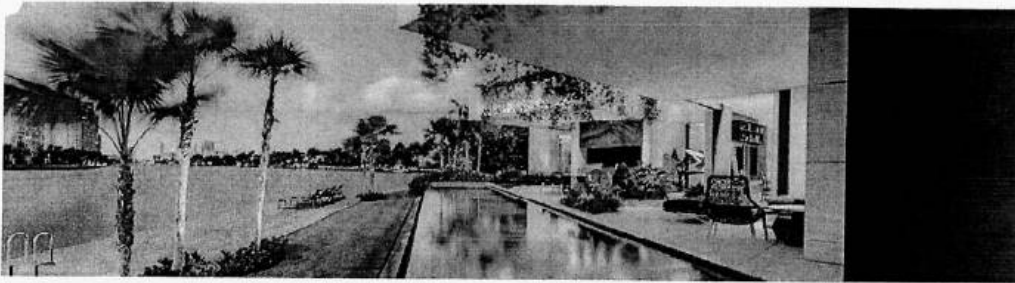
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I hope that the municipality will give serious consideration to my concerns addressed above and be assured that my objection is intended for the good of Pringle Bay as a community and protection of the surrounding eco system.

Yours faithfully
Karen Quested Khagram

Melinda Kitshoff
SAOTA

info@sacta.com
www.saota.com



109 Hatfield Street Gardens Cape Town 8001 South Africa
Directors: Stefan Antoni Philip Olmesdahl Greg Truen Philippe Fouché Mark Bullivant Logen Gordon

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The Town Planning Department
 Overstrand Municipality
 Hermanus
loretta@overstrand.gov.za

2 School End Street, Riverton ,7490

08 June 2021



PORTION 141 (PORTION OF PORTION 133) OF THE FARM HANGKLIP 559: APPLICATION FOR A
 DISTILLERY AND REMOVAL OF TITLE DEED RESTRICTIONS

OBJECTION AGAINST THE TOTAL REMOVAL OF TITLE DEED CONDITIONS

1. MY INTEREST IN THE APPLICATION

I am the owner of portion Erf 559/48 Hangklip/Rooiels. The pristine area of critical biodiversity, namely the coastal stretch which will be affected by the proposed total removal of title deed conditions, lies between Rooiels and Pringle Bay. Conservation of the area is of critical importance to the whole, wider Hangklip/Kleinmond area.

I wish to register my objection against the proposed total removal of title deed conditions on Portion 141, for the reasons set out hereunder.

I set out a possible solution in paragraph 7.

2. TWO SETS OF TITLE DEEDS FOR PORTION 133 AND PORTION 45.

2.1 REQUEST PLEASE

I request please that a uniform approach be followed by the Overstrand Municipality regarding the compliance with title deed restrictions on the smallholdings between Rooiels and Pringle Bay, even though there are two sets, distinguished from each other by the consent aspect (as set out below).

2.2 THE HISTORY

The smallholdings between Rooiels and Pringle Bay consist of two mother portions, namely Portion 133 and Portion 45, both of the farm Hangklip 559. The smallholdings are either zoned Conservation Usage, or Undetermined, and some as Agriculture, as in the case of Portion 141.

Both mother portions are designated as Critical Biodiversity Area.

Mother Portion 133 was subdivided in the 1960's into a number of smallholdings on the slope of the mountains on the landside of the mountains, and also on the seaside of the mountains.

Inland, across the trunk road, Portion 45 was subdivided into a number of smallholdings at about the same time.

As is usual for township establishment, title deed restrictions for regulating the use of the smallholdings were registered on the title deeds. Zoning scheme regulations were apparently not invented at that time.

FILE NO: PTN 141 of Farm 559
Hangklip ✓
SCAN NO:
Lambert
COLLABORATOR NO:
1548235

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Unlike the usual registration (as for mother Portion 45) of the restrictions on smallholdings in favour of both the developer, Hangklip Beach Estates Ltd, as well as in favour of all the other smallholdings in the subdivision, the restrictions on mother Portion 133 were effected only in favour of Hangklip Beach Estates Ltd.

This leaves the smallholdings between Rooiels and Pringle Bay with two sets of title deed conditions.

This, in my opinion, is not an ideal situation for a coherent conservation approach for the Critical Biodiversity Area between Rooiels and Hangklip.

3. THE DANGER OF CONSENT BY HANGKLIP BEACH ESTATES

In the application for a distillery on Portion 141, application is also made for the complete removal of title deed conditions, after Hangklip Beach Estates had recently consented to it.

Such removal might now destroy the original land planning that holds the smallholdings together and which protects the other owners from any inappropriate development.

This applies to both mother Portion 133 and mother Portion 45, as Portion 45 will not escape the effects of adverse development, detrimental to conservation, of any Portion 133 smallholdings across the trunk road from them

4. DEEDS OFFICE REQUIREMENT.

We support the view from the Deeds Office of not allowing the removal of the title deed restrictions on Portion 141 solely on the basis of the consent of Hangklip Beach Estates Ltd.

Instead, the Deeds Office now requires the consent of the Overstrand Municipality before registration of the cancellation.

5. IMPORTANT PRECEDENT WILL ALSO BE SET

In my opinion it is important now that a precedent also be set that the Overstrand Municipality needs to approve such removals of restrictions, which are otherwise applied for on the basis of consent only without motivating the desirability of having the restrictions removed.

6. THE NEED FOR DESIRABILITY TO BE PROVED

6.1 It is important that the set legal procedure and considerations be followed for the application.

6.2 I would submit that consent by Hangklip Beach Estates does not amount to the requirement of desirability (or public interest or social benefit).

6.3 Title deed conditions cannot be removed if it is not in the "public interest" (as legally defined) to do so. I find no compelling reason in the Applicant's report why the application is in the public interest.

6.4 It is important to retain as much of these title deed conditions as possible, as these conditions create the very character of a particular area. Typically most nearby properties have similar title deed conditions. It follows that any change in this status quo may have consequences and disparities for all other nearby properties owners.

6.5 It should also be considered that the Applicant is seeking to change the status quo of the area in a way that will seriously impact on the existing use and enjoyment of the area by the general public. The potential cost to the environment, and very real loss of income from eco-tourists like the birders

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(including the restaurants and accommodation facilities serving them) by far outweigh the benefits of having a distillery. In my opinion, there are no benefits, only serious risks. The Applicant has failed to prove public interest.

6.6 There appears to be considerable over-reach in the removal of title deed conditions going way beyond what are required to be removed for the operation of a distillery.

As per the opening paragraphs of the present application, two small adjustments (**See par 7: Possible Solution**) were originally sought to enable the agricultural industry.

The complete removal of all title deed conditions, which is now applied for, is overbroad.

7. POSSIBLE SOLUTION:

7.1 I would propose that the DM approve the following:

7.1.1 **The deletion of C4:** "No building shall be erected within 25,19 metres of any road or within 6,3 metres of any other boundary of the land."

7.1.2 **The amendment of C13:** "No [shop,] public garages or filling stations, business premises, canteens, bioscopes, factory or industrial buildings shall be erected on the land nor shall any such business or public entertainment be conducted on the land."

7.2 I would submit that the above will allow the applicant to conduct its consent uses of agricultural industry and farm stall, as applied and motivated for, under the current zoning of the smallholding of Agriculture (AGR1). (**This is however not to be interpreted as support for the Agricultural Industry**).

Yours faithfully,

Todd Lambert



115/630

66 Harveya Road
Rooiels

4 June 2021

TP-A Theart
(Hild Stoep)

Municipal Manager
Overstrand Municipality
PO BOX 20
HERMANUS
7200
Email: loretta@overstrand.gov.za

YOUR REF: MUNICIPAL NOTICE 69/2018 PORTION 141 OF THE FARM HANGKLIP NO 559
OBJECTION TO THE APPLICATION FOR REMOVAL OF RESTRICTIVE CONDITIONS, CONSENT
USE AND DEPARTURE

Dear Sir / Madam

1. I hereby lodge my strong objection to the above development.
2. I have lived in Rooiels since 2010 with my wife Alison Scott.
3. I have a direct interest in this matter as my position of chairman of the Rooiels Conservancy in 2018 and 2019
4. I feel the proposed whisky and gin distillery / manufacturing is completely inappropriate in the area which has been designated an important biodiversity conservation area. The risks of pollution to the environment are too great to allow this commercial development that benefits only a handful of people.
5. The area in which the proposed distillery is located is an ecological gem of international significance. This fact is not disputed by anyone and requires no proof. It is a known fact that Nature Conservation authorities have always regarded this area as a key component of the declared Kogelberg Biosphere reserve and it has Buffer status. Numerous threatened species and types of fynbos occur here and nowhere else in the world. Do we really want to take risks with handling noxious and hazardous materials in this area? This is not good and responsible town planning.
6. Noxious means "harmful, unpleasant or unwholesome". The nature of the distillery is such that it uses a lot of energy and water and produces a product (alcohol) which in its undiluted distilled form is extremely poisonous to all life. Waste products from the process are also poisonous and escape into the air, land and water. The cumulative effect of a distillery in the long term is that the surrounding ecosystem is systematically poisoned. This may happen very quickly in the case of negligence or accidents at the distillery or may occur slowly and cumulatively over many years. But the bottom line remains; the ecosystem will be much worse off.

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Hangklip
SCAN NO: 01
COLLABORATOR NO: 1547504

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7. It doesn't matter how well they are run, distilleries world-wide are classified as "noxious" due to their harmful waste products, including both emissions, "fermenter sludge" and "spent wash".
8. The Applicant concedes the noxious nature of the proposed distillery by correctly applying for the removal of title deed restriction C6 prohibiting noxious trade or activity from being conducted on the property.
9. It is a common sense fact that the proposed distillery will substantially increase vehicular traffic on this section of Porter Drive. The Applicant will need to apply for a micro manufacturing license for the Distillery, which will entitle him to produce a substantial amount of liquor (2millionlitres of spirits per annum). This would require many tons of barley to be transported in to the property per annum. There is also additional traffic necessitated by the visitors, packaging, waste products and sewerage – all which require trucks or big vehicles.
10. Porter Drive is a simple narrow dirt track, which is very rocky and sandy in places and in other places requires a vehicle with fairly high clearance.
It can only accommodate a vehicle going in one direction at a time.
It is also used as a footpath by the many hikers, cyclists, bird watchers, runners and tourists who love walking along this pristine stretch of coast.
The increase industrial traffic will certainly have an adverse effect on the natural fauna.
11. This Application is seriously damaging to the environment from a transportation point of view and the unnecessary use of fossil fuels. Everything is transported in and then everything is transported out.
12. The claim made by Applicant on how transportation will be limited is baseless and totally unenforceable. There are simply no legal mechanism in place to reduce such extensive use and the very undesirable environmental consequences thereof.
13. Removal of Title Deed Restrictions - title deed conditions cannot be removed if it is not in the "public interest" (as legally defined) to do so. I find no compelling reason in the Applicant's report why the application is in the public interest.
14. It is important to retain as much of these title deed conditions as possible, as these conditions create the very character of a particular area. Typically most nearby properties have similar title deed conditions
15. It should also be considered that the Applicant is seeking to change the status quo of the area in a way that will seriously impact on the existing use and enjoyment of the area by the general public. The potential cost to the environment, negative publicity for Overstrand, and very real loss of income from eco-tourists like the birders (including the restaurants and accommodation facilities serving them) by far outweigh

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the benefits of having a distillery. In my opinion, there are no benefits, only serious risks. The Applicant has failed to prove public interest.

16. The building and set back lines are there to ensure harmony and uniformity among properties in this area. Allowing this in respect of one property will be out of keeping with the other properties and makes for disharmonious town planning.
17. It is estimated that the Applicant has already spent in the region of R2million in the creation of a dam and the substantial double storey / double volume building with special antique windows from Cape Town's original station. This is by no means a "modest addition to the former stable building" (p1), nor has there been a "minor extension" (p3) thereto.
18. The building plans for the additions were lodged by the Elves family, well before bringing this application and well knowing that it was for a distillery, not for stables. In fact, the additions are now already completed. It is clearly a distillery building and not stables. Please note the misleading use of the future tense in this application: "this will require" (p1). Please also have regard to p 14 showing an outdated photograph before the extensive addition, creating the false impression that the construction of the distillery will only take place after approval of this application. Please note that the extensions were already complete at the time this application was advertised.
19. Consequently, the building plans for the additions were clearly submitted by the Elves family under false pretenses and without full disclosure of the future intended use thereof. They did not act in good faith.
20. "...the proposal is not a distillery of an industrial scale with concomitant impacts on utility services, traffic and waste by-products" This is misleading as even a micro-distillery (up to two million litres of spirits per annum) has many impacts, including on utility services, traffic and waste by-products. Their business model certainly doesn't make sense in the light of the significant and expensive building works. It should be noted that the extensive building work has already had an impact on Porter Drive. It is also significant that the Rooiels gate was used by all the heavy concrete mixers and brick lorries. So much for the stated intention of the Applicant to limit its impact on the Rooiels side of Porter Drive!
21. The application states on p 7 thereof that the proposed distillery "is consistent with the biosphere principles" because of the so-called "small scale" (potentially 2 million liters!) and "recycles an existing building". It is clearly not consistent with the biosphere principles to have a toxic noxious micro distillery in the Buffer Zone of an otherwise pristine area.
22. On p 1 the application states "It represents a re-cycling or re-use of an existing building which is no longer used for its original purpose" The very logic of this argument is suspect. By this logic if the distillery should fail, the mere existence of these extensive buildings should then be a compelling motivation to allow another development such as a wedding venue, campsite or a rave venue.

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23. Much is made of the fact that the new development is on the area invaded by Kikuyu. The application furthermore states a "stone wall to prevent Kikuyu from encroaching into the fynbos". Why should the Applicant who for 15 years did not control the Kikuyu, now be trusted to stop the spread thereof? This statement has no substance.
- The Applicant has allowed the invasion of alien plants over more than 15 years. The offer of restoration of the land as a bargaining tool for development rights has a hollow and cynical ring to it. The Applicant should not be rewarded and allowed to benefit from his mismanagement of the environment on the property over the years
24. The Applicants profess their "commitment to establish a sustainable eco-friendly lifestyle on the property." The transportation of raw materials to the site, removal of waste from the site and the pumping of liquid waste into the septic tank system don't support this statement.
25. The unsubstantiated statement is made that the distillery "makes use of renewable resources and operates in accordance with sustainable production processes." It is abundantly clear that the carbon footprint of the transportation is not ecologically sustainable.
- It is also clear that the extraction of subterranean water used in the distillery is not ecologically sustainable and will have an effect on the water table and aquifer of the area.
26. A number of alarming statements are made about waste water disposal. Liquid waste with its high concentration of chemicals and minerals cannot be used for irrigation purposes and would contaminate the soil and have devastating effects on the nutrient poor soil which fynbos needs to survive. Greywater also contain high levels of chemicals, minerals and nutrients and cannot be used in a fynbos region.
27. An environmental assessment needs to be done by a specialist regarding the effect of irrigation and that of increased phosphates on the fragile natural fynbos ecosystem in which Portion 141 is situated. The effect thereof such a system on the seepage areas and run off into the sea should also be studied by a specialist.

I urge you to turn down this application in this current from until legally binding safeguards protecting the environment are in place.

Yours faithfully

John Charalambous

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REG. NO. 2000/031645/21 VAT REGISTRATION NUMBER: 4240911740



3 June 2021

OUR REF: FHL/LH/F4097-01
YOUR REF: MUN NOTICE 70/2021

THE MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY

TP - A Theart
(Hvid Steep)

VIA EMAIL: loretta@overstrand.gov.za

LAND USE APPLICATION FOR PORTION 141 (A PORTION OF PORTION 133) OF THE FARM HANGKLIP 559 - NOTICE: 70/2021

We act for Ms Hettie Claassens, the owner of Erf 179 Rooiels in this matter.

It is our client's instructions to lodge a formal objection in respect of this Land Use Planning Application.

Our client objected to essentially the same application as per our letter dated 27 July 2018.

Kindly incorporate our client's objection dated 27 July 2018 herein (We annex it to this objection and mark it Annexure 'A').

Please kindly take notice that we herewith note the following further objections:

A. CRITICAL CONSERVATION SIGNIFICANCE OF THIS AREA

We annex a copy of a letter of Mr Paul Hardcastle (CapeNature) dated 26 June 1996. This was written in the context of comment on a similar application in respect of Portion 147, (which is only six smallholdings away from Portion 141).

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P. - 7 JUN 2021

FILE NO: Pbn 141/559
Hangklip
SCAN NO:
14
COLLABORATOR NO: 1547532

Mr Hardcastle had the following to say about this area:

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"The area between Klein Hangklip and the sea is of special conservation significance. Very rare plant communities are present in particular a nearly continuous zone of *Erica-Osmitopsis* seepage fynbos on the level terrace below Porter Drive.

Of particular significance is the fact that the area includes a self-contained catchment system from the top of the Klein Hangklip range to the sea. This presents the possibility (which has been nearly completely lost elsewhere) of maintaining an entire intact gradient of plant communities. This is particularly important since the adaptation of fynbos to the low-nutrient status of the soils makes fynbos particularly vulnerable to enrichment by fertilizers and any form of pollution.

Originally *Erica-Osmitopsis* seepage fynbos communities occurred extensively on the narrow coastal plain or terrace between Rooiels and Hermanus but development has destroyed most of it and fragmented the remainder. The future survival of which these remnants is therefore very unlikely. In the Kleinmond "nature reserve" (the only place where a sample of these habitat types are protected), disturbance, an old dump site and sewerage works threatens the ecological integrity of these sensitive ecosystems and their future here is very insecure even here.

Cape Nature Conservation has recognized the conservation significance of the Klein Hangklip area for a long time. In 1981 the realignment of Trunk Road no 27 between Rooiels and Pringle Bay along the seaward side of Klein Hangklip was strongly opposed by Cape Nature Conservation in order to maintain the ecological integrity of this unique area. Fortunately, these recommendations were accepted at the time and the road was kept to the original inland route.

From a conservation point of view it is extremely important to maintain this entire area as natural as possible both for its special (even unique) conservation significance as well as for its amenity value (looking onto a natural area) and as a break between the development nodes of Rooiels and Pringle Bay.

Unfortunately the area has been subdivided into about 12 smallholdings of about 22 ha each. Although only a few houses have been built, the ecological integrity and natural character of the area is potentially threatened particularly if further development occurs in an insensitive manner.

Mr Hardcastle states elsewhere that no further development should occur on these 12 smallholdings:

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"Huge areas of the coastal terrace between Rooiels and Kleinmond has already been set aside for township development, much of which is in very sensitive areas such as marshland and seepage fynbos. In addition, most of the coastal plain between Rooiels and Betty's Bay has been subdivided into more than 800 smallholdings mostly between 12 ha and 22 ha in extent. If further subdivision, or additional development, is allowed on any one of these properties then it would be difficult not to allow similar development on all the properties. Such development will result in suburban sprawl which will totally destroy the unique character of the area (together with highly threatened and rare habitats) and is clearly unacceptable.

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It is therefore proposed that no further subdivisions of properties be allowed and that no additional property rights be allocated. If these developments are allowed, the potential exists that the whole coastal plain between Rooiels and Kleinmond can become a continuous linear development.

Additional property rights should only be allocated where properties are combined as units, with development clusters concentrated near Pringle Bay and Rooiels. The rest of the area should be managed as a natural area and natural amenity for the community. Such a strategy would fit in well with biosphere reserve concept"

SANBI also recognised the unique environmental character of the area by designating these smallholdings as a critical biodiversity area.

Clearly this industrial proposal (under the guise of an agri-industry) cannot be supported and is not desirable.

B. COMMENT ON THE APPLICATION

The 2018 previous and similar land use application on the same property was suddenly withdrawn without giving plausible reasons. In the absence of proper reasons and disclosure, the suspicion exists that the Developer was most likely provided with insider information by someone at Overstrand Municipality on the views of the Planning Tribunal, and Developer then decided to avoid a negative finding by withdrawing its application and starting it afresh.

In this fresh application the Developer has annexed various documents obtained from DEA& DP and the Breede - Gourits Catchment Management Agency in 2018. This creates the misleading impression that these letters have been given in respect of this new 2021 application, when this is definitely not the case. These documents should not have been annexed and should not be considered as they have been written in response to another application.

The Developer picks and chooses which of these outdated documents it wants to include in this application (we will get to the documents later).

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We have read the 2021 application of Planning Partners (Pty) Ltd dated February 2021 and comment *ad seriatim* from paragraph 1 – 14 as follows:

Ad paragraph 1

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The Developers are named as the Trustees of the Free Life Trust and then later as "Leigh and Monique Elves". Why this discrepancy? Is it deliberately done to create the impression that this is a small hands-on family business? This is misleading and incorrect. According to the Trust Deed information obtained from CIPRO a Third Trustee is named. See also Annexure 2 where a different Third Trustee has signed the Resolution. Why is this omitted in the application?

The so-called "modest" addition to the "stables" is also misleading in a number of respects:

- (a) It is by no means "modest" as it encompasses an area estimated to be around 140 to 170 square metres. In addition there are 8 parking bay, a loading bay and an area for 8 water tanks
- (b) It is by no means an addition to the stables, as it was already in 2017 clearly indicated on plans as a distillery
- (c) It is referred to in the application in the future tense, when in fact the additions were already completed upon bringing this application. (See also the old and misleading photographs attached to the application)

The Developer has not been open and honest about this development. It has attempted to bring it about under the radar, by doing so in a piecemeal fashion and under false pretences. The new addition to the barn was never an extension of the stables, it was a distillery building from the outset. It appears that building plans were submitted to Overstrand Municipality and approved under false pretences.

The so-called "business model" of the Developer does not form part of this application. Why not? Clearly business models can be changed from time to time without the Municipality's consent. An application cannot be motivated or approved on the basis on a "business model".

This proposal amounts to an industrial proposal (it clearly doesn't fit under agricultural industry). Quite rightly, on the plan submitted to the Western Cape Liquor Authority the distillery building (with the extension shown) is referred to as the "Pringle Rock Distillery Plant".

Ad paragraph 2.1 – 2.3

The consent use procedure is not available to the Developer. The correct and proper route for the Developer is a rezoning for industrial use. (This is clearly unlikely to succeed).

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 The Developer cannot show that it in any way qualifies for an "agricultural industry" consent use. This property is and was never used for agricultural purposes. The horses of the previous owner were domestic animals (pets) not farming stock.

Ad paragraph 3

The definition in terms of the Overstrand Municipality's Land Use Scheme of 2020 (p6) defines agricultural industry. According to the definition this distillery can only operate if it produces barley or grain on or near the property (which it does not). The same principle applies to a "farm stall".

Ad paragraph 4.1

This property falls within 5km of the core zone of the Kogelberg Biosphere and a protected nature area and falls within an Environmental Overlay Zone.

The whole of the area between Porter Drive and the sea constitutes a wetland (see letter of Paul Hardcastle and the report of Ms Amida Johns who conducted an EIA and did a botanical report in respect of a nearby smallholding.)

Given the Critical Biodiversity Area status of this area and the letter and report by established and respected experts in this field, it is necessary for a fresh water specialist to conduct an inspection on the ground to confirm the existence of this wetland. It appears as if the proposed distillery is situated in the middle of a wetland, as is the well and dam. It appears highly likely that an EIA will be required.

The distillery will have a serious environmental impact on the wetland.

Ad paragraph 4.2

This is incorrect to state that the distillery will not adversely affect the character of the surrounding area. It is common sense that the surrounding wetland will be negatively affected. The amenity value of the surrounding area will be adversely affected. In the previous application many letters of objection were received stating how the amenity value would be negatively impacted

Ad paragraph 4.3

The photograph on page 4 of the application is incorrect as it does not reflect the large extension of the building. The photograph is deliberately misleading and its placement in this application must be investigated by the Municipality.

The forest of gum trees is however correct. Despite it "environmental" window dressing, the Developer has done nothing in 15 years to eradicate these invasive aliens. These gum trees which consume large amounts of water are probably useful to keep the marshland around the homestead and distillery relatively dry.

The property is already a huge fire hazard (disproportionate demanding protection from Fire Services) and a distillery on the property will drastically increase the fire hazard.

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Ad paragraph 4.4

We do not understand how the building of a wall would cease the spreading of invasive Kikuyu grass? The building of a wall is not generally accepted as a rational method of eradicating invasive aliens. This seems like yet another misleading statement in this application. We do not understand why the Developer has not in 15 years made any efforts or progress in eradicating the Kikuyu. The Developer is clearly not particularly "green" or environmentally conscious.

Eco tourism should be encouraged in the Buffer zone of the Biosphere, not industrial distilleries.

The Developer is invited to tell us how it "recycles an existing building" It does not make any sense and seems to be an attempt at creating the misleading impression that the distillery is environmentally friendly. What is true is that a barn has been enlarged considerably to become a large industrial-type distillery.

The statement that the proposed distillery would have no impact on the natural environment is wrong, misleading and without any factual basis.

The applicant states as follows on page 8:

"The production process will not generate harmful impacts on the reserve, and no alien plant species will be introduced onto the property which could potentially spread to the reserve"

The above statement is meaningless unless the Developer can prove that the production process will not generate any harmful impacts. (Distilleries are notorious for harmful environmental impacts)

The Developer has allowed various invasive plant species to flourish on its property and other smallholdings for example the (Spidergum) *Eucalyptus Conferruminata*, *Acacia Cyclops* (Rooikrans) and (Kikuyu) *Pennisetum Clandestinum*.

Ad paragraph 4.5 – Existing Title Deed Conditions

The submissions of the Developer are incorrect. The Municipality is the only authority (or National minister) who can remove any Title Deed Conditions - if it is in the public interest to do so. The Developer has tried to bypass the Tribunal to expunge the restrictive title deed conditions relating to the property. Clearly such conduct of the applicant was unlawful (We restate our position as per our letter of 2018). It seems as though the developer has established a pattern to take 'short cuts'.

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Ad paragraph 5

The averments made with regard to letters given in relation to another application in 2018 are totally misleading and incorrect for the following reasons:

- a) The record does reflect that any official had an *in loco* inspection and responded only to the submission made by the Developer
- b) The National Water Act as well as National Environmental Management Act triggers an environmental authorisation with regard to,
 - (i) Mass water extraction;
 - (ii) Proximity to a protected area closer than 5km;
 - (iii) Industrial activity within a wetland.
- c) The reports are obviously outdated and relate to another application and it is submitted that the officials were poorly briefed by the Developer
- d) The current application according to the Developer is a new application (p1)
- e) Most of the property is still virgin land;
- f) The whole area below Porter Drive is a wetland / *Erica-Osmitopsis* seepage area (refer to the Annexure from Cape Nature).

Ad paragraph 6.1

We agree that the property of the Developer is "picturesque" but this natural setting is not being improved aesthetically by situating a distillery thereon.

Distilleries are noxious of character and tend to pollute the air, land and water. This is the reason why distilleries should be located on an industrial site (barring exceptional circumstances). The Developer does not qualify for exceptional circumstances.

It is of concern that the Developer does not even attempt to indicate where the waste and toxic by-products will be kept or dumped. It appears that very limited thought has gone into this essential component.

Ad paragraph 6.2

The landowner is a Trust and not natural person. There is also a third Trustee which is not named or referenced in this application.

Ad paragraph 6.3

This process of distillery is a noxious process and the waste products are extremely harmful to the environment.

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The photograph is misleading. The officials concerned cannot only make a desk-top evaluation and need to hold an inspection *in loco* during winter to properly assess the facts.

Ad paragraph 6.4

The road traffic will increase drastically. As this is apparently a municipal road, it appears as if the next logical step of the Developer would be to request the Municipality to maintain the road at the general taxpayers' expense.

The Developer did not produce a water license from the Department of Water Affairs as part of this application. Any abstraction for water for an industrial use must have a water permit and environmental inspection report and an environmental authorisation to protect the water resources, wetland and biodiversity of plants.

As already stated, there is no adequate and detailed waste solution in place.

The applicant failed to do a traffic impact study as the increased traffic could have a drastic impact on the environment, when cumulative impacts over an extended period of time are taken into account.

Ad paragraph 7

These policies stated do not assist the Developer.

There are various other policies in place to protect wetlands, underground water and biodiversity.

This application does not fit in with the Overstrand Municipality Land Use Scheme despite the Developer trying to colour it in as being compatible. The Developer simply does not meet the various requirements for this.

Ad paragraph 8

We do not agree with these submissions. We refer to previous comments on the removal of the Title Deed Conditions.

Ad paragraph 9

The correct application would be a rezoning application to an industrial use. The Developer realises that it would not succeed with a rezoning, hence the attempt to try to slip through under the agricultural industry provision.

Ad paragraph 10

This is opposed. No reasonable explanation is given to motivate for a departure. It will create a very negative precedent to all other smallholding owners.

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Ad paragraph 11

- a) As will be stated later herein, the Overstrand Planning bylaw is inconsistent with SPLUMA.
- b) The Developer is abusing the planning process with this second application and is taking 'short cuts'.
- c) This is not correct
- d) These are all old responses to another application and no *in loco* inspections by officials were undertaken
- e) As stated these old reports have little bearing on this application as this is a new application and the letters are outdated;
- f) There is no documentation to show this allegation and it is denied.
- g) The Town Planner's previous application was poorly assessed.
- h) This is not a small scale proposal, but a substantial distillery judging by the size of the building
- i) This is denied
- j) This is denied
- k) This is denied
- l) This is applicable
- m) This is denied
- n) This is denied
- o) This is denied
- p) This is denied

Ad paragraph 12 and 13

The motivation is again very selective. No assessment has been done as to what constitutes the cumulative impact of this application.

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Ad paragraph 14

We disagree with this bold statement for which no evidence was provided.

Overstrand Municipality Amendment Bylaw on Municipal Land Use Planning, 2020

Overstrand's Municipal Land Use Bylaw does not conform with the Spatial Planning and Land Use Management Act, Act 16 of 2013 (SPLUMA).


- (i) The Municipal Bylaw, Section 72(1) the composition of the Planning Tribunal shall be for "a minimum of 4 (Overstrand) employees (Sec 72(1)(a) and Sec 72(1)(b) "a minimum of 1 non-municipal employee".
- (ii) Section 36 of SPLUMA, by contrast, refers to the Appointment of persons (plural) who are not municipal employees.

The Overstrand bylaw does not comply with SPLUMA and consequently the composition of the Overstrand Planning Tribunal is invalid.

We herewith give notice of our intention to address the Planning Tribunal.

Kindly acknowledge receipt of this letter of objection.

Yours faithfully
RAYMOND McCREATH INC.


Per
FHL RAYMOND

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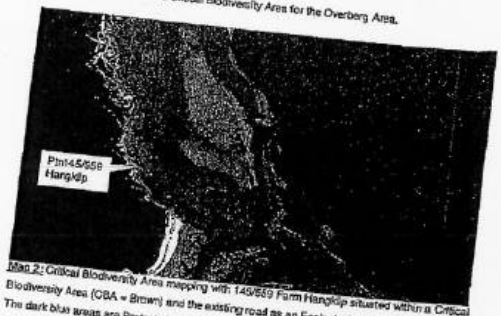
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The property falls within a Critical Biodiversity Area for the Overberg Area.



Map 2: Critical Biodiversity Area mapping with 145/669 Farm Hangklip situated within a Critical Biodiversity Area (CBA - brown) and the existing road as an Ecological Support Area (ESA - green). The dark blue areas are Protected Areas.

4.4. SITE VEGETATION

The natural vegetation on site has been classified and mapped by the South African National Biodiversity Institute (SANBI) as Kogelberg Sandstone Fynbos and Hangklip Sand Fynbos on an underlying Table Mountain Sandstone geology. These vegetation types, given their descriptive parameters, are supported with this ground vegetation survey. The delimitation of the boundaries of the vegetation types however differs to some extent with this assessment. (See map 4).

The Kogelberg Sandstone Fynbos vegetation on site covers an altitudinal range from approximately 45m to around 250m at the summit ridge of the Klein-Hangklipberge. Although the vegetation type has a single classification, the species composition changes to some degree with a change in altitude, slope, aspect and distance from the sea shore.

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Map 3: Distribution of Kogelberg Sandstone Fynbos - Critically Endangered - (Green area) and Hanglip Sand Fynbos - Endangered - (Brown area) on the study site and immediately adjacent properties as mapped by SANBI.

The most pronounced area is the scree (fallen rock cover) zone (See geology map 2) that extends from the base of the mountain up slope towards the cliff face. The soil here has a more pitric nature and supports a number of plant species that often favour more shale derived clayish soils. There is a strong proteoid element here with dense stands of *Protea nana*, *Protea compacta* (Red List (RL) = Near Threatened), *Leucadendron gaudieri*, *Leucadendron xanthocarpus* and *Leucospermum confertum*. Other more defining species include *Banksia nagebia*, *Elagia stipularis*, *Mastodia digitata*, *Berkaya habarta*, *Aspalathus cordata*, *Campylactochys cernua* and *Erica coccinea*. Red List plant species of *Semaria adscendens* (RL = Near Threatened), *Dioscorea thymelaeoides* subsp. *meridiana* (RL = Vulnerable), *Amphibolus tomentosus* (RL = Near Threatened), *Adenandra villosa* subsp. *robusta* (RL = Rare) occur scattered throughout this vegetation habitat zone as well as on the adjacent more grey rocky sandstone. The area is also the most heavily infested with alien plants species of *Pinus*, *Eucalyptus*, notably the spiter gum, and *Leycesterium*. The denser area has up to approximately 75% density alien coverage. Some clearing activities have commenced on the edge of the infestation. See Map 4 for the locality and extent of the alien plant coverage.

The existing access gravel road to the property site and the proposed new access road/back to the potential house pass through this scree area. The brown soils have been quarried to a minor extent for road surfacing.

The adjoining more grey rocky sandstone and the seaward-facing steep upper slope and mountain ridge have a mixed ericoid and rustoid fynbos community within the Kogelberg Sandstone vegetation

type dominated by *Elygia stipularis*, *Elygia flavosa*, *Reclia similis*, *Elygia hookeriana*, *Erica pectinifolia*, *Erica equisetifolia*, *Protea repens* and *Leucadendron gaudieri*. *Tetraria biemalis*, *Berzetta albiflora*, *Stauria radiata* and *Grubbia tomentosa* are found scattered throughout this habitat. Plants of the noteworthy *Erica stokoei* and endemic *Erica thomae* var. *thomae* occur on the rocky ridge and over to the eastern aspect of the Klein-Hangklipbosse.



Photo 1: Kugelbos Sandstone Fynbos above the existing access road with pinetic sere vegetation on the lower slopes.

The Hangklip Sand Fynbos vegetation on site extends from the shoreline to near the base of the mountain. A coastal rocky community occurs for a short distance inland directly adjacent to the high water mark of the sea. This coastal vegetation zone is strongly influenced by salt water sea spray from the adjacent ocean. Typical species found here include *Erica pilosperma*, *Erica apiculifolia*, *Coloboma album*, *Capobonum edulis*, with taller shrubby species of *Passerina corymbosa*, *Tarsonanthus floralis*, *Scaevola glauca* and *Phytolacca buxifolia*. The rocky areas up to some 30m from the high water mark of the sea are the predominant location of the Red List - Endangered, *Erica brachialis*. The species is known from a few fragmented subpopulations from Camps Bay to Cape Point, and Saccis to Friggle Bay. All subpopulations are threatened by too frequent fires and coastal housing development. The total population numbers are very low with less than 500 plants remaining. The Red List category recommends no further loss of plants in the subpopulations. The *Erica brachialis* plants that occur on the property study site are very large old trees mostly confined to the refuges between the rocks. Scattered rockeries, *Acacia cyclops*, occur amongst the coastal rocks and are an added threat to the *Erica brachialis*.

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Photo 2: A view of the property site from the south end of the access road looking down over the base of the scrub zone, across the sand flats and to the rocky coastal zone and sea.

The rocky coastal zone between Rook's and Pirigle Bay, as well as some other locations including Heron's, is known for the Red List (= Vulnerable), *Mitrasacme*, *Glaucobolus caminus*. No plants were seen on the study site despite this being their flowering time. This however does not completely exclude the species from occurring as plants do not necessarily flower every year.

The rocky coastal habitat grades into a more sandy flat of the inland coastal plain. Here the deeper sands are increasingly leached and present with a plant species assemblage having a greater resin component, notably *Eriophora*. Generally occurring species include *Mitrasacme*, *Eriophora*, *Croton*, *Cliffortia*, *Aspalathus*, *Pelargonium*, *Physcia*, *Sloanea*, *Cyathoides* and *Anacardium*. A few plants of the Red List *Leucospermum*, *Conocarpus*, *Vicium* (RL=NT) were noted to occur over the flats. The Red List species of *Diastella*, *Myrsine* and *Sarcocolla* (RL=V) and *Sarcocolla* (RL=NT) are also found throughout the vegetation type as scattered plants.

The Hanglip Sand Fynbos is known for its populations of the Red List (RL = Endangered) *Erica patersonii*. No plants of this species were found on site. The post fire orchid, *Dica subulosa* (Red List = Critically Endangered) has been recorded in the near area but it is not known if it occurs on this property. It is unlikely to occur as close to the sea shore as the proposed dwelling but may occur within the proposed road/track impact area. The orchid is confined to the lower coastal slopes and flats from Pirigle Bay to Betty's Bay only.

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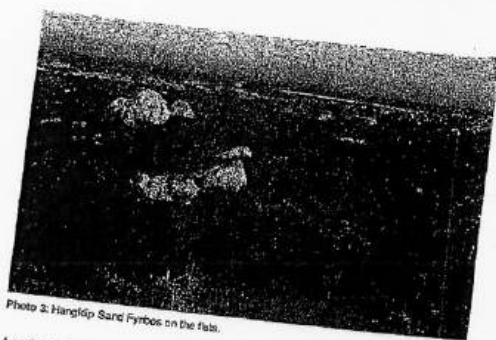


Photo 3: Hanglip Sand Fynbos on the flats.

A portion of the flats appears to have recently been burnt and accounts for the more sparse vegetation cover.



Photo 4: A recently burnt section through the sand flats area of the property.

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The final two alternative development sites, Area 1 and Area 2, of the initially proposed four sites for the house occur within the Hanglip Sand Fynbos vegetation type and are included in the rocky and sandy habitats located between 16 and 18 meters above sea level. The preferred options of Area 1 (GPS: 34° 20' 00.00" S; 18° 49' 25.40" E) and Area 2 (GPS: 34° 19' 53.20" S; 18° 49' 19.00" E) of 500 square meters each have a good species diversity that is comparable to the overall area of the vegetation type and contains no observed Red List threatened plant species. Specific species are *Berula albiflora*, *Grassia portulaca*, *Capepon compressum* and an *Apothosma* species. A similar conclusion was obtained for the alternative site option of Area 2 (GPS: 34° 19' 55.10" S; 18° 49' 22.10" E). A single plant of *Semodes adscendens* occurs at this location. This is not seen as a significant constraint issue given the low threatened status of the species - Red Listed as Near Threatened - and it occurring as a single plant of a species that is found scattered throughout the property. The alternative option site of Area 4 (GPS: 34° 20' 01.50" S; 18° 49' 24.40" E) has a cluster of some 90 individual large old woody plants of *Erica brachialis* and as such is very strongly not recommended as a locality for development.

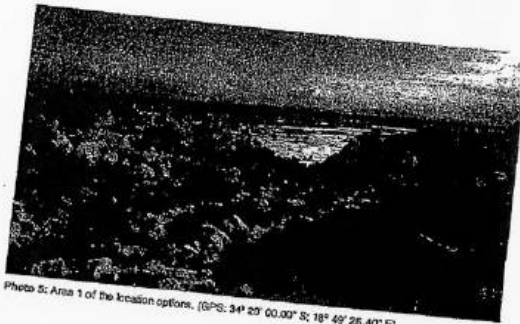


Photo 5: Area 1 of the location options. (GPS: 34° 20' 00.00" S; 18° 49' 25.40" E)

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Photo 6: Area 2 of the preferred location options. (GPS: 34°19' 53.20" S; 18° 49' 18.00" E)

Two distinct seasonally wet pan-like depression wetlands occur on the coastal flat and are dominated by *Elegia nuda* and *Elegia flacca*. A wetland seepage zone of *Borrichia lanuginosa* and *Erica perspicua* occurs at the junction of the sand flats and mountain slope on the northern boundary of the property. These habitat plant communities within the vegetation type remain classified as Hangkê; Sand Pyrobit but has a differential assemblage of wetland indicator species.

5. CONSERVATION VALUE AND BOTANICAL SENSITIVITY

The conservation value (CV) and botanical sensitivity (BS) of the study site is based on the vegetation type, vegetation/habitat condition, species diversity as well as the presence of Red List plant species. (See map 5.)

The majority of the vegetated area of property site is regarded as having a high conservation value and high botanical sensitivity. This is based on the threatened status of the vegetation types, the good condition of the vegetation on site as well as the generally scattered nature of the Red List plant species over the property as a whole.

A very high conservation value is assigned to the coastal rocky area vegetation zone of the *Erica brachialis* as an area into which the subpopulation of the species may expand. The *Erica brachialis* plants presently occur as clusters of plants mostly in rocky areas with some scattered plants within the rocky coastal area inland of the high water mark of the sea.

A lower botanical sensitivity is assigned to the alien infestation. It is noted that this area however has a very high rehabilitation potential and a programme of alien clearing is strongly recommended.

The ground surface of the existing access road surface itself is excluded from a conservation status. Note however is made of effect of the material used for road surfacing on the condition of the vegetation on the road sides.

The confidence levels of the botanical sensitivity and conservation value allocation over the property is regarded as high.

6. BOTANICAL IMPACT ASSESSMENT

Botanical impacts are assessed for the proposed development of new house on one of the selected two alternative locations, Area 1 and Area 2, as well as for the no-go option/alternative. The potential botanical impact of a new access road is also assessed.

It is assumed that the proposed development of the residential house and the associated infrastructure and road will permanently impact the area involved.

The direct negative botanical impacts of the development options are expected to involve the loss of the allocated areas site vegetation and the loss of the ecological processes associated with the vegetation type at those sites. Although the house is to be placed on low sites the diversity of plants will not survive the shading under the house structures.

The indirect impacts are those that may possibly occur during the operational phase of the house once built and in operational use.

Note is made that all the location options are in the coastal rocky vegetation itself or on transitional to sandy flats. Such habitats are inherently sensitive to disturbance over that of the natural ecological processes.

The cumulative botanical impacts are those on two threatened vegetation types, one, Hanglip Sand Fynbos with a below target conservation status as well as the ecosystem of an Endangered Red List plant species, *Eria brachialis*, that exists as a few small scattered subpopulations.

6.1 BOTANICAL IMPACT OF PROPOSED RESIDENTIAL HOUSE

The development of a new house at the location options of Area 1 or Area 2 - preferred option as Area 2 - will result in the loss of an area of the threatened vegetation type Hanglip Sand Fynbos. These locations have vegetation in a good condition that is comparable to the remainder of the property, excluding the area of the present alien plant infestation.

Impacts on the vegetation type are confined to the coastal rocky zone of the Hanglip Sand Fynbos.

The Areas 1 and 2 do not have the recorded site Red List plants species specifically within the designated 500m² areas. (Previously considered Area 3 has a single plant of the low threatened *Semanea adscendens* while Area 4 has a concentration of the Endangered *Erica brachialis*). All areas have plants of *Erica brachialis* in the immediate vicinity within the coastal zone that would possibly, variously, accommodate the expansion of the subpopulation of *Erica brachialis*. As such this zone has been assigned a very high conservation value and botanical sensitivity status. (See Map 5)

The direct negative impacts for the location options of a house at Area 1 or Area 2 are:

- i) the loss of a vegetation type and the associated habitat processes. These two 500m² localities are within an Endangered vegetation type with a good plant diversity associated with the vegetation type and no Red List species. As such the proposed development botanical impact here is regarded as High. The probability of this local, long term and significant impact is High. The recommended mitigation to this option would be for a single dwelling at one of the areas with a minimised construction impact and surface footprint outside of the house structure itself. Further mitigation for this loss would be to not establish any formal garden or plant in any plant species not strictly occurring locally in the plant community of the vegetation type. The significance of the impact on the vegetation for either area with mitigation would be reduced to Medium.
- ii) the loss of habitat area for the potential expansion of the subpopulation of *Erica brachialis*. The area to be occupied by the new house may be potentially suitable habitat for the expansion of the subpopulation of this species. The extent of this is dependent on an ecological dispersal process of the species into its preferred micro habitats. The significance of the botanical impact here is regarded as Medium - High. No additional mitigation steps are offered other than those for the loss of the vegetation type.

Indirect botanical impacts for the location options of a house at Area 1 or Area 2 are:

- i) primarily considered to be potentially from the affect of water pollution associated with home activities such as household waste disposal on the vegetation. The significance impact is considered Medium. Mitigations for this indirect impact would include the construction and operational regulation of disposal facilities and activities within the operational section of the Environmental Management Programme of the Basic Assessment Report. The significance of the impact may be reduced to Low.
- ii) The probable exclusion of fire. The need to protect the new house from fire will result in a fire protection and exclusion zone around the house structure. This prevents the process functioning of the vegetation immediately surrounding the house. The significance of this process related impacted is considered Medium - High. Mitigation for this to reduce the significance of the impact to Medium would be to have as narrow a functional fire exclusion area around the house as possible.

No direct or indirect positive botanical impacts are expected from the development of a house at either of these two locations.

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The direct botanical impacts of the house.

Adverse impacts on botanical resources	Alternative 1	Alternative 2	No-go option
Nature of impact:	Loss of vegetation type (Negative) - Local	Loss of vegetation type (Negative) - Local	None
Extent and duration of impact:	Local and Permanent	Local and Permanent	
Probability of occurrence:	Certain	Certain	
Degree to which the impact can be mitigated:	Inevitable	Inevitable	
Degree to which the impact may cause irreparable loss of resources:	Complete loss	Complete loss	
Cumulative impact prior to mitigation:	Medium	Medium	
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very-High):	High	High	
Degree to which the impact can be mitigated:	Low	Low	
Proposed mitigation:	-One single dwelling at one of the location alternatives. Minimize the construction impact and surface loss prior to the house structure. Further mitigation for this loss would be to not establish any formal garden or plant in any plant species not already occurring locally in the plant community of the vegetation type.	-One single dwelling at one of the location alternatives. Minimize the construction impact and surface loss prior to the house structure. Further mitigation for this loss would be to not establish any formal garden or plant in any plant species not already occurring locally in the plant community of the vegetation type.	
Cumulative impact post mitigation:	Medium-Low	Medium-Low	
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High):	Medium	Medium	

Adverse impacts on botanical resources	Alternative 1	Alternative 2	No-go option
Nature of impact:	Loss of vegetation type (Negative) - Regional	Loss of vegetation type (Negative) - Regional	
Extent and duration of impact:	Regional and Permanent	Regional and Permanent	
Probability of occurrence:	Certain	Certain	
Degree to which the impact can be mitigated:	Inevitable	Inevitable	
Degree to which the impact may cause irreparable loss of resources:	Complete loss	Complete loss	
Cumulative impact prior to mitigation:	Medium-Low	Medium-Low	
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very-High):	Medium-Low	Medium-Low	
Degree to which the impact can be mitigated:	Low	Low	
Proposed mitigation:	-One single dwelling at one of the location alternatives. Minimize the construction impact and surface loss prior to the house structure. Further mitigation for this loss would be to not establish any formal garden or plant in any plant species not already occurring locally in the plant community of the vegetation type.	-One single dwelling at one of the location alternatives. Minimize the construction impact and surface loss prior to the house structure. Further mitigation for this loss would be to not establish any formal garden or plant in any plant species not already occurring locally in the plant community of the vegetation type.	

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Corrective impact post mitigation:	Low	Low	
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High)	Low	Low	
Friable impacts on biological aspects	Alternative 1	Alternative 2	No-go option
Nature of impact:	Loss of potential habitat for capybaras/hoatzin	Loss of potential habitat for blue parrotlets/hoatzin	None
Extent and duration of impact:	Local and permanent	Local and permanent	
Probability of occurrence:	Probable	Probable	
Degree to which the impact can be avoided:	Reversible	Reversible	
Degree to which the impact can be mitigated:	Significant	Significant	
Comprehensive impact prior to mitigation:	Medium	Medium	
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very-High)	Medium-High	Medium-High	
Degree to which the impact can be mitigated:	Low	Low	
Proposed mitigation:	Site design avoiding activities the construction impact over surface that will spill.	Site design avoiding activities the construction impact over surface that will spill.	
Corrective impact post mitigation:	Medium	Medium	
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High)	Medium	Medium	

The highest biological impacts of the house.

Corrective impact post mitigation:	Low	Low	
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High)	Low	Low	
Friable impacts on biological aspects	Alternative 1	Alternative 2	No-go option
Nature of impact:	Water pollution	Water pollution	None
Extent and duration of impact:	Local and permanent	Local and permanent	
Probability of occurrence:	Probable	Probable	
Degree to which the impact can be avoided:	Partly reversible	Partly reversible	
Degree to which the impact can be mitigated:	Marginal	Marginal/Low	
Comprehensive impact prior to mitigation:	Medium	Medium	
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very-High)	Medium	Medium	
Proposed mitigation:	Suitable disposal of household waste water and sewage	Suitable disposal of household waste water and sewage	
Corrective impact post mitigation:	Low	Low	
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High)	Low	Low	

Factor to be used in botanical impact	Alternative 1	Alternative 2	No-go option
Nature of impact:	Fire exclusion from the site and the vegetation of the near surroundings.	Fire exclusion from the site and the vegetation of the near surroundings.	None
Extent and duration of impact:	Significantly and immediate surroundings.	Significantly and immediate surroundings.	
Probability of occurrence:	Highly probable	Highly probable	
Urgency to which the impact can be reversed:	Partly reversible	Partly reversible	
Degree to which the impact may cause irreparable loss of resources:	Significant loss	Significant loss	
Cumulative impact due to mitigation:	Medium-High	Medium-High	
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very-High):	Medium-High	Medium-High	
Degree to which the impact can be mitigated:	Medium	Medium	
Proposed mitigation:	Active functional fire exclusion area around the house.	Active functional fire exclusion area around the house.	
Current fire impact due to mitigation:	Medium	Medium	
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High):	Medium	Medium	

6.2 BOTANICAL IMPACT OF NEW ACCESS ROAD

The position of the new road to the house at the preferred location option has not yet been exactly positioned by a surveyor within a site plan. The demarcated line on the map indicates the approximate positioning primarily to avoid any wetland areas and follow the least gradient. A finer scale mapping would be needed with exact GPS point readings to avoid the scattered Red List plant species occurring over the property site as a whole. The length of the road is estimated at some 550m and will have an approximate surface coverage of around 1650m².

The direct negative botanical impacts for the new road are:
 i) the loss of vegetation types and the associated habitat processes. The proposed road is situated within an Endangered and Critically Endangered vegetation type with a good plant diversity associated with the vegetation type and scattered plants of a number of Red List species. As such the proposed botanical impact here is regarded as High. The probability of this local, long term and significant impact is high.

The recommended mitigation to this option would be to minimise the construction impact within the framework of the Environmental Management Programme. The surface footprint of the road should be kept to a single vehicle track with the construction of two "spoor" only. The significance of the impact on the vegetation with mitigation would be reduced to Medium.

in the loss of Red List plant species. The lower mountain slopes, flats and coastal area have scattered Red List plants as discussed in the description of the site vegetation. The significance of this impact is considered Medium-High.

The mitigation recommendation to minimise the botanical impact on these species would be fine scale the position of the road to avoid the individual Red List plants on the proposed route. Impact significance is reduced to Medium to Low.

Indirect botanical impacts for the new access road are:

i) primarily considered to be potentially from the affect of soil pollution from road surface (fill material) use with the maintenance of the road. The nature of the soil adjacent to the road surface may be altered by inappropriate road fill material and lead to the exclusion of soil specific species present in the vegetation type. The significance of this impact is considered Medium-High. Mitigations for this indirect impact would include the use of a sand and sandstone rock material for surfacing. Clay is not to be introduced onto the sand flats. This would include the construction and operational regulation within the operational section of the Environmental Management Programme of the Basis Assessment Report. The significance of this impact may be reduced to Medium to Low.

Some low significance indirect positive impact may be gained from the road in the control of fires inappropriate for biological processes of the vegetation type. Access for alien clearing along the coast may also be facilitated.

The alternative no-go option would mean that this development will not take place in the proposed locations and the vegetation type and ecological process would remain in their present state.

Direct botanical impacts for the new road.

Potential impacts on botanical aspects	Alternative 1	Alternative 2	No-go option
Nature of impact:	Loss of vegetation - (Negative) Local	Loss of vegetation - (Negative) Local	None
Extent and duration of impact:	Local and permanent	Local and permanent	
Probability of occurrence:	Definite	Definite	
Degree to which the impact can be avoided:	Partially reversible	Partially reversible	
Degree to which the impact may cause irretrievable loss of resources:	Significant loss	Significant loss	
Cumulative impact prior to mitigation:	High	High	
Significance ranking of impact prior to mitigation (Low, Medium, Medium-High, High, or Very-High):	High	High	
Degree to which the impact can be mitigated:	Medium	Medium	
Proposed mitigation:	Single vehicle track with the construction of two 3000m ² pits.	Single vehicle track with the construction of two 3000m ² pits.	
Cumulative impact post mitigation:	Medium	Medium	

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Significance of impact after mitigation (Low, Medium, Medium-High, High, or Very High)	Medium	Medium	
Potential impacts on biological resources	Alternative 1	Alternative 2	No-go option
Name of Impact:	Use of A-Section (Highway) - None	Use of A-Section (Highway) - None	None
Distant and duration of impact:	Local and Permanent	Local and Permanent	
Probability of occurrence:	Probable	Probable	
Degree to which the impact can be reversed:	Partially reversible	Partially reversible	
Degree to which the impact may cause irretrievable loss of resources:	Significant loss	Significant loss	
Cumulative impact prior to mitigation:	Medium	Medium	
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very High):	Medium	Medium	
Degree to which the impact can be mitigated:	High	High	
Proposed mitigation:	Use of a standard and standard rock material for surfacing. Checkered to be introduced.	Use of a standard and standard rock material for surfacing. Checkered to be introduced.	
Cumulative impact post mitigation:	Low to None	Low to None	
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very High):	Low to None	Low to None	

Significance of impact after mitigation (Low, Medium, Medium-High, High, or Very High)	Medium	Medium	
Potential impacts on biological resources	Alternative 1	Alternative 2	No-go option
Name of Impact:	Soil changes (negative) - Local	Soil changes (negative) - Local	None
Distant and duration of impact:	Local and Permanent	Local and Permanent	
Probability of occurrence:	Probable	Probable	
Degree to which the impact can be reversed:	Partially reversible	Partially reversible	
Degree to which the impact may cause irretrievable loss of resources:	Significant loss	Significant loss	
Cumulative impact prior to mitigation:	Medium	Medium	
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very High):	Medium	Medium	
Degree to which the impact can be mitigated:	High	High	
Proposed mitigation:	Use of a standard and standard rock material for surfacing. Checkered to be introduced.	Use of a standard and standard rock material for surfacing. Checkered to be introduced.	
Cumulative impact post mitigation:	Low to None	Low to None	
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very High):	Low to None	Low to None	

Indirect biological impacts for the new road.

Potential impacts on biological aspects	Alternative 1	Alternative 2	No-go option
Nature of Impact:	Total site clearing and wet fire management-Positive	Total site clearing and wet fire management-Positive	None
Extent and duration of impact:	Local and Permanent	Local and Permanent	
Probability of occurrence:	Highly probable	Highly probable	
Degree to which the impact can be avoided:	-	-	
Degree to which the impact may occur irrespective to loss of mitigation:	Medium positive	Medium positive	
Cumulative impact prior to mitigation:	-	+	
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High or Very High):	-	-	
Degree to which the impact can be mitigated:	-	+	
Proposed mitigation:	-	-	
Cumulative impact post mitigation:	-	-	
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very High):	Medium Positive	Medium Positive	

7. CONCLUSIONS AND RECOMMENDATIONS

- The location options Areas 1 and Area 2 of 500m² each have a vegetation of very high botanical value and conservation value. No Red List plant species were recorded within these specifically designated locations.
- The reduced development plan to a single residential house at one of the located Area 1 or Area 2 and with an impact area of no more than 500m² is considered to result in a lower negative botanical impact.
- All mitigation measures as specified in the impact assessment are strongly recommended.

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9. DECLARATION OF INDEPENDENCE

Declaration of Independence

I, **Amida Johns**, declare myself to be independent in the specialist botanical assessment for this application and that all opinions and recommendations expressed are my own.

Amida Johns

10. ABRIDGED CV

Abridged CV

Surname: Johns

First Name: Anida

Date of Birth: 12 July 1959

Formal Qualifications: BSc – Geography & Zoology (UCT & Unisa), Additional Botany Systematics (Unisa).

A range of volunteer and professional vegetation work in conservation management and research since 1994 for CapeNature, specifically the Kogelberg Nature Reserve. SANBI/CNRF botanical assessments of rare and threatened plants Kogelberg Biosphere Reserve and environs.

Speciality: Independent consultant.

- Botanical Assessment of Rocklands, Hermanus, Withers Environmental Consultants
 - Botanical Search and Rescue; Housing development on the remainder of ET 243 Hermanus, Withers Environmental Consulting
 - Botanical Assessment as SAP, Portion 192 Farm 559 Hangklip.
 - Botanical Assessment of Portion 18 Farm 238, Stormvlei, PHS Consulting
 - Botanical survey; Rezoning and development of Portion 2 Farm 483, Treyners Rivier, Sluiter Pass, PHS Consulting
 - Botanical survey; Pringle Bay Rehabilitation Network, PHS Consulting
 - Botanical Search and Rescue; Environmental authorisation for the proposed construction of 410 subsidy residential units, Kleinmond, Ouma Consulting/Ecosora
 - Botanical survey; Palmiet Cemetery Site, Bute's Bay, Overstrand Municipality
 - Botanical survey; Proposed Kleinmond Cemetery Site, Overstrand Municipality
 - Vegetation of Kogelberg Biosphere Reserve, Biosphere Reserve, UNESCO
 - Vegetation survey, Export Environmental Audit, Kentucky Farm, Elgin CapeSpan
 - Plant Identification of vegetation of Oudebosch outcrops area, Kogelberg Nature Reserve, CSIR
 - Plant Identification; Bute's Kop footpath, Kleinmond, Robb Family Trust
 - Botanical Survey of Grabouw Quarry, Ecozone Environmental Consultants.
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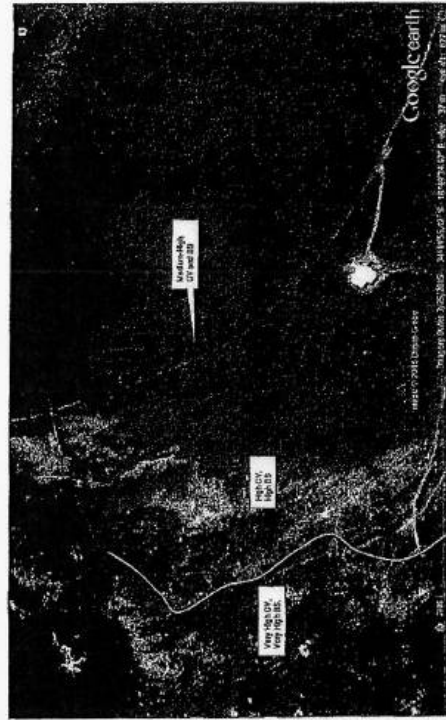
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Map 4: The property site indicating the location options of the proposed boxes. The yellow squares are the two suboptimal locations, alternative 1 and alternative 2. With the red squares the discarded alternative location options. The proposed new access road is also indicated as well as the vegetation types, wetlands and concentrated alien plant invasions.



Map 8: Conservation Value (CV) and Biological Sensitivity (BS) areas on the property site.

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Addendum to the Botanical Assessment

ADDENDUM TO THE BOTANICAL ASSESSMENT FOR THE PROPOSED
DEVELOPMENT OF A SINGLE DWELLING UNIT ON PORTION 146 OF FARM 553,
PRINGLE BAY

25 July 2017

Addendum to the Botanical Assessment

This addendum should be read with the Botanical Assessment Report compiled for the proposed development of a single house and access road on Portion 143 Farm 559, Hangklip, Pringle Bay. The purpose of this addendum is to assess the potential botanical impacts of the proposed development at Site Alternative 3.

1. Description of Alternative 3

Alternative 3 entails the construction of a single dwelling unit within the stand of exotic Australian myrtle, Spider Gum and pine trees next to Portuz Drive (see Figure 1).

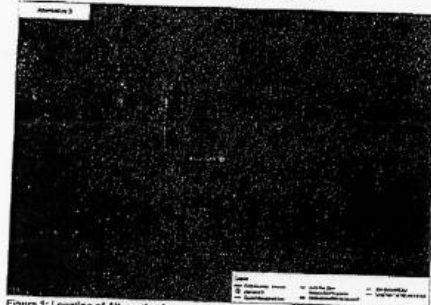


Figure 1: Location of Alternative 3.

2. Botanical Impact Assessment

Botanical impacts are assessed for the proposed development of single dwelling unit and access road at Site Alternative 3. The following botanical impacts were assessed:

Direct negative impacts for the location options of a single dwelling at Alternative 3

- 1) the loss of a vegetation type and the associated habitat processes. The removal of 500m² of vegetation at the alternative 3 site would occur in a lower ranked Conservation Value and Botanical Sensitivity (Medium-High Conservation Value (CV) & Botanical Sensitivity (BS)) area than the other two site alternatives (See map 5). This is due to the dense stand of the alien trees and shrubs. The condition of the vegetation on this site would improve to near that of the surrounding high values with a sustained long term (+ 10 years) alien clearing programme. The impact of this alternative is on Kogelberg Sandstone Fynbos recognized as Critically Endangered as to the lower Endangered status of the Hangklip Sand Fynbos (See Map 4). Despite this the local vegetation impact is considered Medium-low at alternative site 3 due to the degrading effects of the alien stand particularly the Myrtaceae species.
- 2) the loss of habitat area for the potential expansion of the subpopulation of *Erika breschkei* is not applicable at this site. The site 3 alternative is out of the zone ranked as having a Very High Conservation and Biodiversity Value assigned due to the *Erika breschkei* habitat.

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Addendum to the Botanical Assessment

Indirect botanical impacts for the location of a single dwelling at Alternative 1

- i) effect of water pollution on the vegetation of site alternative 3 remains Medium with the construction and operational regulation of waste disposal as per the Environmental Management Plan mitigating the impact to Low.
- ii) the probable exclusion of fire. The need to exclude fire would probably be greater at site 3 as the denser vegetation presents a higher a fire risk. As such the removal of vegetation within a fire protection zone around the new house would be greater than for the other alternatives. The significance of this impact is High with mitigation of the narrowest functional fire exclusion area lowering the impact significance to Medium-High.

The impact ratings associated with all these alternatives were included in the impact rating tables for ease of reference.

a. Impacts that may result from the construction phase

Nature of impact	Loss of vegetation type due to construction of the proposed dwelling - Local		
Extent and duration of impact	Local and Permanent	Local and Permanent	Local and Permanent
Probability of occurrence:	Definite	Definite	Definite
Degree to which the impact can be reversed:	Irreversible	Irreversible	Irreversible
Degree to which the impact may cause irretrievable loss of resources:	Complete loss	Complete loss	Complete loss
Cumulative impact prior to mitigation:	Medium (Negative)	Medium (Negative)	Medium to Low (Negative)
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very-High)	High (Negative)	High (Negative)	Medium (Negative)
Degree to which the impact can be mitigated:	Low	Low	Low
Proposed mitigation:	<ul style="list-style-type: none"> • One single dwelling at one of the location alternatives. • Minimise the construction impact and surface footprint outside of the house structure itself. • Further mitigation for this loss would be to not establish any formal garden or plant in any plant species not already occurring locally in the plant community of the vegetation type. 		
Cumulative impact post mitigation:	Medium to Low (Negative)	Medium to Low (Negative)	Low (Negative)
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High)	Medium (Negative)	Medium (Negative)	Medium to Low (Negative)

Nature of impact	Loss of vegetation type due to construction of the proposed dwelling - Regional		
Extent and duration of impact	Regional and Permanent	Regional and Permanent	Regional and Permanent
Probability of occurrence:	Definite	Definite	Definite
Degree to which the impact can be reversed:	Irreversible	Irreversible	Irreversible
Degree to which the impact may cause irretrievable loss of resources:	Complete loss	Complete loss	Complete loss

Appendix to the Botanical Assessment

Assess Irrecoverable loss of resources:			
Cumulative impact prior to mitigation:	Medium to Low (Negative)	Medium to Low (Negative)	Low (Negative)
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very-High)	Medium to Low (Negative)	Medium to Low (Negative)	Low (Negative)
Degree to which the impact can be mitigated:	Low	Low	Low
Proposed mitigation:	<ul style="list-style-type: none"> One single dwelling at one of the location alternatives. Minimise the construction impact and surface footprint outside of the house structure itself. Further mitigation for this loss would be to not establish any formal garden or plant in any plant species not strictly occurring locally in the plant community of the vegetation type. 		
Cumulative impact post mitigation:	Low (Negative)	Low (Negative)	Low (Negative)
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High)	Low (Negative)	Low (Negative)	Low (Negative)
Item 10			
Nature of impact: Loss of potential habitat for Critic Invertebrates due to construction of the proposed dwelling - Local			
Extent and duration of impact:	Local and Permanent	Local and Permanent	none
Probability of occurrence:	Probable	Probable	n/a
Degree to which the impact can be reversed:	Irreversible	Irreversible	n/a
Degree to which the impact may cause irreparable loss of resources:	Significant loss	Significant loss	n/a
Cumulative impact prior to mitigation:	Medium (Negative)	Medium (Negative)	n/a
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very-High)	Medium (Negative)	Medium (Negative)	n/a
Degree to which the impact can be mitigated:	Low	Low	n/a
Proposed mitigation:	<ul style="list-style-type: none"> One single dwelling. Minimise the construction impact and surface footprint outside of the house structure itself. 		
Cumulative impact post mitigation:	Medium (Negative)	Medium (Negative)	n/a
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High)	Low (Negative)	Low (Negative)	n/a
Item 11			
Nature of impact: Loss of vegetation due to construction of the proposed access road			
Extent and duration of impact:	Local and permanent	Local and permanent	none
Probability of occurrence:	Definite	Definite	n/a
Degree to which the impact can be reversed:	Partially reversible	Partially reversible	n/a
Degree to which the impact may cause irreparable loss of resources:	Significant loss	Significant loss	n/a

Addendum to the Botanical Assessment

cause irreparable loss of resources:			
Cumulative impact prior to mitigation:	High (Negative)	High (Negative)	n/a
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very-High)	High (Negative)	High (Negative)	n/a
Degree to which the impact can be mitigated:	Medium	Medium	n/a
Proposed mitigation:	• Single vehicle track with the construction of "bump speed" strip.		
Cumulative impact post mitigation:	Medium (Negative)	Medium (Negative)	n/a
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High)	Medium (Negative)	Medium (Negative)	n/a

Nature of Impact:	Loss of Red Listed species due to construction of the proposed access road.		
Extent and duration of impact:	Local and Permanent	Local and Permanent	None
Probability of occurrence:	Probable	Probable	n/a
Degree to which the impact can be reversed:	Partially reversible	Partially reversible	n/a
Degree to which the impact may cause irreparable loss of resources:	Significant loss	Significant loss	n/a
Cumulative impact prior to mitigation:	Medium (Negative)	Medium (Negative)	n/a
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very-High)	Medium (Negative)	Medium (Negative)	n/a
Degree to which the impact can be mitigated:	High	High	n/a
Proposed mitigation:	• Fine scale the position of the road to avoid the individual Red Listed plants on the riparian zone.		
Cumulative impact post mitigation:	Low (Negative) to Negligible	Low (Negative) to Negligible	n/a
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High)	Low (Negative) to Negligible	Low (Negative) to Negligible	n/a

B. Impacts that may result from the operational phase

Nature of Impact:	Possible to lose water pollution during the operational phase of the dwelling.		
Extent and duration of impact:	Local and Permanent	Local and Permanent	Local and Permanent
Probability of occurrence:	Probable	Probable	Probable
Degree to which the impact can be reversed:	Partially reversible	Partially reversible	Partially reversible
Degree to which the impact may cause irreparable loss of resources:	Marginal loss	Marginal loss	Marginal loss
Cumulative impact prior to mitigation:	Medium (Negative)	Medium (Negative)	Medium (Negative)
Significance rating of impact prior to mitigation:	Medium (Negative)	Medium (Negative)	Medium (Negative)

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(Low, Medium, Medium-High, High, or Very-High)			
Degree to which the impact can be mitigated:	High	High	High
Proposed mitigation:	<ul style="list-style-type: none"> • Suitable disposal of household waste water and sewage; • The EN19 (Appendix K) must be implemented during the operational phase. 		
Cumulative impact post mitigation:	Low (Negative)	Low (Negative)	Low (Negative)
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High)	Low (Negative)	Low (Negative)	Low (Negative)

Nature of impact:	Establishment of a fire protection and exclusion zone around the house structure. This prevents the process functioning of the vegetation immediately surrounding the house.		
Extent and duration of impact:	Local and Permanent	Local and Permanent	Local and Permanent
Probability of occurrence:	Definite	Definite	Definite
Degree to which the impact can be reversed:	Partially reversible	Partially reversible	Partially reversible
Degree to which the impact may cause irreversible loss of resources:	Significant loss	Significant loss	Significant loss
Cumulative impact prior to mitigation:	Medium-High (Negative)	Medium-High (Negative)	Medium-High (Negative)
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very-High)	Medium-High (Negative)	Medium-High (Negative)	High (Negative)
Degree to which the impact can be mitigated:	Medium	Medium	Medium
Proposed mitigation:	<ul style="list-style-type: none"> • Have as narrow as possible, but, functionally, fire exclusion area around the house. 		
Cumulative impact post mitigation:	Medium (Negative)	Medium (Negative)	Medium (Negative)
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High)	Medium (Negative)	Medium (Negative)	Medium to high (Negative)

Nature of impact:	Possible soil pollution from road surface (as) material use with the bitumen of the road.		
Extent and duration of impact:	Local and Permanent	Local and Permanent	None
Probability of occurrence:	Probable	Probable	n/a
Degree to which the impact can be reversed:	Partially reversible	Partially reversible	n/a
Degree to which the impact may cause irreversible loss of resources:	Significant loss	Significant loss	n/a
Cumulative impact prior to mitigation:	Medium (Negative)	Medium (Negative)	n/a
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very-High)	Medium (Negative)	Medium (Negative)	n/a
Degree to which the impact can be mitigated:	High	High	n/a
Proposed mitigation:	<ul style="list-style-type: none"> • Use of a sand and sandstone rock material for surfacing • Clay is not to be introduced. 		

Addendum to the Botanical Assessment

* The EAPF attached as Appendix H must be adhered too.			
Cumulative impact post mitigation:	Low (Negative) to Negligible	Low (Negative) to Negligible	Nil
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High)	Low (Negative) to Negligible	Low (Negative) to Negligible	Nil
Table 1: Impacts on Botanical Resources			
Nature of Impact:	Allen vegetation clearing and will be managed.		
Extent and duration of impact:	Local and Permanent	Local and Permanent	Local and Permanent
Probability of occurrence:	Highly probable	Highly probable	Highly probable
Degree to which the impact can be avoided:	Not required	Not required	Not required
Degree to which the impact may be less than or equal to loss of resources:	No loss	No loss	No loss
Cumulative impact prior to mitigation:	N/A	N/A	N/A
Significance rating of impact prior to mitigation (Low, Medium, Medium-High, High, or Very-High)	N/A	N/A	N/A
Degree to which the impact can be reduced:	N/A	N/A	N/A
Proposed mitigation:	N/A	N/A	N/A
* The EAPF attached as Appendix H must be adhered too.			
Cumulative impact post mitigation:	Medium (Positive)	Medium (Positive)	Medium (Positive)
Significance rating of impact after mitigation (Low, Medium, Medium-High, High, or Very-High)	Medium (Positive)	Medium (Positive)	Medium (Positive)

3. Conclusion

The significance of all potential impacts on the botanical aspects associated with all three site alternatives was assessed.

For the additionally assessed Alternative site 3 the impacts on the vegetation only extends as far as the development site, thus no direct impacts are foreseen beyond this extent. Although this alternative will result in the removal of a higher threatened status vegetation type the significance is lower due to the degradation of the vegetation at the site mostly from the exotic *Myrsine*. The site also has a lower Conservation Value and Botanical Diversity in terms of the condition presented in the main botanical report. This alternative also excluded any negative vegetation impact from a new access road. The duration of live impacts associated with the construction and operational phases range from short term (0.5 years) to permanent (> 15 years), but can be mitigated to acceptable significance levels.

The significance rating of the impact of the development on the potential habitat of *Erica brachialis* has been assessed to Low as the plant species prefers for sheltered rocky areas protected from frequent fire. The proposed access is to be on more open habitat.

From a botanical perspective the proposed development impact of a single dwelling unit on a property of such an extent is acceptable at any of the three site alternatives. The Alternative Site 3 however offers the least botanical impact given the effects of the alien plants on the biodiversity as well as the exclusion of any new access road.

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KAAPSE NATUURSEWARING
WETENSKAPLIKE DIENSTE



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Daarom - Date

26 Jun 1996

Rovel Fox & Partners
117 Waterkant
CAPE TOWN
8000

For attention: Mr. N. Berriman

PROPOSED CONSENT APPLICATION: PORTION 147, FARM 319 CALEDON

Your letter NB0205.C dated 2 May refers.

The area between Klein Hangklip and the sea is of special conservation significance. Very rare plant communities are present in particular a nearly continuous zone of *Eriko-Oenothera* seepage fynbos on the level terrace below Porter Drive.

Of particular significance is the fact that the area includes a self-contained catchment system from the top of the Klein Hangklip range to the sea. This prevents the possibility (which has been nearly completely lost elsewhere) of maintaining an entire intact gradient of plant communities. This is particularly important since the adaptation of fynbos to the low-nutrient status of the soils makes fynbos particularly vulnerable to enrichment by fertilizers and any form of pollution.

Originally *Eriko-Oenothera* seepage fynbos communities occurred extensively on the narrow coastal plain or terrace between Rooiels and Hornsman but development has destroyed most of it and fragmented the remainder. The future survival of which these remnants is therefore very uncertain. In the Kleinmond "nature reserve" (the only place where a sample of these habitat types are protected), disturbance, an old dump site and a sewerage works threatens the ecological integrity of these sensitive ecosystems and their future even here is very insecure even here.

Cape Nature Conservation has recognized the conservation significance of the Klein Hangklip area for a long time. In 1981 the realignment of Trunk Road no. 27 between Rooiels and Pringle Bay along the seaward side of Klein Hangklip was strongly opposed by Cape Nature Conservation in order to maintain the ecological integrity of this unique area. Fortunately, these recommendations were accepted at the time and the road was kept to the original inland route.

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From a conservation point of view it is extremely important to maintain this entire area as natural as possible both for its special (even unique) conservation significance as well as for its amenity value (looking onto a natural area) and as a break between the development nodes of Rooiels and Pringle Bay.

Unfortunately the area has been subdivided into about 12 smallholdings of about 22 ha each. Although only a few houses have been built, the ecological integrity and natural character of the area is potentially threatened particularly if further development occurs in an insensitive manner.

The ideal would be to acquire the Kieia Hangeklip area as an extension of the Kogelberg core conservation area of the proposed biosphere reserve or, alternatively, as a buffer zone of the biosphere reserve in co-operation with Indoonwen.

Large areas of the coastal terrace between Rooiels and Kelmund has already been set aside for township development, much of which is in very sensitive areas such as marshland and seepage fynbos. In addition, most of the coastal plain between Rooiels and Eury's Bay has been subdivided into more than 600 smallholdings mostly between 12 ha and 22 ha in extent. If further subdivision, or additional development, is allowed on any one of these properties then it would be difficult not to allow similar development on all the properties. Such development will result in suburban sprawl which will totally destroy the unique character of the area (together with highly threatened and rare habitats) and is clearly unacceptable.

It is therefore proposed that no further subdivisions of properties be allowed and that no additional property rights be allocated. If these developments are allowed, the potential exists that the whole coastal plain between Rooiels and Kelmund can become a continuous linear development.

Additional property rights should only be allocated where properties are combined as units, with development clusters concentrated near Pringle Bay and Rooiels. The rest of the area should be managed as a natural area and natural amenity for the community. Such a strategy would fit in well with the biosphere reserve concept.

This proposal still has to be discussed with local and provincial planning departments.

Yours sincerely



DIRECTOR: SCIENTIFIC SERVICES

Copy for information: The Divisional Manager: South-Western Cape Division
Cape Nature Conservation

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THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

WILMA EMMENTIA VAN RENSBURG AO PHILIPUS STEPHANUS VAN RENSBURG NO (In their capacities as trustees for the first holding of the House Trust)	Case no: 155/05 First Appellant Second Appellant
and PERAMPALANATHAN NARAYANAO NO PIRABOTHAN NARAYANAO NO SHASHI NARAYANAO NO ANTHONY NARAYANAO NO (In their capacities as trustees for the first holding of the House Trust)	Third Respondent Second Respondent Third Respondent Fourth Respondent

PERAMPALANATHAN NARAYANAO NO PIRABOTHAN NARAYANAO NO SHASHI NARAYANAO NO SERWANAMA MOODLEY NO ANTHONY NARAYANAO NO (In their capacities as trustees for the first holding of the House Trust)	Case no: 456/05 First Appellant Second Appellant Third Appellant Fourth Appellant Fifth Appellant
--	--

WILMA EMMENTIA VAN RENSBURG AO PHILIPUS STEPHANUS VAN RENSBURG NO MISC FOR HOLDING LOCAL GOVERNMENT AND TRANSITIONAL AFFAIRS EASTERN CAPE PROVINCE NELSON MANDELA METROPOLITAN MUNICIPALITY THE MUNICIPALITY OF GEBEL	First Respondent Second Respondent Third Respondent Fourth Respondent Fifth Respondent
--	--

Neutral citation: Van Rensburg AO v Van Rensburg NO (155/05), Narayan AO v Van Rensburg NO (456/05) (24 May 2006)

OPINION: Nkomo, Heber, Van Niekerk, Mhlanga JJA and Sisonkele AJA

HEARD: 3 May 2005

DELIVERED: 26 May 2005

SUMMARY: Two First Appellants — names of rights derived from restrictive conditions in title deed stated to be subject to alternative arrangements — zoning regulations and town planning schemes and enforcing restrictive conditions — the Removal of Restrictive Act 96 of 1997 not applicable — power of Member of the Executive Council of the Eastern Cape Province to alter or amend restrictive conditions — delegation not properly granted — statutes made without reference to written objections to any extent liable to be set aside — power of court of the same division and of equal jurisdiction to set aside or otherwise interfere with order founded on its fact in effect

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dismissed - held that in the prevailing circumstances the court had no such power either by way of inherent jurisdiction or in terms of the Uniform Rules of court - held that justice required the proceedings to be allowed.

ORDER

On appeal from: Eastern Cape High Court, Port Elizabeth (Van der Byl AJ and Dambuza J, each sitting as court of first instance in two separate but related matters).

1. In *Wilma van Rensburg NO & another v Perapanjokam Naidoo NO & others* (case no 155/09);

- (a) the appeal is upheld with costs including the costs of two counsel.
- (b) the order of the court below is set aside in its entirety and substituted as follows:

"The application is dismissed with costs including the costs of two counsel."

2. In *Perapanjokam Naidoo NO & others v Wilma van Rensburg NO & another* (case no 455/09);

- (a) the appeal is dismissed with costs including the costs of two counsel.
 - (b) the appellants' legal representatives are precluded from recovering any costs from the appellants related to the unnecessary and duplicated parts of the record (one third thereof).
-

JUDGMENT

NAVSA et MHLANTLA JJA: (Hoher, Van Heerden JJA and Saldulker AJA concurring)

[1] These two linked appeals, which are before us with the leave of this court have been consolidated, and are the culmination of protracted litigation between feuding neighbours. The two appeals necessitate consideration of three judgments of the Port Elizabeth High Court. In the first, Froneman J had ordered

that approvals granted by the Municipality, to legitimise construction work, which had already been completed in the north eastern corner of an erf in Summerstrand Township, Fort Elizabeth, be set aside and that the entire northern bulking on that erf be demolished, as well as the top storey and staircase leading to it of another building situated in the north-western corner of the erf, within 90 days of the date of the order. He also ordered an abatement of a nuisance emanating from that erf.¹ In the second high court judgment, delivered on 8 July 2008, which is the subject of the first appeal before us under case number 155/2008, Van der Byl AJ, purported to declare parts of Froneman J's judgment, delivered on 30 March 2007, to be of no force and effect and made certain allied orders. In the third judgment, delivered on 2 June 2008, which is the subject of the second appeal under case number 455/2008, Dambuza J reviewed and set aside a decision of the Member of the Executive Council of Local Government & Traditional Affairs, Eastern Cape Province (the MEC) to remove restrictive title deed conditions in relation to the erf referred to above.

[2] In the first appeal, the power of a high court, not sitting as a court of appeal, to suspend or nullify final orders granted in the same division, in relation to the locus referred to in the preceding paragraph and to make related orders, falls to be considered. In the second appeal the question is whether the MEC's decision was rightly reviewed and set aside. The appeal against the order of Van der Byl AJ is referred to as the suspension appeal. The appeal against the order of Dambuza J is referred to as the review appeal.

[3] The opposing fiduciary trustees are as follows. The trustees for the time being of the Shan Trust are Parasparakam Naidoo, her husband Pankajaram Naidoo and three other members of their family. The trustees for the time being of the Hobie Trust are Philippus and Wilma Van Rensburg, who are husband

¹ The judgment of Froneman J is reported as *Van Rensburg NO v Nelson Mandela Metropolitan Municipality* 2008 (2) SA 8 (SC).

and wife. The litigating parties are referred to as the Shan and Hobie Trusts respectively.

[4] The Hobie Trust is the owner of erf 104, situated at 4 Sixth Avenue, Summerstrand, Port Elizabeth. The Shan Trust owns erf 105, situated at 3 Seventh Avenue, Summerstrand, Port Elizabeth. The Hobie Trust property abuts the northern boundary of the Shan Trust erf. The Shan Trust conducts the business of a guest house on erf 105.

[5] The litigation between the parties relates to certain structures on erf 105 that were constructed, extended and renovated over time by the Shan Trust, in furtherance of the guest house business it conducts on the premises. The following issues arise:

- (a) whether erf 105 could be used for purposes other than that of a private residential dwelling;
- (b) the legality of authorisations to conduct a guest house business, granted by the Nelson Mandela Metropolitan Municipality (the Municipality);
- (c) the legality of approvals of building plans by the Municipality to regularise buildings already constructed on erf 105; and
- (d) the power of the MEC, to alter or amend restrictive conditions in a title deed, more particularly in relation to erf 105.

[6] As will become apparent, chronology and sequence are crucial to a proper appreciation of the issues in both matters. At the outset it is necessary to deal with the history of Summerstrand, the township in Port Elizabeth in which the properties in question are located. Although there appears to be some confusion about the date of the establishment of Summerstrand Township, there is force in the submissions on behalf of the Hobie Trust, that relevant documentary evidence tends to show that the township was established by the Administrator of the then Cape Province at a time when the Townships Ordinance 13 of 1927 was in force. The Townships Ordinance 33 of 1934

repealed the earlier Ordinance, with effect from 1 January 1935, Section 63 of the 1934 Ordinance provided that any matter pending under the 1927 Ordinance and uncompleted should be completed in terms of that earlier Ordinance.

[7] At the time of the establishment of Summerstrand Township the following restrictive conditions were inserted in title deeds in favour of all erf-holders:
 C. SUBJECT FURTHER to the following conditions contained in Deed of Transfer 7959/1944 imposed by the Municipality of the City of Port Elizabeth in terms of the provisions of Township Ordinance No 13 of 1927 in favour of itself and any co-holder in the Summerstrand Extension Township (and subject to alteration and amendment by the Administrator):

- (a) That this erf shall be for residential purposes only;
- (b) That only one house designed for the use as a dwelling for a single family, together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf;
- (c) That no more than half the area of this erf shall be built on;
- (d) That no building or structure or any portion thereof except boundary walls and fences shall be erected nearer to the street line which forms a boundary of this erf than the building indicated on the diagram of this erf. (Our emphasis.)

[8] It is now necessary to deal with the history of material events in relation to erf 105, which regrettably, is lengthy and complex. The Hoble Trust became owner of erf 104 in 1989. The Shan Trust became owner of erf 105 in 1996 and at that stage there was only one main dwelling situated on its southern boundary with a double garage outbuilding on the western edge.

[9] The Shan Trust conducted the business of a guest house on erf 105 by virtue of a special consent given to it by the Municipality, ostensibly in terms of its Zoning Scheme Regulations. The first consent was provided on 28 March 1996 and limited the Shan Trust to a maximum of four bedrooms for hire. On 17 September 2002 the Shan Trust applied for a further departure from the Zoning Scheme Regulations to operate a guest house with a total of 11 rooms for hire. The Hoble Trust, together with five other owners and residents in the vicinity, objected to the application. Almost two years later, on 28 July 2004, the Municipality resolved to grant the Shan Trust's application, subject to certain

conditions. An appeal by the Hobie Trust to the MEC against that decision was unsuccessful.

[10] Extensive improvements on erf 105 were embarked on by the Shan Trust from the time that it became owner. These were effected in three phases. It appears that at almost every stage of the development the plans and approvals followed the construction work on the premises. In respect of improvements effected during 2000 it is admitted by the Shan Trust that no building plans were approved by the Municipality until 2004. The Shan Trust's contention that it effected the improvements in the *bona fide* belief that the plans had been approved before construction commenced has an unconvincing and hollow ring to it.

[11] An outside staircase extending an existing one, in a building on the north-western side of the erf leading to the roof of a second storey, was not depicted on the approved plan. Once again, the Shan Trust's explanation that this was an oversight on the part of the architect, in our view, is too glib. In 2000, and after much litigation, the Shan Trust sought to overcome this problem by submitting a site development plan in pursuit of *ex post facto* approval.

[12] It is also clear that, prior to the special consent granted to it by the Municipality to extend its guest house facilities from four rooms to 11, the Shan Trust had already been letting and hiring 11 rooms. It is disingenuous to suggest, as the Shan Trust does, that it had lodgers in the additional rooms rather than guests.

[13] During 2004, after an application was launched in the Port Elizabeth High Court by the Hobie Trust to interdict the Shan Trust from using erf 105 unlawfully, officials of the Municipality inspected the property and found that rooms were unlawfully used on a permanent basis as accommodation for post-graduate students, that a staircase extended beyond the building line and that a number of

kitchens had been installed within the existing buildings, contrary to the zoning regulations. The Municipality demanded that the Shan Trust cease the unlawful use of the property and ensure that the construction work complied with zoning regulations within 30 days.

[14] As a result of the attitude adopted by the Municipality, and in the hope that the matter would be resolved to its satisfaction, the Hobie Trust withdrew its application for an interdict. The Shan Trust did not, however, satisfy all of the demands made upon it by the Municipality. This led to a further application by the Hobie Trust in the Port Elizabeth High Court, in which it sought, *inter alia*, an order for the demolition of the offending buildings on erf 105.

[15] The Municipality initially opposed the application and the Shan Trust decided in the light thereof, not to do so. However, one day before the answering affidavit by the Municipality was due to be filed, it made a demand upon the Shan Trust, similar to its previous demand referred to in para 13 above. According to the Shan Trust it responded by submitting new plans in an attempt to legitimise the buildings already constructed. The Municipality denied having received those plans.

[16] During February 2007, and before the application was heard, the Municipality withdrew its special consent to a departure from the zoning regulations, in terms of which it had granted the Shan Trust permission to conduct a guest house with 11 rooms. It subsequently also withdrew its opposition to the application by the Hobie Trust. In response, the Shan Trust entered the fray and sought a postponement from Froneman J. in order to do the following:

- (a) to take the necessary steps to review the Municipality's withdrawal of its special consent;
- (b) to make an application for the removal of the restrictive conditions from the title deed of Erf 105 Summerstrand;

(c) to resubmit a detailed site development plan and building plans in respect of improvements to Erf 105 Summerstrand.
At the same time the Shan Trust undertook, in an apparent attempt at appeasement, to abate the nuisance complained of.

[17] Froneman J, characterised the purpose of the postponement application as follows:

[17] is in essence to give time to conduct a defence to the claims in the main application.
The learned judge stated that the Shan Trust was required to show that *prima facie* had a *bona fide* defence. He took the view that, even though the Hobie Trust had raised the restrictive title conditions in the main application set out in para 8 above as a ground for relief for the first time in supplementary affidavits at the end of October 2006,² the Shan Trust had done nothing in this regard until it sought a postponement in March 2007. Froneman J also took into account that the Shan Trust had failed to provide any legal or factual basis for the proposed review of the Municipality's decision to withdraw its special consent and for the setting aside of the restrictive title conditions. Consequently, the learned judge refused the postponement and ordered the Shan Trust to pay the costs, including the costs of two counsel.

[18] In the main application, Froneman J had regard to the relevant restrictive conditions, in essence they provide that the erf be used for residential purposes only, that only one single house dwelling for use by a single family and ordinary outbuildings required for such use may be built on the erf, and that no garage other than for ordinary use for persons residing on the erf may be erected. The learned judge stated that these kinds of restrictive conditions took precedence over the Municipality's zoning and planning schemes and that this followed from their characterisation in our case law as praedial servitudes in favour of other erf

² Initially the grounds on which the Hobie Trust relied were: (a) the non-compliance with the National Building Regulations and Standards Act 103 of 1977, (b) contraventions of Zoning Scheme and Land Use Planning regulations and (c) the irregular granting by the municipality of special consent to use the buildings as part of a guesthouse.

holders.³ He concluded that any possible permission by the Municipality to build or use buildings contrary to the restrictive conditions could not be lawful. Froneman J went on to make the orders referred to in para 5 above. He refused leave to appeal against his judgment.

[19] An application for leave to appeal against the judgment of Froneman J was refused by this court on 25 September 2007 and in due course by the Constitutional Court on 1 November 2007.

[20] In the meanwhile on 27 June 2007, approximately three months after the judgment of Froneman J, the Shan Trust applied to the Premier of the Eastern Cape for the removal of the applicable restrictive conditions. On 17 July 2007 the Hobie Trust objected in writing to the application by the Shan Trust and substantiated its opposition.

[21] On 11 October 2007, the MEC, purporting to act under delegated authority from the Premier of the Eastern Cape Province (the successor to the erstwhile Administrator), granted consent for the removal of Condition C (a), (b), (c) and (d) from Title Deed No T26430/1992 in respect of erf 105⁴ and substituted therefor the following condition:

"That the erf shall be used for residential purposes, including for a guesthouse, only, subject to the provisions of the municipality's guesthouse policy and applicable zoning scheme."⁵
It is common cause that when the MEC made the decision to remove the restrictive conditions, she did not have before her the written objection by the Hobie Trust.

[22] On 7 November 2007 the Hobie Trust requested reasons for the MEC's decision to remove the restrictive conditions. Reasons were supplied on 1 February 2008.

³ Cf. note 1 at para 6.
⁴ Set out in para 7.

[23] The Shan Trust reported to yet further litigation. On 8 January 2008 an application was launched in the Port Elizabeth High Court, in terms of which it sought an order setting aside parts of the order of Froneman J, alternatively an order that parts of his order be declared to be of no force and effect. Furthermore, an order was sought suspending that part of Froneman J's order in terms of which the Shan Trust was required to demolish and remove the top storey and the accompanying staircase of the building in the north western corner of erf 105, pending a decision of the Municipality in relation to the site development plan that it intended presenting for approval. From the perspective of the Shan Trust this would legitimise the offending structures, ex post facto. Further relief, irrelevant for present purposes, was also sought. This application was heard by Van der Byl AJ.

[24] On 26 March 2008, before the Shan Trust's application was ripe for hearing, the Hobie Trust instituted proceedings in the Port Elizabeth High Court to have the MEC's decision reviewed and set aside, inter alia, on the grounds that:

- (a) the decision amounted to an abrogation of the real and registered praedial servitude rights of the Hobie Trust as well as of other residents in Summerstrand;
- (b) the decision was not properly made in terms of the Removal of Restrictions Act 84 of 1997 (the Act);
- (c) the decision constituted administrative action as defined in the Promotion of Administrative Justice Act 3 of 2000 (PAJA) and fell to be set aside on the bases set out above as well as it having been taken without hearing the affected parties, including the Hobie Trust and other residents in Summerstrand;
- (d) the objections of the Hobie Trust and other affected residents were not considered;
- (e) the MEC lacked statutory authority to make the decision removing the restrictive conditions.

[25] Before the Hobie Trust's application was heard, judgment was delivered in the Shan Trust application referred to in para 23 above. Van der Byl AJ made the following orders:

1. It is declared that, because of the removal of the restrictive conditions contained in paragraph C of Title Deed No. T 29430/1956 in respect of Erf 105, Simonsstrand, Port Elizabeth, by virtue of a decision of the [MTC] taken on 11 October 2007, paragraphs 1 and 2 of the order granted in Case No. 1988/06 on 30 March 2007 have become of no force and effect.
2. The [Municipality] is ordered to consider and process the site development plan and building plans, Annexure R to the founding affidavit, submitted to it by the Applicants on 7 June 2006 (of which copies have been submitted to it on 20 March 2007).
3. Paragraph 3 of the order granted by Froneman J on 30 March 2007 is suspended in terms of Rule 45A until such time as the [Municipality] has finally considered and processed the site development plan and building plans referred to in paragraph 2 of this order, whereafter the parties, depending on the outcome of such consideration and processing, are granted leave to approach this Court on the same papers, supplemented as the circumstances may require, for further appropriate relief.
4. The [Hobie Trust] is ordered to pay the costs of this application (including the costs attendant upon the employment of two counsel).

[26] Van der Byl AJ took into account that the Hobie Trust's review application was pending. He noted, with dismay that the Hobie Trust had refused to agree to a postponement of the Shan Trust's suspension application to allow for the finalisation of the review application. In dealing with the merits of the application, the learned judge had regard to numerous decided cases dealing with the maxim *causato rursus legis cessat ipse lex*, which literally translated reads as follows: 'if the reason for a law falls away, the law itself falls away.' He considered whether it applied to interpretation of statutes only or whether it could be applied in relation to judgments and orders of court and concluded that a judgment and order may fall away if the cause fell away.

[27] Van der Byl AJ said the following in relation to the orders issued by

Froneman J.

I was in grave doubt whether Froneman J would have, had the existence of the restrictive conditions been the only issue on which he was called upon to consider the demolition of the northern building, issued the orders in question if the restrictive conditions had at the time of his judgment already been removed, albeit after the northern building had already been erected.

[28] The learned judge concluded that the removal of the restrictive conditions removed the cause on which the orders were based and that the execution of the orders had become unenforceable. He traversed ground already covered in the application before Froneman J and, unlike the latter, was readily accepting of the Shan Trust's assertion that subsequent to the demand by the Municipality during 2008 it had taken all the necessary steps to regularise the situation in relation to offending structures on erf 105. It was for that reason that Van der Byl AJ made the orders compelling the Municipality to consider the plans set out in the orders made by him. In relation to paragraph 3 of Froneman J's order, he held that Uniform rule 45A entitled him to suspend it in the terms set out earlier.

[29] Subsequent to the order by Van der Byl AJ, the Hobie Trust's review application was heard and judgment was delivered. Dambuzi J held that the decision by the MEC, removing the restrictive conditions, was administrative action in terms of PAJA and that it fell to be reviewed and set aside for future, inter alia, to have regard to the submissions made by the Hobie Trust. She held further that there had been no proper delegation to the MEC and that the latter had no power to remove the restrictive conditions. Dambuzi J accordingly ordered the Registrar of Deeds to reinstate the restrictive conditions to Title Deed No T26430/1996 in respect of Erf 105, Summerstrand.

Conclusions

[30] We intend to deal first with the review appeal. Counsel representing the Shan Trust rightly conceded that he could not contend that the decision by the

MEC was not 'administrative action' as defined in PAJA.⁵ He focused on the nature of the rights derived from the restrictive title deed conditions. He sought to characterise them as rights which, from inception, were always subject to alteration or amendment and submitted that residents including the Hable Trust could not now complain when those restrictive conditions were altered or amended. He relied on the decisions of this court in *Rossmour Mansions (Pty) Ltd v Briley Court (Pty) Ltd* 1945 AD 217 and *Rooze's Motors (Pty) Ltd v Van der Walt* 1962 (4) SA 680 (A) and on *Gardner v Registrar of Deeds* 1950 (3) SA 235 (C).

[31] In *Rossmour* an application to the then Administrator of the Province for the removal of restrictive conditions was unopposed and the Administrator subsequently removed them. The respondent applied to court to have the Administrator's decision declared *ultra vires*. The court of first instance and this court had regard to the Ordinance in terms of which the Administrator purported to act and concluded that the Administrator had no power to deprive erf-holders of their rights. At pp 228-229 of *Rossmour* the following appears:

"Where an application to establish a township has been granted subject to a requirement imposed on the recommendation of the Township Board, that restrictive conditions as to the use of lots are to be included in the sites, such conditions, when once included in the sites of the lot-holders, if not framed in terms which expressly render them subject to future cancellation or variation, must be regarded as conferring rights of a permanent nature, which cannot be cancelled or varied either by the Township Board itself, or by any other authority, by virtue of powers of "administration" exercisable over the township concerned."

[32] The Shan Trust's reliance on *Rossmour* is misplaced. That case dealt with the Administrator's power to deprive erf-holders of their right. The dictum in the preceding paragraph is no authority for the proposition that an affected erf-holder

⁵ The MEC is a public authority. When she makes decisions affecting particular holders of title deeds and residents in a township generally she is exercising public power. Her decisions in this regard have a direct external effect.

should not be afforded a hearing. In the present constitutional structure such a proposition is untenable.⁶

[33] It is true that in *Garden Close* the High Court held that owners were not entitled to be consulted on an Administrator's decision to amend or alter restrictive conditions. That case was decided by a provincial division almost 60 years ago. It is unsustainable under the current constitutional dispensation and perhaps even wrongly decided then.⁷

[34] It is necessary to address the MEC and the Municipality's attitude towards the rights of land owners, derived from restrictive conditions in their title deeds. The Municipality and the MEC appear to adopt the position that the Municipality's policies and zoning regulations trump the rights of owners derived from their title deeds. This is unacceptable.

[35] In *Malan & Another v Arubonnel Investments (Pty) Ltd* 1988 (2) SA 12 (A) at 40E-G this court said the following:

'It must be borne in mind that a town planning scheme does not overrule registered restrictive conditions in title deeds. Moreover, a consent by a local authority in terms of a town planning scheme does not per se authorise the user of an erf contrary to its registered restrictive title conditions. See *Ex parte Norder Tuis* (Edms) Bpk 1902 (1) SA 751 (T) at 752D-D, *Meyer v Theron* 1956 (3) SA 264 (T) at 272; *Erwin v Vereeniging Town Council* 1976 (3) SA 443 (T) at 447D-D.'

[36] Froneman J, in arriving at the conclusions referred to above, stated (at para 6):

'It is common cause that this kind of restrictive condition takes precedence over the municipality's zoning and planning schemes. Generally this follows from their characterisation in our case law as *praescripta servitutibus* in favour of other erf holders (*Ex parte Rouben Treas (Pty) Ltd* 1993 (3) SA 209 (D) at 212E-213F; *Malan and Another v Arubonnel Investments (Pty) Ltd* 1988 (2) SA 12 (A) at 40B-C) and in this case also, particularly, from the express wording of clause 1.8.6 of the

⁶ See in this regard s 6(2)(c) of PAJA. That Act was promulgated in furtherance of the fundamental right to administrative action that is lawful, reasonable and procedurally fair.

⁷ *Buffalo City Municipality v Gubb and Another* 2005 (4) SA 496 (SCA) at paras 7 and 8.

Council Zoning Scheme Regulations. Consequently, any possible permission by the municipality to build or use buildings contrary to the conditions cannot be granted.

See also *Camps Bay Ratepayers and Residents Association and others v Minister of Planning, Culture and Administration, Western Cape and others* 2001 (4) SA 294 (C) at 324E-G.

[37] Restrictive conditions of the kind in question ensure for the benefit of all other even in a township, unless there are indications to the contrary. They are inserted for the public benefit and in general terms, to preserve the essential character of a township. In this regard see *Melan* at 38B-C and 39F-G. If landowners across the length and breadth of South Africa, who presently enjoy the benefits of restrictive conditions, were to be told that their rights, flowing from these conditions, could be removed at the whim of a repository of power, without hearing them or providing an opportunity for them to object, they would rightly be in a state of shock.

[38] Section 84 of the Act provides for notice to be given to affected persons in the event of a contemplated removal of restrictive conditions. In the present case the MEC and the Municipality disavowed any reliance on the Act and relied solely on the right reserved to the Administrator to alter or amend the restrictive conditions, as provided for in the title deed.

[39] Furthermore, the MEC's reliance on a delegation by the Premier is misplaced. First, the title deed itself does not provide for delegation. Second, no delegation was proved. In this regard the onus rested on the MEC. See *Chairman, Board on Tariffs and Trade & others v Teltron (Pty) Ltd* 1997 (2) SA 25 (A) at 31F-H. The MEC relied on a proclamation in terms of which the administration of the Act was assigned to her.⁸ Given that the MEC and the Municipality disavowed reliance on the Act it is of no assistance to them.

⁸ Proclamation No 6 of 1998, Provincial Gazette No 323 31 July 1998.

[40] The two grounds referred to above, separately and together, are fatal to the Shan Trust case. There also appears to be force in the submissions on behalf of the Hobie Trust, that the power to alter or amend does not include the power to remove or delete. Further, since restrictive conditions are usually inserted to preserve the identity of an area, the Municipality might be required to engage with other neighbours and owners in the area. Even if the area has undergone some change, it does not necessarily follow that further change is warranted or unchallengeable. Steps have apparently been taken by the Municipality in an attempt to engineer a blanket removal of restrictive conditions in the Summerstrand area. As far as is known, no progress has yet been made. It is, however, for the reasons aforesaid, not necessary for any further discussion on these or any other issues in respect of the review appeal.

[41] For the reasons set out above, the conclusions of Dambuzza J cannot be faulted.

[42] We turn to deal with the suspension appeal. In interpreting a judgment the court's intention is to be ascertained primarily from the language of the judgment or order as construed according to the usual well-known rules relating to documents. As in the case of any document, the judgment or order and the Court's reasons for giving it must be read as a whole to ascertain its intention. In this regard see *Administrator, Cape & another v Ntshwagela & others* 1990 (1) SA 706 (AD) at 715F-H.⁸

[43] It is necessary to place Froneman J's judgment and conclusions in proper perspective. First, Froneman J was apprised of the Shan Trust's intention to apply to have the restrictive conditions removed and he clearly and rightly did not think it would be of any consequence. Second, the learned Judge very carefully considered the conduct of the Shan Trust over the years and concluded as

⁸ Drawn from *Prasbee South Africa (Pty) Ltd v Goshuco AG* 1977 (4) SA 292 (A).

follows (at para 10):

'On the papers before me the Shan Trust has shown a flagrant and sustained disregard, not only for the legitimate interests of its neighbours, but also for the local authority requirements, over a very long period of time.'

[44] Froneman J went on to consider whether a damages claim rather than a demolition order might meet the exigencies of the situation. He took into account the diminution in value of the Hobie Trust property as a result of the Shan Trust's conduct. He reasoned that although a damages claim was viable, it was important to bear in mind that the continuous enjoyment of the privacy of those living as neighbours to erf 105 would be destroyed if he failed to order demolition. He took into consideration that the title conditions sought to preserve the character of the suburb and that developments at erf 105 undermine it.¹⁸

[45] It should be borne in mind that in the application heard by Froneman J, the Shan Trust was aware of the allegations made against it by the Hobie Trust. It is clear that the repeated offending conduct of the Shan Trust, set out above, was reversed in the affidavits filed by the Hobie Trust. The Shan Trust chose, at its peril, to leave opposition to the Municipality.

[46] It is not surprising that Froneman J was unwilling to grant the Shan Trust the postponement sought. He had rightly concluded in the main application, that the Shan Trust had lagged behind the law once too often and that enough was enough! Thus, Froneman J's orders were intended to have immediate effect. The 60 day period within which the demolition order was to be effected was stipulated for practical purposes, namely to enable the owners and demolishers to do the necessary within a time frame. There can be no doubt that he intended that immediate steps be taken to ensure execution of the relevant orders.

¹⁸ See para 12 of the judgment.

[47] It is against that background that the application before Van der Byl AJ should be seen. Van der Byl AJ failed to appreciate the full import of Froneman J's judgement. It re-engaged on issues decided finally by Froneman J, namely, whether the offending conduct by the Shan Trust should continue to be countenanced. It will be recalled that Van der Byl AJ directed the Municipality to consider plans which, if approved, would ostensibly legitimise the contravening structures. Van der Byl AJ did what he was not empowered to do, namely, deciding in final terms, an order made by a court of equal jurisdiction to be of no force and effect.¹¹ He was not sitting as a court of appeal or review in respect of Froneman J's judgement and yet his reasoning reflects hallmarks of those procedures.

[48] The cases relied upon by the court below, dealing with the rationale for court orders falling away because of subsequent events, are distinguishable. In *S v Mofee* 1981 (3) SA 800 (Z) an accused had been convicted of failing to make payments under a contribution order to a named certified institution in contravention of provisions of the applicable Maintenance Act. On review it appeared that the child concerned had previously been discharged from the institution and that the contribution order should therefore have been discharged. The court held that since a contravention of the applicable statutory provision was dependent on the contribution validly being in force, it could not have been the law's intention to treat as valid, a maintenance order when the entire object of the order had fallen away. Put differently, the court had intended that contributions be made for as long as the child was in an institution. That scenario is a far cry from the facts of the suspension appeal. Froneman J had intended the orders he made to be final and to be executed. As far as he was concerned the Shan Trust had come to the end of the road.

¹¹ As appears from what is set out in para 25 above, Van der Byl AJ nullified Froneman J's order setting aside any building plan approvals granted by the Municipality in relation to the building that had already been constructed in the north eastern corner of erf 105.

[49] *Ras & andere v Sand River Citrus Estates (Pty) Ltd* 1972 (4) SA 504 (T), *Le Roux v Yasko Landgoed (Edms) Bpk* 1984 (4) SA 252 (T) and *Bekker NO v Total South Africa (Pty) Ltd* 1990 (3) SA 189 (T) were all concerned with the question whether the cause for writs of execution remained extant. These cases do not assist the Shan Trust.

[50] Purporting to act according to the provisions of Uniform rule 45A,¹² Van der Byl AJ suspended Froneman J's order, in terms of which the Shan Trust was required to take the necessary steps to demolish the offending structures on erf 105. He did so even before the stated reason for nullifying it had materialised, and without proper appreciation of what Froneman J had intended.

[51] Apart from the provisions of Uniform rule 45A a court has inherent jurisdiction, in appropriate circumstances, to order a stay of execution or to suspend an order. It might, for example, stay a sale in execution or suspend an ejection order. Such discretion must be exercised judicially. As a general rule, a court will only do so where injustice will otherwise ensue.¹³

[52] A court will grant a stay of execution in terms of Uniform rule 45A where the underlying cause of a judgment debt is being disputed, or no longer exists, or when an attempt is made to use the levying of execution for ulterior purposes. As a general rule, courts acting in terms of this rule will suspend the execution of an order where real and substantial justice compels such action.¹⁴

[53] Froneman J had regard to whether justice would be done by ordering the demolition. He considered an alternative measure, namely damages, but importantly, thought that the conduct of the Shan Trust over the years had been flagrantly disrespectful of the law and the rights of others. Seen from this

¹² Uniform rule 45A reads as follows:

'The court may suspend the execution of any order for such period as it may deem fit.'

¹³ See Farlam, Fichardt, Van Loggerenberg *Etienne's Superior Court Practice* 61-330.

¹⁴ *Etienne's Superior Court Practice* B1-330 to B1-336A.

perspective Van der Byl AJ aimed in suspending the relevant order. Even though he may have taken a different view it was not appropriate for him to prefer his view to that of Froneman J.

[54] There certainly was no case to be made at any stage for a rescission of any part of Froneman J's judgment. The learned judge had correctly concluded that insofar as the offending structures were concerned and having regard to the unlawful conduct of the Shan Trust over the years, the time for finally had come. The principle of legality, a cornerstone of the Constitution, applies to government and governed alike. Repeat transgressors such as the Shan Trust are undeserving of the protection afforded by Van der Byl AJ. Froneman J intended finality. The effect of Van der Byl AJ's judgment is recrudescence.

[55] One remaining aspect calls for attention. The record in the review matter was prepared by the Shan Trust's legal representatives. It contains a great deal of irrelevant and duplicated matter. The Hobie Trust's representatives were not approached timely to avoid this unfortunate result. Counsel representing the Shan Trust conceded that fault could rightly be attributed to his attorneys and was unable to provide a basis for resisting an order that his attorney should be precluded from recovering from his/her client such costs incurred in consequence of those unnecessary portions being incorporated into the record. In our view, at least a third of the record was unnecessary.

[56] For all the reasons set out above, the following order is made:

1. In *Wilms van Rensburg NO & another v Parapanjakam Naidoo NO & others* (case no 155/09):

- (a) the appeal is upheld with costs including the costs of two counsel.
- (b) the order of the court below is set aside in its entirety and substituted as follows:

'The application is dismissed with costs including the costs of two counsel.'

179/630

650

198/290

21

2. In *Pempeyakam Naidoo NO & others v Wilma van Rensburg NO & another* (case no 455/09):
- (a) the appeal is dismissed with costs including the costs of two counsel.
 - (b) the appellants' legal representatives are precluded from recovering any costs from the appellants related to the unnecessary and duplicated parts of the record (one third thereof).

M S NAVSA
JUDGE OF APPEAL

N Z MHLANTLA
JUDGE OF APPEAL

APPEARANCES:

Case no 45608
 For Appellant: H J Van der Linde SC
 J D Huisamen

Instructed by: Greyvensteins Nortier Inc, Port Elizabeth
 E G Cooper MaRedt Inc, Bloemfontein

For Respondent: O Rogers SC
 M Eujen

Instructed by: De Villiers & Partners, Port Elizabeth
 Honey Attorneys, Bloemfontein

Case no 15509
 For Appellant: O Rogers SC
 M Eujen

Instructed by: De Villiers & Partners, Port Elizabeth
 Honey Attorneys, Bloemfontein

For Respondent: H J Van der Linde SC
 J D Huisamen

Instructed by: 1st - 5th Respondents:
 Greyvensteins Nortier Inc, Port Elizabeth
 E G Cooper MaRedt Inc, Bloemfontein

6th & 8th Respondents:
 Rushmere Naach Inc, Port Elizabeth
 (Abiding with the decision of the Court.)

7th Respondent:
 State Attorney, Port Elizabeth
 State Attorney, Bloemfontein

181 | 630

L Gillion

From: Lynette Hunkin <admin@raymcc.co.za>
Sent: Friday, 04 June 2021 13:40
To: L Gillion
Subject: FW: LAND USE APPLICATION FOR PORTION 141 (A PORTION OF PORTION 133) OF THE FARM HANGKLIP 559 - NOTICE 70/2021
Attachments: F4097, Part 1.pdf; F4097, Part 2.pdf; f4097, Part 3.pdf; F4097, Part 4.pdf; F4097, Part 5.pdf; F4097, Part 6.pdf; F4097, Part 7.pdf

Good day

Please see PART 7 to the attachments omitted in previous email.

Regards,
 FHL RAYMOND



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From: Lynette Hunkin
Sent: 04 June 2021 01:28 PM
To: loreta@overstrand.gov.za
Subject: LAND USE APPLICATION FOR PORTION 141 (A PORTION OF PORTION 133) OF THE FARM HANGKLIP 559 - NOTICE 70/2021

OUR REF: F4097
 YOUR REF: MUN NOTICE 70/2021

Good day

182/630

We refer you to the attached correspondence and supporting annexures thereto.

Kindly acknowledge receipt.

Regards,
FHL RAYMOND

RAYMOND
McCREATH INC.
INC.
ATTORNEYS, CONVEYANCERS & ADMINISTRATORS OF ESTATES
PROKUREURS, AKTEBESORGERES & BOEDELBEREDDERS

Unit 304 Crossfire Place, Gardner Williams Ave,
Paardevlei, Somerset West, 7129
PO BOX 2962, Somerset West, 7130
Deeds Office BOX 143, High Court Box No. 319

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L Gillion

KHANG 141/559

183/630

From: Tracy Boll < >
Sent: Friday, 04 June 2021 13:28
To: L Gillion
Subject: Rezoning and development of Pringle Bay property



Good day Loretta

TP - A Theart
(H vld Stoep)

I am a property owner in Pringle Bay and would like to voice my concern about the possible rezoning and development of property in this area.

I am not in favour of any rezoning or the development of a retirement village and whiskey distillery.

The reason I bought in the area is due to the beauty of the environment and being able to live in a relatively unspoilt biosphere. At the time that I bought my property the agents assured me that it was a protected area and would never be over developed. This area is very special and unique and should definitely remain as it is. I have seen the destruction of a number of small country villages and I would not like this to happen to Pringle Bay and the surrounds. This type of development puts money in the pockets of a few people at huge expense to the environment. It would be extremely detrimental and would set a dangerous precedent for more development. The damage can never be undone and the area would lose its attraction.

My details are as follows:
Tracy Boll
57 (Erf 1327) Caesar Road
Pringle Bay
Mobile

Please don't allow this development to take place. I am very concerned and would appreciate any feedback relating to this matter.

Kind regards
Tracy Boll

FILE NO: Ptn 141/559 ✓
Hangklip
SCAN NO:
Boll
COLLABORATOR NO: 1547327

- 4 JUN 2021

TP - 4 - 2021

L Gillion

KHANG 141/559

184/630

From: Holger Wellmann <
Sent: Friday, 04 June 2021 08:41
To: L Gillion
Subject: Application to establish a distillery on portion 141 of the smallholdings between Rooiels and Pringle Bay

TP - A Theart
(Huidstoep)



Dear Loretta,

We would like to object the application to establish a distillery on portion 141. We fully support the letter lodged by RERA.

Our main concern is the road usage between the Rooiels Porter Drive gate and Erf 141. I will defer the other valid objections for the better informed.

Here are our reasons for objection focussing only on the road usage from the Rooiels entrance:

1. To protect the well known and world famous resident, the Cape Rockjumper.
2. To protect the integrity of Rooiels by avoiding unnecessary 'through traffic'.
3. The potential of reckless driving cannot be discounted and the properties below that are close to the road are vulnerable to consequences of potential accidents. Where would the liability lie should a vehicle crash into one of the houses? Including injury to any person? Could this liability issue be further investigated as a legitimate point in restricting access?
4. Currently there has been a noticeable increase in traffic on this section of the road. The traffic includes Cement Trucks, Delivery Trucks, service vehicles etc. They are using this access for the sake of building on Erf 141 with visible consequences. The drivers of these vehicles are understandably not aware of the delicate nature the road traverses with inappropriate speeds and neglect.
5. It is noteworthy that above vehicles are being used for (?) unapproved building on Erf 141
6. The noble suggestion by the applicants that future guests to Erf 141 would be transported by 'bus' from Pringle Bay using the Pringle Bay entrance only is noted. This however, should be interpreted as an admission by the applicants that the access from the Rooiels entrance is problematic and undesirable. In addition, the fact that this access is so indiscriminately used as indicated in point 4, does not allow for any trust in future use via Pringle Bay only. How would this be policed especially over time?

Kind regards

Holger and Rix (E.N.) Wellmann (for the Wellmann Family Trust)

FILE NO: Ptn 141/559 ✓
Hangklip
SCAN NO:
Wellmann
COLLABORATOR NO:
1547293

1

TP

- 6 JUN 2021

TP - A Theart
(H. Vid Stoep) 185/630

L Gillion

From: Anli VIJJOEN < >
Sent: Friday, 04 June 2021 12:54
To: L Gillion
Cc: 559
Subject: Portion 141 of Hangklip no. 559 Application for 3 items



We wish to register our objection to all three components of this application. We have been property owners in Rooiels since 1987, and have finally retired here. We live at 7 Mammosa Road, erf 151.

The reasons for our objections are:

- 1) the application is not complete and fully quantified on all aspects of the various processes
- 2) the fire hazards are not fully explained, understood, or considered
- 3) influence of increased traffic, effluents, waste products, odours, etc on the environment is not properly researched or described
- 4) unfortunately we as South Africans had to become used to very inadequate enforcement of our numerous laws, rules and regulations. So, we have little confidence that this plant will be closed down or taken to task in the event that any of the numerous undertakings given in the application is being trespassed. We therefore rather prevent this from starting, than having to fight it later on at considerable legal cost.

Yours faithfully

Du Toit and Anli Viljoen

FILE NO: Pbn 141/559 ✓
Hangklip
SCAN NO: Viljoen
COLLABORATOR NO: 1547325

TP - 4 JUN 2021