



Overstrand Municipality

LAND USE PLANNING REPORT – MUNICIPAL PLANNING TRIBUNAL (MPT)

ERVEN 3160 & 3161, 190 FIFTH STREET & 32 TENTH AVENUE, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: PROPOSED CONSOLIDATION, REZONING, CONSENT USE, DEPARTURE: MESSRS PLAN ACTIVE ON BEHALF OF KINDOC INDUSTRIES (PTY) LTD

Reference number	3160 & 3161 HVK(3296)	Application submission date	17 May 2016	Date report finalised	16 January 2017
PART A: AUTHOR DETAILS					
First name(s)	Petrus				
Surname	Roux				
Job title	Town Planner				
SACPLAN registration number	A/2246/2015				
Directorate/Department	Infrastructure and Planning				
Contact details	028 313 8900 petrusroux@overstrand.gov.za				
PART B: APPLICANT DETAILS					
First name(s)	Merike				
Surname	Lerm				
Company name	Plan Active Town & Regional Planners				
SACPLAN registration number	A/158/2009	Is the applicant authorised to submit this application	Yes		
Registered owner(s)	Kindoc Industries (Pty) Ltd				
PART C: PROPERTY DETAILS					
Property description (in accordance with Title Deed)	Erf 3160 & 3161, Hermanus				
Physical address	190 Fifth Street and 32 Tenth Avenue, Voëlklip	Town/City	Hermanus		
Current zoning	Residential Zone I: Single Residential	Extent (m ² /ha)	Erf 3160 - 4957m² Erf 3161 - 991m²	Are there existing buildings on the property?	Yes
Applicable zoning scheme	Overstrand Municipality Zoning Scheme Regulations, 2014				
Current land use	Residential	Title Deed number & date	Erf 3160 -53506/2014 Erf 3161 – 53506/2014		
Any restrictive title conditions applicable	No	If Yes, list condition number(s)			

Any third party conditions applicable?	No	If Yes, specify	
Any unauthorised land use/building work	No	If Yes, explain	

PART D: PRE-APPLICATION CONSULTATION

Has pre-application consultation been undertaken?	No	If yes, provide a brief summary of the outcomes below.
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PART E: LIST OF APPLICATIONS

Rezoning	√	Consolidation	√	Consent Use	√
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PART F: EXECUTIVE SUMMARY

An application has been received on 17 May 2016 from Messrs. Plan Active Town & Regional Planners on behalf of Kindoc Industries (Pty) Ltd for the following:

1. consolidation of Erven 3160 and 3161, Hermanus in terms of Section 16(2)(e) in order to form one (1) erf of 5948m²;
2. rezoning of the consolidated erf in terms of Section 16(2)(a) from Residential Zone 1 to General Residential Zone 3 (Bulk Zone) in order to establish a thirteen (13) bedroom guesthouse (Lanzerac Beach Manor House);
3. consent use in terms of Section 16(2)(o) in order to accommodate a Beach Manor House (hotel/guesthouse) with an in-house spa and conference facilities on the property; and
4. departure in terms of Section 16(2)(b) for relaxation of building lines.

PART G: BACKGROUND

The applicant seeks to consolidate Erven 3160 and 3161, Hermanus in order to establish one (1) large property. Both erven have been developed with dwellings and respective outbuildings. The existing structures on the properties will be maintained in order to be used as part of a thirteen (13) bedroom guesthouse (Lanzerac Beach Manor House). The consolidated property will be rezoned to General Residential Zone 3 (Bulk Zone 2) in addition with a consent use application in order to access the rights for a thirteen (13) bedroom guesthouse (Lanzerac Beach Manor House) with an in-house spa and conference facility.

Relaxation is also made to accommodate the existing building within the parameters of the new proposed zoning (the relaxation of the eastern lateral building line of Erf 3161 from 4,5m to 1,2m to accommodate the existing dwelling).

PART H: SUMMARY OF APPLICANT'S MOTIVATION

The proposed consolidated erf is larger than twelve (12) minimum sized erven in Voëklip. The proposed application should be weighed up against other possible applications for the property: the subdivision of the subject property into twelve (12) portions and applying for a five (5) bedroom guesthouse on each of the twelve (12) properties. Which will lead to one hundred and twenty (120) people staying in twelve (12) guesthouses, this has a much greater impact than the proposed application.

The thirteen (13) bedroom guesthouse (Lanzerac Beach Manor House) could not be accommodated on a single residential property due to the limit of the maximum bedrooms being five (5) bedrooms, therefore the rezoning to General Residential Zone 3 (Bulk Zone 2) is considered better suited. A consent use under General Residential Zone 3 (Bulk Zone 2) for a hotel is considered due to it being the only closest definition. The operation will however only be for a large guesthouse with a lower impact and scale than a hotel i.e the Lanzerac Beach Manor House name.

The proposed zoning was discussed with the Municipality to ensure that the zoning is in line with the ambiance and character of the area. General Residential Zone 3 (Bulk Zone 2) will be limited to the restrictions of a single residential erf since most of the surrounding erven are residential.

The proposed guesthouse (Lanzerac Beach Manor House) will cater for guests who visit Hermanus while staying at Lanzerac Stellenbosch.

Bedrooms 1 to 9 will be in the main dwelling currently on Erf 3160. Bedrooms 10 and 11 in the existing cottage. Bedrooms 12 and 13 will be accommodated in the existing dwelling currently on Erf 3161.

The gymnasium will be renovated as a dining area with toilets, kitchen and storage. It should be noted that the proposed guesthouse (Lanzerac Beach Manor House) will not have a larger footprint than already taken by the existing structures. All bedrooms and amenities will be located in the existing structures. Only new walkways will be built.

The spa and conference facility at the Lanzerac Beach Manor House will only be open for guests of the guesthouse (Lanzerac Beach Manor House). A manager will be onsite at all times, however there is no bedroom planned for the manager; as it is not a prerequisite.

No restrictions are contained in the title deed of both properties for the proposed consolidation, rezoning, consent use and departure. The proposed application will have a low impact on the environment and traffic in the area.

The character of the area will remain unchanged as the guesthouse (Lanzerac Beach Manor House) will be accommodated in the existing structures. It is foreseen that the upmarket, luxurious guest accommodation will add to the value of the surrounding properties.

According to the CES report no additional services will be required for water. The two (2) properties are supplied from two (2) different water mains. Only one (1) connection will be proposed once the consolidation is registered.

The services report, which was submitted by the applicant, calculated that there is insufficient capacity in the existing sewer system to accommodate the proposed development. According to the applicant this will require minimum upgrades to accommodate the development. The developer will be liable for bulk services levies to contribute towards the upgrades to the sewer system.

Storm water run-off will maintain the status quo.

Sufficient capacity is available in the electrical system.

An area is identified for the storage of refuse removal.

Sixteen (16) parking bays are required by the proposed guesthouse (Lanzerac Beach Manor House) and 18 bays are provided. The existing access from Tenth Avenue will be used for small deliveries and for refuse removal. The main access point to the property will be maintained from Fourth Street as well as the exit. The engineering consultants stated that the access points are sufficient for the purpose of this application.

The Overstrand Spatial Development Framework (2006) (SDF) earmarks the area for residential purposes. The proposed application will therefore be in line with the SDF. The application will not affect the densities of the area as proposed by the Overstrand Municipal Growth Management Strategy (2010) (GMS).

The proposed application will not have an impact on the heritage value of Hermanus.

No listed activities are triggered by the application.

PART I: SUMMARY OF PUBLIC PARTICIPATION

Methods of advertising		Date published	Closing date for comments
Press	Yes	25 August 2016	30 September 2016
Notices	Yes	25 August 2016	30 September 2016
Ward councillor	Yes	25 August 2016	30 September 2016
Total valid comments	Thirteen (13)		
Valid petition(s)	No		

Community organisation(s) response	No	Ward councillor response	No
Total letters of support	None		
Was public participation undertaken in accordance with section 45- 49 of the Proposed Draft By-law on Municipal Land Use Planning			Yes

PART J: SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Thirteen (13) objections and an additional two (2) late objections have been received from the adjacent neighbours as per attached list (Annexure D). Issues raised by the objectors overlap and therefore will be summarised and discussed together. It should be noted that the issues raised in the late objections also overlap with the issues raised by the other objectors which are commented on by the applicant.

1. Objection

The proposed land use will have a negative impact on the traffic of the area and will lead to unwanted noise levels associated with higher traffic; increased traffic, delivery of vehicles making noise, drop off and collection of staff, unsafe for children playing in the street etc. No traffic impact assessment was submitted. A suggestion is made to construct speed humps to lower the travelling speed in the area.

Comment received from Applicant

The proposed consolidated erf is larger than twelve (12) minimum sized erven in Voëlkop. If the owner decided to subdivide and develop each erf it will have a greater impact. The proposed application for the thirteen (13) bedroom guesthouse should be weighed up against other possible applications for the property: the subdivision of the subject property into twelve (12) portions and applying for a five (5) bedroom guesthouse on each of the twelve (12) properties. Which will lead to one hundred and twenty (120) people staying in twelve (12) guesthouses, this has a much greater impact than the proposed application. The proposed application will have a maximum of eighteen (18) vehicles entering the premises at different times of the day. Guesthouses generate low traffic volumes versus residential area. In most instances guests do not arrive or depart on the same time.

Deliveries will be managed on a professional basis which will limit the impact on guests and neighbours. Deliveries would have been present no matter if it is a five (5) or thirteen (13) bedroom guesthouse. Deliveries will be done during the day to limit noise in the evenings.

Staff will be dropped off and picked up on-site to limit noise and to reduce security risks associated with the aforementioned. Noise levels will be kept to a minimum to ensure good relations with neighbours and guests.

Pre-submission correspondence with the Municipality and application correspondence up to date has not necessitated the submission of a Traffic Impact Statement or Assessment (TIS/TIA). It can therefore be assumed that the proposal does not trigger the aforementioned. Only thirteen (13) to eighteen (18) parking bays are required to accommodate the proposed land use. The proposal does not trigger more than fifty (50) trips per hour and consequently a TIS/TIA is not required. If additional information is required it will be provided.

Speed humps are suggested, although it is normally in front or near community establishments which are not present.

Town Planner's Response

The applicant proposes that the parking for the proposed land use will be managed on the property in such a way that it will have a low impact on traffic in the area. It should be noted that although guests do not necessarily arrive and depart on the same time the manager will not be able to prohibit the coming and going of guests and this could result in a constant movement of vehicles which could lead to the tranquillity of the area being affected.

2. Objection

The objectors state that the applicant plays with words and 'misrepresents' the proposed land use: hotel versus Beach Manor House.

Comment received from Applicant

The objectors highlight the misrepresentation of the application. It is true that the proposed land use cannot meet the definition of a guesthouse (with reference to the amount of rooms, single interleading structure and a live in owner/manager), but nor can it be a hotel.

The proposed Lanzerac Beach Manor House will not include a restaurant nor will the facilities be open to the public. The dining area will only serve food to guests in the manner of a bed and breakfast. No public access areas are proposed.

Generally a hotel (with a large number of rooms) will be located on a much smaller site 500m² to 1000m² size properties. This will have a greater impact on an area. The proposed thirteen (13) bedrooms compared to the size of the property are almost one (1) bedroom per normal sized property in Voëlkop. Other Municipalities in Cape Town allow for up to fifteen (15) guestrooms on a single residential property within a set of parameters. The size of the proposed consolidated property is also why the municipal officials at the Overstrand Municipality did not object to the application during our pre-application discussions. The size of the consolidated property must therefore be considered with this application.

The only option to attain a thirteen (13) bedroom guesthouse (Lanzerac Beach Manor House) was to consolidate and rezone the properties. The wording was therefore only to state that the intention and impact is not a hotel, but to motivate the scale, proposed land use and exclusions.

Town Planner's Response

There is not a true definition within the relevant Zoning Scheme which can properly define the proposed use. Other applicants might have used the wording for a boutique-hotel. Nevertheless the applicant clearly states the proposed use and the context behind the proposed application.

It should be noted that the meeting held between the applicant and the municipal officials before the application was submitted, was only to discuss particulars of the application and the relevant legislation to consider. The municipal officials do not have the authority to indicate whether an application will be approved or not.

3. Objection

The proposed land use will be of no benefit to the area and will negatively affect the land values due to loss of tranquility because of noise, pollution from vehicles, etc. Permanent residences are more value for money.

Comment received from Applicant

Hermanus is a popular tourist destination with a few guesthouses in Voëlkop. The Lanzerac Beach Manor House is seen as a residential land use therefore the property does not have to be rezoned for commercial use.

The proposed Lanzerac Beach Manor House will not include a restaurant nor will the facilities be open to the public. The dining area will only serve food to guests in the manner of a bed and breakfast. No public access areas are proposed.

Upmarket guesthouses are situated in upmarket residential areas in the Western Cape; therefore the association of a guesthouse with a residential area is seen more positive on the residential areas.

Other alternatives should also be considered, for example if twelve (12) erven were created and the house is used by a large family without any rules and regulations over a weekend or holiday. With the Beach Manor House there will be rules and regulations that the owner must adhere to. Should the rules and regulations not be adhered to then the approval can be rescinded. The proposed use proves to be a more controlled environment.

It is also the best interest of the owner to ensure a high standard is maintained in order to ensure guests return and that good relations are maintained with the neighbours.

Guests seek a tranquil environment for holidays, why will the owner compromise one of the most important factors? The proposed establishment will be upmarket and will add value to the area.

The establishment will contribute towards the tourism sector of Hermanus. Guesthouses also promote the area in order to attract more guests.

The stats provided indicate the negative effect of large hotels in residential areas, but it does not indicate the effect of smaller scaled land use.

It should be noted that the parameters of a Single Residential Zoned property will still apply to the consolidated property to ensure that the property is restricted to remain in character with the surrounding area.

No substantial evidence is provided that permanent residence will add more value compared to the tourist facility. Approximately twenty

(20) workers will be employed by the proposed establishment which will have a very positive impact on the social and economic growth of the area.

Town Planner's Response

It should be noted that the area and property owners have vested rights. The objectors have concerns regarding their rights versus the new rights being applied for by the applicant and the effect the proposed rights have on the surrounding area. The applicant states that the alternatives must be considered which is; the subdivision of the subject property into twelve (12) erven and the development of those twelve erven for guest houses. It should be noted that the creation of twelve (12) erven is in line with the primary rights enjoyed by the surrounding property owners and therefore can be seen more in line with the character of the area than the proposed new rights. Furthermore it is not prearranged that each property owner will seek to develop their property as a five bedroom guest house nor is it prearranged that approval for each and every consent use will be given.

The applicant also states that if an approval is given and the rules and regulations are not adhered to then the approval can be rescinded. This is not correct as it will mean the property must be rezoned back to the original zoning and the re-subdivision into two (2) erven as size of the second dwelling will not be in line with the zoning parameters. Although the zoning parameters of a single residential zoned property will apply the use and management of the property will be fundamentally changed by the approval of the application.

4. Objection

No provision is made for restrooms for the staff working there.

Comment received from Applicant

It is an oversight which will be addressed. The manager will be at the establishment twenty four (24) hours of the day seven (7) days a week. This is almost the same as living at the establishment.

Town Planner's Response

This will have to be addressed should the application be approved.

5. Objection

The proposed rezoning opens door for future developers. Furthermore, one (1) of the objectors state a hotel is only allowed on a commercial zoning.

Comment received from applicant

The proposed rezoning will be restricted to ensure that the property is not used/developed for any other land use. The proposed land use will be restricted to the thirteen (13) bedrooms, and further restricted with SR1 zoning parameters, and the facilities will only be used by the guests. Therefore the owner will not have cart blanche to develop the proposed consolidated property.

The proposed General Residential Zone 3 (Bulk Zone 2) contains hotel as a consent use. The statement from one (1) of the objectors claiming that it can only be accommodated on a commercial zoned property is therefore irrelevant.

Town Planner's Response

The objectors clearly view the proposed use as a commercial entity, although it can be contained on a general residential zoned property. The prominent concern is that the subject property will not be used for the same uses as the surrounding properties. Should the application be approved similar applications will also have to be considered, this in effect it creates a precedent.

6. Objection

The workforce and liquor licence on the property for the proposed land use will have a negative impact on the safety of the area (attract unwanted elements).

Comment received from Applicant

The management will deal with any unwanted elements on and outside of the premises. Communal areas will be for the guests only.

Town Planner's Response

This is a management issue which will have to be managed by the management of the Lanzerac Beach Manor House, should the application be approved.

7. Objection

The service yard and refuse area must be screened from the street and refuse area must be covered/enclosed and kept clean. An objector asks how the visual impact of a lot of refuses versus the removal thereof only once a week will be addressed.

Comment received from Applicant

The service yard and refuse area will be screened (behind walls) and not exposed to the adjacent properties. It is in the owners' best interest to enclose and deal with the refuse in a manner that would not have a negative impact.

Town Planner's Response

This is a management issue which will have to be managed by the management of the Lanzerac Beach Manor House, should the application be approved. If the application is approved then a condition will be stipulated that the refuse area must be properly managed and screened.

8. Objection

Existing municipal infrastructure cannot accommodate the proposed land use.

Comment received from Applicant

The civil services report and GLS report were submitted with the application. The availability of services was also discussed with the engineering department. Bulk services for all services except sewer infrastructure have enough capacity to accommodate the proposed development. The Services Report confirmed that the sewer bulk infrastructure needs to be upgraded, however the Engineering Department confirmed no upgrades of bulk services are required to accommodate the proposed consolidation, rezoning, consent use and departure application.

Town Planner's Response

Services report from the Overstrand Engineering Department indicates that a bulk service levy is payable. That should the service need to be upgraded it is on his/her own cost. The Services Report only states that the sewer bulk infrastructure is according to the GLS Report. The GLS Report confirmed that the sewer bulk infrastructure needs to be upgraded. Therefore, the response provided by the applicant that the Engineering Department confirmed no upgrades of sewer bulk infrastructure are required is unfounded. This proof must be provided should the application be approved.

9. Objection

The developer intends to obtain the erven next to the subject property in order to incorporate it with the proposed Beach Manor House.

Comment received from Applicant

The adjacent properties are for sale. The property owner has no intent to buy the properties.

Town Planner's Response

Any person can buy and sell property. Should the owner wish to incorporate the adjacent properties with the subject properties then an additional town planning application will have to be submitted and evaluated.

10. Objection

The proposed Lanzerac Beach Manor House will impose on existing mountain views.

Comment received from Applicant

The proposed Lanzerac Beach Manor House will be accommodated within the existing buildings.

Town Planner's Response

No additional work is proposed to extend the height of the existing structures therefore. If the application is approved a condition will be imposed that the existing bulk and footprint must be maintained.

11. Objection

The proposal is not compatible with the surrounding residential land uses.

Comment received from Applicant

The proposed Lanzerac Beach Manor House will be restricted to the proposed thirteen (13) bedrooms, no public access will be allowed and SR1 parameters will be implemented. The proposed development will be a luxurious, upmarket development that will fit in with the upmarket neighbourhood. It will add value to the area.

The SR1 parameters will be implemented which will ensure that the property is restricted to remain in character with the surrounding area.

Town Planner's Response

It should be noted that the area and property owners have vested rights. The objectors have concerns regarding their rights versus the new rights being applied for by the applicant and the effect the proposed rights have on the surrounding area. The applicant states that the alternatives must be considered which is; the subdivision of the subject property into twelve (12) erven. It should be noted that the creation of twelve (12) erven is in line with the primary rights enjoyed by the surrounding property owners and therefore can be seen more in line with the character of the area than the proposed new rights. The applicant also states that if an approval is given and the rules and regulations are not adhered to then the approval can be rescinded. This is not correct as it will mean the property must be rezoned back to the original zoning and the re-subdivision into two (2) erven as size of the second dwelling will not be in line with the zoning parameters. Although the zoning parameters of a single residential zoned property will apply the use and management of the property will be fundamentally changed by the approval of the application.

This concern will be discussed under the desirability heading of this application.

12. Objection

The proposed Lanzerac Beach Manor House is not in line with the relevant spatial policies for the area. The land use is seen as a commercial use. In addition the subject property is not earmarked for local economic opportunity purposes.

Comment received from Applicant

It should be noted that the response from the applicant includes a legal opinion which is extensive and therefore it is attached to the item as Annexure E. Only portions of the legal opinion are highlighted in the applicant's response below.

The applicant referred the matter to Mr Johan du Plessis from Messrs Du Plessis Hofmeyer Malan Attorneys for a legal opinion. The legal opinion was obtained in order to answer the objections regarding the amendment of the spatial planning policies as well as to strengthen the motivation for not applying for the amendment of the spatial planning policies.

- The attorney refers to Section 26 of the Municipal Systems Act, Act 32 of 2000 (MSA) which describes the core component of an Integrated Development Program (IDP). An IDP must reflect the municipal council's vision for the long term development of the Municipality and a Spatial Development Framework (SDF) which must include "...the provision of basic guidelines for a land use management system for the Municipality.
- Section 35(1) of the MSA states the following of the IDP adopted by Council "...the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development, in the Municipality.
- A SDF is one of the sectoral components of an IDP. In par 1 of the SDF it is stated that the SDF is to provide general direction and to guide decision making on an on-going basis. The advantages of an SDF includes:
 - (a). *It will ensure the identification of a common spatial vision and a set of objectives focussed on a desired orderly spatial development pattern for the area; and*
 - (b). *It will inform a broad land use management policy, which can be referred to and used to objectively assess the desirability of all future development applications.*
- The SDF only forms part of a number of planning tools available to the Municipality. A more direct planning tool is the Overstrand Municipality Growth Management Strategy, which identify growth nodes.

- For the proposed area it is clear that the vision for the subject area is to maintain the residential character. The proposed use will be for residential purposes, and existing structures will be utilised for the proposed uses, the character of the built environment will remain unchanged.
- The proposed in house facilities (spa and conference facilities) as secondary land uses, which may be permitted with special consent from Council. The applicant states that due to the scale of the proposed land use within the existing structures, the size of the consolidated property, the intention of the proposed land use, the exclusions being applied for (no public access areas; SR1 parameters) the opinion is held the amendment of the SDF is not required to accommodate the proposed land use.
- The attorney further states if it was considered that the proposed land use is not consistent with the SDF. A deviation of the SDF could be applied for, because the land use only relates to the basic or broad guidelines. Therefore the amendment of the SDF and its policies is not required. Section 10 of the By-Law specifically sets out that the requirements must be complied with when a SDF is deviated from.

Town Planner's Response

Regarding the character of the area refer to comment made in point 3 it should be noted that the legal opinion did not state that the SDF and planning guidelines must be amended, but in their opinion a deviation of the guidelines could be considered. The legal opinion also states that the analysis of the application should be done with the character and broad principles which are contained in the policy documents. This point will be discussed under the evaluation heading of this application.

13. Objection

There are restrictive title deed conditions that have to be removed to accommodate the proposed application.

Comment received from Applicant

The structures which encroach upon the restrictive title deed conditions will be removed. The Municipality agreed that no other title deed conditions have to be removed to accommodate the proposed land use application.

Town Planner's Response

This point will be discussed in Part O of this item.

14. Objection

The parking ratio was interpreted and applied incorrectly. The public areas equate to 484,27m² and consequently forty eight (48) parking bays have to be provided.

Comment received from Applicant

No facilities are open for the public. No parking is therefore provided for the facilities which are to be used solely for the guests. Staff will be transported to the premises and picked up and dropped off on the premises. Transport will be provided for guests to the Lanzerac Beach Manor House. Nevertheless sufficient parking is provided on site.

Town Planner's Response

The parking ratio is correctly determined however guests do not necessarily arrive and depart on the same time and the manager will not be able to prohibit the coming and going of guests and this could result in a constant movement of vehicles which could lead to the tranquillity of the area being affected. Furthermore the manager will be hard pressed to turn away and/or keep record of people attending conferences who do not stay at the Lanzerac Beach Manor House, which will also be hard to determine by the Municipality. In general a guest house does not have conference facilities in the definition as it does not fit with the character of a residential area. Further parking will be required if the facilities are open to the public.

15. Objection

Incorrect and inappropriate motivation of planning principles (with reference to spatial justice).

Comment received from applicant

Spatial Justice: - Previous disadvantaged communities will not receive land. However, the proposed Lanzerac Beach Manor House will create employment opportunities for local residents in town. Most staff who will benefit from the proposed Lanzerac Beach Manor House will be local residents living in the informal settlements (i.e. previous disadvantaged communities). The proposed development is located within an existing built environment and does not result in exclusion, segregation or discrimination.

Spatial Sustainability: - The proposed use is compatible with the character of the area and does not impact negatively on the rights of anyone else. The impact on the environment will be kept to a minimum. Extent of the subject property, restrictions placed on the development, compatibility of the surrounding land uses, compliance with spatial planning policies of that area, etc. allows for the consideration and approval of the proposed rezoning, consent use and departure without having an adverse impact on the sustainability of the area. The proposed addition is a brown field/improved erf within an established residential area and therefore will not impact on urban sprawl, or upon a sensitive environment.

Efficiency: - The property is easily accessible and conveniently located close to the Hermanus CBD, beaches and tourist attractions. Therefore discouraging urban sprawl and encourages densification. The existing structure will be used which proves to be more sufficient.

Good Administration: - The company follows cooperation with the Overstrand Municipality to ensure an efficient, uncomplicated land use planning process. The application will follow due process as stated in the Planning By-Law.

Spatial Resilience: - Not applicable

Town Planner's Response

This point will be discussed in Part N of this item.

16. Objection

How will the hotel/Beach Manor House be regulated and controlled to the restrictions as being applied for?

Comment received from Applicant

If the application is approved it will be subject to certain conditions. The owners will have to adhere to the conditions or risk losing the rights. Any deviation will alarm neighbours and force law enforcement to act on any complaints.

Town Planner's Response

Refer to point 3. The statement made by the applicant that the rights will be lost is not correct as it will mean the property must be rezoned back to the original zoning and the re-subdivision into two (2) erven as size of the second dwelling will not be in line with the zoning parameters. Furthermore, with the rezoning of the property permanent rights will have vested in terms of the new zoning.

17. Objection

The Lanzerac Hotel in Stellenbosch has live entertainment, restaurant, etc. The Lanzerac Beach Manor House will also have these activities. The proposal is therefore a disguised guesthouse while being a hotel.

Comment received from applicant

No public areas are proposed (i.e. no bar or restaurant to the public). The comparison to the Lanzerac Hotel was only an indication of the look and feel and luxury associated with the Lanzerac brand. The scale of the two (2) establishments differs. Photos presented by the objector are of the function venue which can accommodate two hundred (200) people and have live music, and therefore it is misleading. The scale will not be the same for the Manor House.

Town Planner's Response

The applicant clearly states that the intent is not to have facilities open to the public.

PART K: SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments	Recommendation		
			Positive	Negative	Comment
Operational Services	26 August 2016	No objection.	Positive	Negative	Comment
Building Department	29 August 2016	Supported and building structures to be compliant with SANS 10400 including disable compliance.	Positive	Negative	Comment
Local Heritage	30 August 2016	Supported.	Positive	Negative	Comment

Area Manager	30 August 2016	I have no objection except that the provision of basic services must be cleared by Infrastructure Department.	Positive	Negative	Comment
Electro Technical Services	16 September 2016	The Electricity Department does not have a problem with the above mentioned development. However keep in mind that once the consolidation is finalized only one electrical connection will be allowed to the erf.	Positive	Negative	Comment
Telkom	19 September 2016	Attached as Annexure F.	Positive	Negative	Comment
Environmental Section	3 October 2016	No objection.	Positive	Negative	Comment
Fire Department	7 October 2016	Approval is subject to the submission of a fire plan and a fire safety rational design by a competent person (fire engineering) in terms of the National Building Regulations SANS10400.	Positive	Negative	Comment
Engineering Services	13 October 2016	Attached as Annexure G.	Positive	Negative	Comment

PART L: SUMMARY OF APPLICANT'S REPLY TO COMMENTS

The applicant's comment is contained in Part J.

PART M: MUNICIPAL ASSESSMENT OF COMMENTS

It is clear from the comments received from the various departments that they support the application.

The objections received from the objectors are noted and will be considered in the evaluation of the proposed application.

PART N: MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

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

Partially consistent.

(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 applicant further motivated and included the reasons for the consistency in the response given to the objections. Below the Town Planning Department's point of view on the consistency of the application with the development principles.

The objectives relating to:

Spatial Justice

Not applicable. The subject property is within the existing township therefore spatial justice does not apply to this application. The applicant motivates however that the application will create/provide training/employment opportunities of employees who live in previous disadvantaged areas.

Spatial Sustainability

The subject property is already developed and therefore will not have an impact on the environment nor will additional erven be created.

Efficiency

The application is consistent with efficiency as the existing structures and land will be used. The application is consistent with Section 7(c)(ii)(iii) in as far as to the decision making procedure in terms of the time frames and public participation is concerned to minimize negative impacts on parties concerned.

Good administration

The Overstrand Municipality seeks to maintain a good administrative quality which give adherence to well established administrative procedures.

Spatial Resilience

Not applicable.

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

Same as SPLUMA.

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

The subject property is situated in Voëlklip and Planning Unit 3 in terms of the SDF and Overstrand Municipal Spatial Growth Management Strategy. The objective of the SDF is to protect and maintain the character of the established areas in the Overstrand as well as balance growth in those areas. Planning Unit 3 in the Overstrand Municipal Spatial Growth Management Strategy is earmarked for residential use and that the density of the residential units can be increased.

The applicant motivates that the application is in line with the SDF due to the proposed rezoning which is General Residential Zone 3 and that it remains for residential use. Although the proposed zoning inherently remains residential the primary uses associated with the zoning is used to acquire higher densities (i.e. flats). This is not in line with the density policy which states that densification must be done through subdivision and the construction of second dwellings. The applicant therefore motivates that the densities will not increase due to the existing structures being used and the footprint will not increase.

One of the objectors further highlighted the SDF needs to be amended. However considering the aforementioned statement from the applicant a deviation, where site specific circumstances justify deviation, could rather be considered. This is due to the following points; the use will remain residential in the general sense, densities on the current footprint will remain unchanged and no substantial change will be caused to the underlining policies and guidelines set out in the SDF.

The conundrum remains in approving the rezoning in that the owner of the property gains access to primary rights which is not in character with the single residential character of the properties surrounding the subject property. A single residential property as a primary right of a dwelling house which is defined as follows:

".....means a self-contained inter-leading group of rooms, used for the accommodation and housing of one family, together with adequate sanitary facilities and kitchen, and such outbuildings as are ordinarily used therewith, provided further that a dwelling house may not have more than two kitchens;"

Whereas the inherent primary rights for General Residential Zone 3 is as follows: blocks of flats, town house in accordance with 6.3.2, residential buildings; with block of flats being defined as:

".....means a building containing three or more dwelling units, together with such outbuildings as are ordinarily associated therewith; provided that in those zones where flats are permissible, less than three dwelling units shall also be permitted;"

After approving an application the zoning right given cannot be rescinded and therefore the concerns posed by the surrounding residents are valid, and that the proposed application can affect the single residential character of the area.

(In)consistency with guidelines prepared by the Provincial Minister

N/A

Impact on municipal engineering services

The applicant indicated that the sewer bulk infrastructure needs to be upgraded as per the GLS Report.

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

N/A

Existing and proposed zoning comparisons and considerations

As stated earlier the character of the subject property and the surrounding area is single residential. A single residential property as a primary right is a dwelling house which is defined as follows:

".....means a self-contained inter-leading group of rooms, used for the accommodation and housing of one family, together with adequate sanitary facilities and kitchen, and such outbuildings as are ordinarily used therewith, provided further that a dwelling house may not have more than two kitchens;"

Whereas the inherent primary rights for General Residential Zone 3 is as follows: blocks of flats, town house in accordance with 6.3.2, residential buildings; with block of flats being defined as:

".....means a building containing three or more dwelling units, together with such outbuildings as are ordinarily associated therewith; provided that in those zones where flats are permissible, less than three dwelling units shall also be permitted;"

the applicant also seeks to gain consent use in order to accommodate a Beach Manor House (hotel/guesthouse) with an in-house spa and conference facilities on the property, a hotel is defined as"

".....means a property used as a temporary residence for transient guests, where lodging and meals are provided, and may include;

- i. a restaurant or restaurants;*
- ii. associated conference and entertainment facilities that are subservient and ancillary to the dominant use of the property as a hotel; and*
- iii. premises which are licensed to sell alcoholic beverages for consumption on the property; but does not include an off-sales facility;"*

In general a guest house does not have conference facilities in the definition as it does not fit with the character of a residential area. The manager will be hard pressed to turn away and/or keep record of people attending conferences who do not stay at the Lanserac Beach Manor House, which will also be hard to determine by the Municipality.

The consideration must be taken whether the character of the area will be affected and if so the vested rights of the surrounding property owners.

The desirability of the proposal

The applicant motivates that the current property stands are equal to twelve (12) standard size erven and that each property owner of each erf can decide to open a five (5) bedroom guesthouse. As stated previously in response to an objection; the creation of twelve (12) erven is in line with the primary rights enjoyed by the surrounding property owners and therefore can be seen more in line with the character of the area than the proposed new rights. Furthermore it is not prearranged that each property owner will seek to develop their property as a five bedroom guest house nor is it prearranged that approval for each and every consent use will be given. Each application will have to be determined on merit because the size of the standard size properties is generally too small to have a five (5) bedroom guesthouse and the additional five (5) parking bays on the property.

The objections received from the surrounding property owners must be noted. From the objections received from the neighbours surrounding property owners, it can be determined that the approval of the application will have a negative impact on the social and economic composition of the area. Furthermore, the criteria for decision making by a Municipal Planning Tribunal or the Authorised Official is listed in Section 66 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016. The aforementioned section specifically states that the comments in response of the notice and the response thereon must be considered as well as the desirability of the proposed land use.

The first issue in terms of desirability is due to the differences between the current zoning and the proposed zoning as indicated in the former heading. If the owner decided to act out the primary right associated with the proposed zoning it would lead to thirteen (13)

dwelling units being erected which will negatively impact the area. Furthermore the location of the site is situated in a low density high income area with the surrounding land uses being solely used for residential purposes. A thirteen (13) bedroom guest house with a spa and conference facility is not in line with the character of the area. Nor are there associated uses in the vicinity of the proposed site. Therefore the proposed use is in conflict with the residential character of the area. Due to the character being negatively affected the vested rights of the property owners will also be affected. If the application was to be approved then various conditions would need to be put in place and be adhered to, to ensure that the proposed use does not have a negative effect on the character of the area. This leads to the second issue which is after approving an application the zoning right given cannot be rescinded and therefore the concerns posed by the surrounding residents are valid. In general a guest house can be converted back to a single dwelling if current owner choose not to act on the consent use however this will not be the case. If similar applications would be approved in the same location then the cumulative impact would cause the character of the area to change from single residential.

The third issue is that although guests do not necessarily arrive and depart on the same time and the manager will not be able to prohibit the coming and going of guests and this could result in a constant movement of vehicles which could lead to the tranquillity of the area being affected. Furthermore, the manager will be hard pressed to turn away and/or keep record of people attending conferences who do not stay at the Lanserac Beach Manor House, which will also be hard to determine by the Municipality. In general a guest house does not have conference facilities in the definition as it does not fit with the character of a residential area.

The fourth issue is the marketability of the area. This is due to the proposed rezoning which will limit the residential opportunities in the area.

Considering the aforementioned and the objections received, the proposed land use is considered undesirable and therefore the application cannot be supported. It should be stated that the departure was only necessary due to the new building lines imposed by the proposed zoning, the consolidation application cannot be supported alone due to the fact that two (2) dwelling houses will be erected on one (1) property and both being larger than 120m² which is contrary to the primary right of a single residential zoned property, and the consent use application can only be done with the rezoning application. Therefore if the rezoning of the properties cannot be supported then the other aspects (departure, consolidation, consent use) of the application can also not be supported.

A mention was made by one (1) of the objectors that a removal of the restrictive conditions must be done due to the Title Deed containing a restrictive condition and that the Overstrand Municipality is not the successor in title from the Mossel Rivier Company.

A legal opinion has been received that the Overstrand Municipality is the successor in title from the Mossel Rivier Company. The only condition found in the Title Deed which might impede the application is Section D.(iii)E. which states: "...no purchasers of lots in the Township or their successors in title shall erect any hotel, or hold any liquor licence without the written consent of the Company first had and obtained." The applicant applied for a conveyances certificate which indicates that the Municipality only needs to give consent for the proposed use. However, considering the undesirability of the application, it is recommended that the no such consent for this application must be given. The condition is to ensure that the area remains residential and to the benefit to each owner who purchased property in the area.

PART O: ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

As stated in the evaluation an application for the removal of restrictive Title Deed conditions is not applicable. It is however shortly discussed in order to address the objector's comment.

The financial or other value of the rights

The current characteristics of the surrounding area will be influenced and therefore it will influence the marketability of the area.

The personal benefits which will accrue to the holder of rights and/or to the person seeking the removal

The applicant will be the sole beneficiary of the proposed use.

The social benefit of the restrictive condition remaining in place, and/or being removed/amended

The social benefit should the condition remain in place is for the residents of the neighbourhood ensuring that activities not associated with the residential character of the area, be in areas allocated for such activities.

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

It will allow for additional rights to be applied for.

PART P: CONCLUSION

The proposed application in order to rezone and consolidate both Erven 3160 and 3161, consent use in order to operate the Lanserac Beach Manor House (hotel/guesthouse) with an in-house spa and conference facilities on the consolidated property, and the departure from the building lines, is not be recommended for approval.

PART Q: RECOMMENDATION

RECOMMENDATION:

1. that the application received on 17 May 2016 from Messrs. Plan Active Town & Regional Planners on behalf of Kindoc Industries (Pty) Ltd for the following:
 - the consolidation of Erven 3160 and 3161, Voëklip, Hermanus in terms of Section 16(2)(e) in order to form one (1) erf of 5948m²;
 - rezoning of the consolidated erf in terms of Section 16(2)(a) from Single Residential Zone 1 to General Residential Zone 3 (Bulk Zone 2) in order to establish a thirteen (13) bedroom guesthouse (Lanserac Beach Manor House);
 - consent use in terms of Section 16(2)(o) in order to accommodate a Beach Manor House (hotel/guesthouse) with an in-house spa and conference facilities on the property; and
 - departure in terms of Section 16(2)(b) for relaxation of building lines.

not be approved.
2. that the applicant be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above conditions of approval.

PART R: REASONS FOR RECOMMENDATION

- ❖ the application is for the benefit of the applicant and not for the wider community in terms of planning principles;
- ❖ the marketability of the area will be affected due to limited residential opportunities being created by the proposed use.
- ❖ the nature of the thirteen bedroom guest house and associated uses is not compatible with the residential character of the area and will negatively affect the vested rights of the surrounding property owners;
- ❖ the objections from the neighbouring property owners clearly state that the proposed thirteen bedroom guest house and associated uses is unwanted in the residential area;
- ❖ the proposed activity may have a detrimental cumulative impact on the residential character should similar applications be approved; and
- ❖ approving the consent use in terms of the Title Deed is not in the benefit of property owners in the area, since it will have an impact as their right to a predominantly residential area will be under threat.

PART S: ANNEXURES

Annexure A: Locality Plan
Annexure B: Motivation
Annexure C: Proposed Site Development Plan
Annexure D: Objections received
Annexure E: Applicant's reply to Objections received
Annexure F: Telkom
Annexure G: Services Report

PART T: SIGNATURES

Author name: **P ROUX**

Author signature: 

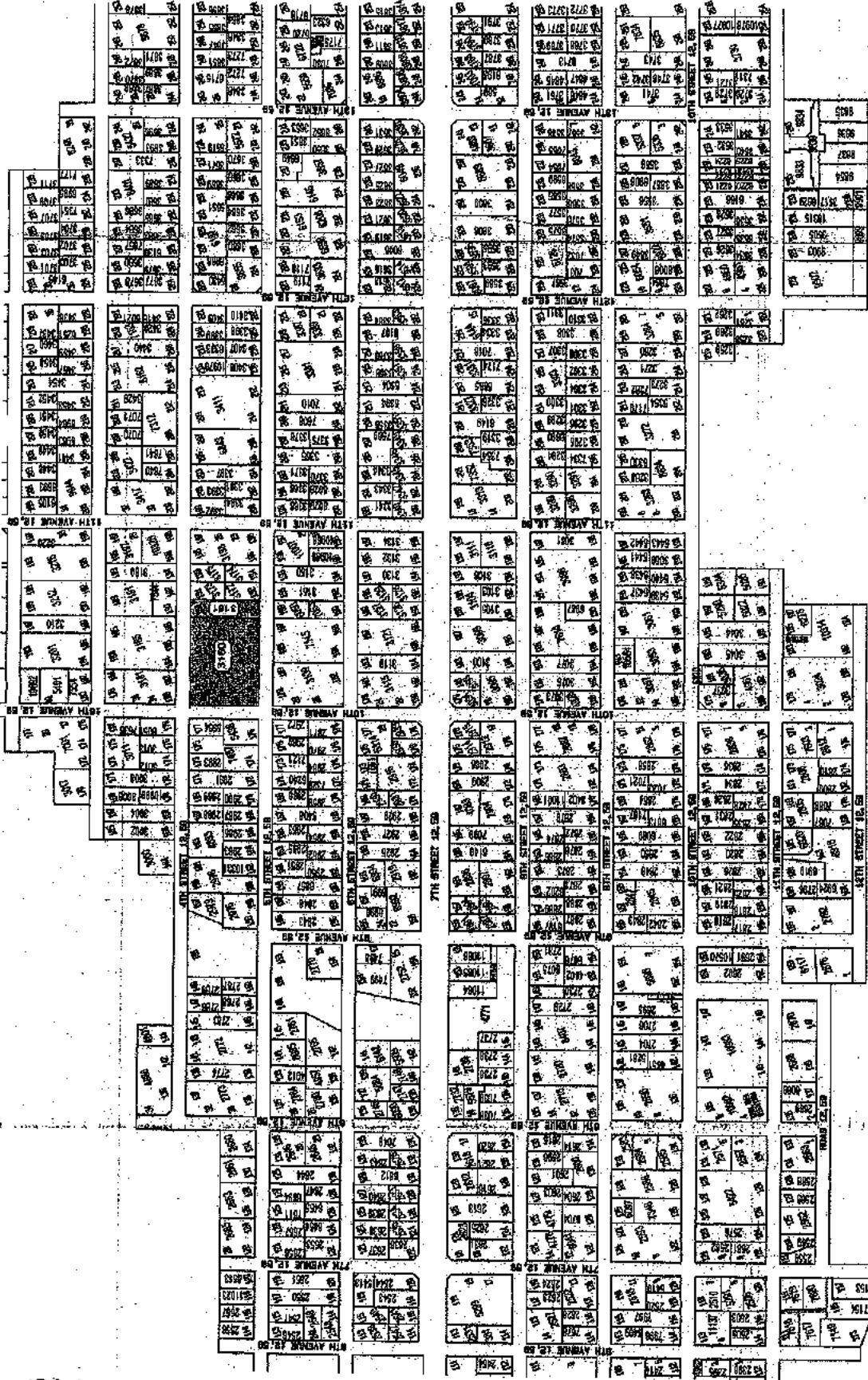
Date: 02/2/17

Registered planner name : **SW VAN DER MERWE**

Registered planner signature : 

SACPLAN registration number: **A/1850/2014**

Date: 7/02/17



Scale: NTS
 Drawing No: 18/018/18M/001
 Date: FEBRUARY 2018

Plan Description:
LOCALITY MAP

Property Description:
**ERVEN 3160 & 3161
 HERMANUS**

All distances approximate
 and subject to survey.
 COPY RIGHT RESERVED

Stads- en Sireekbeplanners
 Town & Regional Planners

PLAN
 Active

**PROPOSED CONSOLIDATION, REZONING,
CONSENT USE & DEPARTURE:
NEW LANZERAC BEACH MANOR HOUSE FOR
ERVEN 3160 & 3161 HERMANUS**

**OVERSTRAND MUNICIPALITY
DIVISION CALEDON**

MOTIVATION REPORT

1. BACKGROUND

The company Plan Active has been instructed by Mr. S.J.D. Potgieter, on behalf of Kindoc Industries Pty Ltd, the owners of erven 3160 & 3161 Hermanus, to apply for the consolidation, rezoning, consent use and departure of erven 3160 and 3161 Hermanus in order to establish a thirteen bedroom Beach Manor House on the subject properties.

Erf 3160 Hermanus is held by title deed no. T53506/2014 and is 4957m² in extent (the equivalent of ten minimum erf sized erven in the vicinity). Erf 3161 Hermanus is held by title deed no. T53506/2014 and is 991m² in extent (the equivalent of two minimum sized erven in the vicinity). It is the intention of the owners to redevelop the subject properties to create tourist accommodation alternatives for people (tourists) visiting the Hermanus area.

Due to the amount of guest rooms proposed for the Beach Manor House, the proposed Beach Manor House cannot be accommodated under the definition of a guesthouse (the aforementioned is limited to five bedrooms only) on a Residential Zone I: Single Residential property. An application is thus herewith lodged for the consolidation and rezoning from Residential Zone I: Single Residential to General Residential Zone 3 (bulk zone 2) with a consent use to accommodate the proposed

thirteen bedroom Beach Manor House. Provision will also be made for an in-house spa and conference facilities in the proposed Beach Manor House.

2. APPLICATION DETAILS

In order to accommodate a thirteen bedroom Beach Manor House with an in-house spa and conference facilities on the subject properties an application is lodged in terms of:

- Chapter 4, Section 16(2)(e) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the consolidation of erven 3160 and 3161 Hermanus;
- Chapter 4, Section 16(2)(a) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the rezoning of erven 3160 and 3161 Hermanus;
- Chapter 4, Section 16(2)(o) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the consent use of erven 3160 and 3161 Hermanus for a hotel to accommodate a Beach Manor House with in-house spa and conference facilities on the subject property;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the departure (building line relaxation) of erf 3161 Hermanus.

3. GENERAL APPLICATION INFORMATION

3.1 PROPERTY DESCRIPTION

The subject properties are situated at 190 Fifth Street and 32 Tenth Avenue in Voëlklip, Hermanus. Please refer to the locality plan attached. There is an existing double storey dwelling with garages, a cottage and gymnasium situated on erf 3160 Hermanus. There is an existing single storey dwelling situated on erf 3161 Hermanus. Most of the structures on erven 3160 & 3161 Hermanus have uninterrupted mountain and sea views. The subject properties are within walking distance to Grotto Beach.

The subject properties fall steeply from the north to the south and are, apart from the buildings, covered by gardens as is evident on the photographs attached. The aforementioned contributes towards the magnificent views from the subject properties. Furthermore erf 3160 Hermanus boasts of a beautiful landscaped garden – refer to the photograph annexure attached.

Erf 3160 Hermanus is held by title deed no. T53506/2014 and is 4957m² in extent (the equivalent of 10 minimum erf sized erven in the vicinity). Erf 3161 Hermanus is held by title deed no. T53506/2014 and is 991m² in extent (the equivalent of 2 minimum sized erven in the vicinity).

The subject properties are situated in a residential environment.

3.2 ZONING

Erven 3160 & 3161 Hermanus are zoned Residential Zone 1: Single Residential and are utilized as such.

Surrounding properties are zoned for single residential purposes.

3.3 LAND USE

The subject properties are currently being used for single residential purposes.

Surrounding properties are mainly used for single residential purposes. Other surrounding land uses are public roads and public open spaces.

3.4 PROPOSED DEVELOPMENT

Application is made for:

- The consolidation of erven 3160 and 3161 Hermanus in terms of Chapter 4, Section 16(2)(e) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016;
- The rezoning of erven 3160 and 3161 Hermanus (newly consolidated erf 12213 Hermanus) from Residential Zone 1: Single Residential to General Residential Zone 3 (bulk zone 2) in terms of Chapter 4, Section 16(2)(a) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016;
- The consent use of erven 3160 and 3161 Hermanus (newly consolidated erf 12213 Hermanus) in terms of Chapter 4, Section 16(2)(o) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for a hotel to accommodate a Beach Manor House with an in-house spa and conference facilities on the subject property;
- The departure (building line relaxation) of erf 3161 Hermanus (newly consolidated erf 12213 Hermanus) in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016.

The owners intend to redevelop the subject property to operate a thirteen bedroom Beach Manor House and an in-house spa and conference facility within the existing structures on the subject property. Due to the amount of guest rooms proposed for the Beach Manor House, the proposed Beach Manor House cannot be accommodated under the definition of a guesthouse on a Residential Zone I: Single Residential zoned property (the aforementioned is limited to five bedrooms only)

Firstly, it is proposed to consolidate erven 3160 and 3161 Hermanus as follows:

TOTAL EXTENT OF PROPOSED CONSOLIDATION	5948m ²
PROPOSED CONSOLIDATION	Erf 3160: 4957m ²
	Erf 3161: 991m ²

Please refer to the concept consolidation diagram for erf 12213 Hermanus attached. It should be noted that the extent of erf 3160 Hermanus is the equivalent of ten minimum sized erven in the vicinity. The extent of erf 3161 Hermanus is the equivalent of two minimum sized erven in the vicinity. Therefore, the extent of the consolidated property is larger than most erven in the vicinity.

The extent of the consolidated erf should be considered when evaluating this application. The proposed application should be weighed up against other possible applications for the property: the subdivision of the subject property into twelve portions and applying for a five bedroom guesthouse on each of the twelve properties after subdivision. Therefore, it is possible to in effect create twelve new portions and establish a five bedroom guesthouse on each of the subject portions, which will equal to 120 guests staying in twelve guesthouses. The impact of the aforementioned will be much greater than what this application is proposing for the subject property.

After consolidation it is proposed to rezone the consolidated property (erf 12213 Hermanus) from Residential Zone 1: Single Residential to General Residential Zone 3 (bulk zone 2) to accommodate a thirteen bedroom Beach Manor House with an in-house spa and conference facilities on the subject property.

A thirteen bedroom establishment (Beach Manor House) cannot be accommodated on a Residential Zone 1: Single Residential property since a maximum of only five guest rooms are allowed. Therefore the proposed rezoning of the consolidated property will allow a larger (thirteen bedroom) Beach Manor House on the consolidated property. Due consideration was given to the appropriate zoning to accommodate the proposed Lanzerac Beach Manor House. General Residential Zones 1 and 2 do not make provision for all the amenities proposed for the subject property as primary or consent uses. It was however evident that General Residential Zone 3 (Bulk Zone 2) provides for the appropriate consent use to accommodate the proposed Lanzerac Beach Manor House.

The proposed General Residential Zone 3 (bulk zone 2) zoning does not make provision for a Beach Manor House as a primary right on the subject property. Therefore a simultaneous application for the consent use of the consolidated property is lodged to accommodate a Beach Manor House on the subject property. The closest definition of the proposed land use would be a "hotel". It should however be noted that this application proposes a Beach Manor House which is intended to be operated as a large guesthouse. Reference will be made to a "Beach Manor House" instead of a hotel due to the lower impact and scale the proposed development will have.

The proposed General Residential 3 (bulk zone 2) zoning was discussed with the Overstrand Municipality to ensure that the zoning is in line with the ambiance and character of the area. Since the majority of the surrounding erven are zoned for single residential purposes, the proposed zoning of General Residential 3 (bulk zone 2) but with land use restrictions of Residential Zone I: Single Residential was deemed most suitable to accommodate the guest suites, in-house spa and conference facilities on the subject properties. It should also be noted that the municipality will restrict the owners to use the subject properties only for the land uses being applied for (i.e. thirteen guest room Beach Manor House, in house conference, spa facility and communal amenities such as dining areas).

The proposed Beach Manor House will form part of the Lanzerac Group. Lanzerac is known for the luxurious and exclusive accommodation options it offers. The existing Lanzerac brand is also known to ensure a tranquil and peaceful environment for the guest accommodation options they offer. The look and feel of the proposed Beach Manor House will resemble the look and feel of the Lanzerac Hotel and Spa in Stellenbosch - the same exclusive and luxurious accommodation in a tranquil setting, close to nature, separate units with beautifully landscaped gardens in between and amenities such as a swimming pool, spa and conference facility available to guests - but only on a smaller scale. Please refer to the photograph annexure.

Currently guests staying at the Lanzerac in Stellenbosch visit Hermanus on a regular basis. Our client identified the need to accommodate these guests in their own accommodation brand in Hermanus instead of booking their guests into guest houses in the vicinity. The extent of the structures on erven 3160 and 3161 Hermanus are ideal since only small alterations have to be made to allow for a thirteen bedroom guesthouse on the subject properties. Furthermore the setting and beautiful landscaped garden is the ideal environment envisaged for tourists visiting Hermanus.

The proposed Lanzerac Beach Manor House will consist of thirteen en-suite bedrooms that will be accommodated in three existing structures on the subject properties. Bedrooms 1-9 will be accommodated in the main dwelling on erf 3160 Hermanus (bedrooms 1-6 will be situated on the ground floor and bedrooms 7-9 on the first floor). Bedrooms 10 and 11 will be accommodated in the existing cottage on erf 3160 Hermanus. Bedrooms 12 and 13 will be accommodated in the existing dwelling currently situated on erf 3161 Hermanus.

The property is also developed with a swimming pool and landscaped garden for the exclusive use by the guests. The gymnasium next to the swimming pool will be renovated to accommodate male and female lavatories, a kitchen, store room and dining area.

Provision is made for two dining rooms in the existing structures on the subject properties. One dining room will be situated in the main dwelling house and the other will be situated in the structure (existing gym) next to the swimming pool. It is proposed to serve breakfast, lunch and dinner to guests on the subject property.

The proposed thirteen bedroom Beach Manor House will be accommodated within existing structures on the subject properties. I.e. the proposed Beach Manor House will not have a larger footprint than the already approved buildings on the subject properties. The separate structures of the proposed Beach Manor House will be linked by proposed new covered walkways as shown on the site development plan attached. The proposed new walkways and gazebos are the only new structures proposed on site. All of the proposed guest suites and amenities will be accommodated in the existing structures on both erven 3160 & 3161 Hermanus.

The site development plan indicates that the proposed Lanzerac Beach Manor House will consist of the following:

1. Main dwelling and existing garages (erf 3160 Hermanus):
 - Ground floor: six en-suite bedrooms, an office, a terrace, spa / dining area, storage rooms, an entrance courtyard / reception area, verandahs, walkways and gazebos.
 - First floor: three en-suite bedrooms and balconies.
2. Cottage (erf 3160 Hermanus):
 - Ground floor: two en-suite bedrooms
3. Gymnasium (erf 3160 Hermanus):
 - Ground floor: male and female lavatories, a kitchen, store room and dining area.
4. Dwelling (erf 3161 Hermanus):

- Ground floor: two en-suite bedrooms, kitchen and lounge / dining area.

The proposed in-house spa and conference facility can be accommodated under the proposed consent use. "Hotel" is defined as follows:

"means a property used as a temporary residence for transient guests, where lodging and meals are provided, and may include;

(i) A restaurant or restaurants;

(ii) Associated conference and entertainment facilities that are subservient and ancillary to the dominant use of the property as a hotel; and

(iii) Premises which are licensed to sell alcoholic beverages for consumption on the property; but does not include an off-sales facility."

It is important to note that the proposed amenities (spa and conference facility) at the Lanzerac Beach Manor House will not be public accessed areas but will be for the exclusive use of guests staying at the Beach Manor House. The proposed spa will consist of two treatment rooms and will provide standard treatments associated with spas. The proposed conference facility will accommodate a maximum of 20 guests.

A manager will be on site at all times to ensure the guests' needs are met. It is however not a prerequisite that the manager has to live on the premises and therefore provision is not made for a manager's room in the proposed Beach Manor House.

As previously mentioned the proposed Lanzerac Beach Manor House will be accommodated within the existing structures on the subject properties. The land use parameters for the proposed Lanzerac Beach Manor House will be restricted to the Residential Zone 1: Single Residential parameters, except for the building lines since the building lines for General Residential Zone 3 is more restrictive:

DEVELOPMENT PARAMETERS	
Erf size	5948m ²
Allowed coverage	50%
Building lines	Street: 4m Side / lateral: 4,5m Rear: 3m
Height	The maximum height of a building measured

	from the base level to the top of the roof is 8,0m
Parking	1 bay per bedroom plus an additional 10 parking bays per 100m ² of public access areas.

AREA SUMMARY	
Main dwelling: Ground floor	
En-suite bedrooms no. 1-6 with living areas	665,4m ²
Covered terrace	72,2m ²
Existing covered walkways	56,3m ²
Total	793,9m²
Main dwelling: First floor	
En-suite bedrooms no. 7-9 with living areas	235,3m ²
Open balcony	85m ²
Total	320,3m²
Cottage 1	
En-suite bedrooms no. 10 & 11	99,7m ²
Cottage 2 (dwelling on erf 3161)	
En-suite bedrooms no. 12 & 12 with living areas	159,5m ²
Covered patios	46,7m ²
Total	206,2m²
Kitchen & Dining area (existing gymnasium on erf 3160)	130,2m²
Proposed covered walkways	64,2m ²
Proposed gazebos 1 & 2	32m ²

DEVELOPMENT SCENARIO	
Ground floor extent (total footprint of all structures)	1326,2m ²
First floor (main dwelling only)	320,3m ²
Coverage	22,3%
Bulk	0,27
Height	Two storeys (existing height to remain unchanged)
Parking required	13 bays
Parking provided	18 bays

BUILDING LINES		
Building line	Allowed	Compliances
Street building line	4m	Yes
Lateral / side building lines	4,5m	No – existing dwelling on erf 3161 encroaches
Rear building lines	3m	N/A

From the above it is evident that the proposed development will adhere to most of the relevant land use parameters applicable. Two existing structures (carport on erf 3160 Hermanus and dwelling on erf 3161 Hermanus) currently encroaches the applicable building lines. The existing carport on erf 3160 Hermanus that encroaches the 10th Avenue building line will be removed from the property. Consequently there is only one building line encroachment and the aforementioned is to accommodate an existing the existing dwelling on erf 3161 Hermanus. Application is therefore made for a departure to accommodate the existing dwelling on erf 3161 Hermanus as follows:

- The relaxation of the eastern lateral building line from 4,5m to 1,2m to accommodate the existing dwelling (proposed en-suite bedrooms no. 12 & 13 with living areas) currently situated on erf 3161 Hermanus.

Title deed no. T53506/2014 has no title deed restrictions that need to be removed in

order for this application to be approved. Please refer to Section 3.7 of the motivation report for the details concerning the title deed conditions and how the restrictions do not prohibit the proposed consolidation, rezoning, consent use and departure of the subject properties.

The proposed consolidation, rezoning, consent use and departure will have a low impact on the surrounding erven as the subject property's zoning will be restricted to the Beach Manor House (thirteen bedroom guesthouse with amenities) and the proposed Beach Manor House will be accommodated in the existing structures on the subject properties.

The proposed consolidation, rezoning, consent use and departure will have a low impact on the environment and traffic of the area. We therefore do not anticipate any problems with the proposed application.

3.5 CHARACTER OF THE ENVIRONMENT

The subject properties are situated at the foot of the mountain in the quiet Voëlklip area. The Voëlklip area is characterized by single dwellings and recreational facilities (mountain biking trails, hiking trails, etc.). The subject properties' character will remain unchanged since it is proposed to accommodate the proposed land use in the existing structures on erven 3160 & 3161 Hermanus. We are therefore of the opinion that the impact on the existing character of the area will be kept to a minimum. The proposal to establish upmarket, luxurious guest accommodation (similar to Lanzerac Stellenbosch – refer to their website: www.lanzerac.co.za) on the subject properties will add value to the area and we do not foresee a negative impact on the surrounding property values.

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

The subject properties are ideally positioned to explore all the great attractions of the Cape Whale Coast and boasts breathtaking views of the ocean, and mountains. The subject properties are five minutes walk away from the famous Grotto Beach and only two minutes walk to various mountain trails in the Fernkloof Nature Reserve.

Due to the size and location of the properties the subject properties have the potential to be developed as a Beach Manor House. The subject properties are situated in the picturesque Voëlklip and last mentioned is known as a popular area for guests visiting and staying over in Hermanus.

When the owners bought the subject properties in 2014 (with all the structures as indicated on the site development plan already developed), they saw the potential of the subject properties to be used for tourist accommodation purposes. Since the owners are familiar with the high demand for guest accommodation in Hermanus (guests staying at the Lanzerac Hotel, Stellenbosch, visit Hermanus regularly) they took the aforementioned into consideration and decided to contribute towards the tourist accommodation options for not only the Greater Hermanus area but also their guests staying at the Lanzerac Hotel in Stellenbosch.

As previously mentioned the alternative to the proposed thirteen bedroom Lanzerac Beach Manor House (i.e. if the subject properties were to be developed to its full potential) would imply the following:

- The subdivision of both the subject properties to create ten (erf 3160) and two (erf 3161) erven respectively (therefore, a total of twelve Residential Zone 1: Single Residential properties) and developing each property with a dwelling house.
- The consent use of each of the twelve properties to accommodate a five bedroom guesthouse on each of the erven. At 10 guests per guesthouse this would amount to a total of 120 guests that can be accommodated if our client chose to follow this route, or;

- Developing a second dwelling with each main dwelling on all twelve properties (since a second dwelling is a primary right in terms of the Overstrand Zoning Scheme Regulations).

Therefore, when weighing the two alternatives against each other, it is evident that the proposed thirteen bedroom Lanzerac Beach Manor House will have a lower impact on the surrounding environment. The fact that the zoning of the subject properties will change, is only to accommodate more than five bedrooms on the consolidated property and to accommodate the separate structures on the subject property (since the definition of a guesthouse stipulates that the guest rooms must be accommodated in an interleading dwelling only). The owners will be restricted to the thirteen bedroom Lanzerac Beach Manor House and any changes to the land use will have to follow another land use application in future. The aforementioned implies that the adjacent property values and the character of the area are protected.

3.7 IMPACT ON EXTERNAL ENGINEERING SERVICES

3.7.1 PROVISION OF SERVICES

Available water

According to the Services Report compiled by Andre van der Merwe Engineering Consultants dated April 2016 the proposed 13 bedrooms will have a maximum capacity of 26 people. With an annual average daily (AAD) usage of 175 l/day/person the total AAD for the site will be 4.6 kl. The area is seen as a low-risk group 1 fire risk area and a minimum flow of 15 l/s per hydrant and a minimum residual head of 7m is required. The area is fed from a high level reservoir to ensure the required criteria are met. The existing water network surrounding the site consist of 75mm diameter mains in 10th street and 4th Avenue and a 110mm diameter main in 5th Avenue. It is proposed to apply for a single 50mm diameter water connection for the site once it has been consolidated to cater for internal fire fighting requirements to be confirmed by others. This connection should be made on the 110mm diameter pipe in 5th Avenue.

A CES report (capacity analysis of the bulk water and sewerage services) was compiled by GLS Consulting (refer to the copy attached). They concluded that there

is sufficient capacity in the existing water system to accommodate the proposed thirteen bedroom Lanzerac Beach Manor House.

Furthermore the developer will be liable for bulk services levies payable to the Overstrand Municipality to contribute towards the necessary services upgrades.

Sewerage

The Services Report calculated the sewer flow of the proposed development at 3.7 kl/day. The site is situated in an area that is serviced by a small bore sewer system. This require that a sewage interceptor tank be build on each property. The required size for a single tank to serve this development is 18m³. The effluent line from this tank will connect to the existing Municipal 90mm diameter sewer line in 5th Avenue.

According to the CES report the municipality will have to implement certain minimum upgrades to the sewer bulk infrastructure far downstream of this development to ensure all bulk services have sufficient capacity for future developments. Allowance for this has been made in the 2016/17 Municipal budget.

The effect of this development on the bulk services at that point will percentage wise be almost negligible compared to the flows from the rest of the town.

The CES report concluded that here is insufficient capacity in the existing sewer system to accommodate the proposed development. The minimum upgrades required to accommodate the development in the existing sewer system are master plan items OHS13.1 & OHS13.2 required to upgrade the existing gravity sewer system between the Mosselrivier PS and the Hermanus WWTP (see full report with figures attached).

The developer will be liable for bulk services levies payable to the Overstrand Municipality to contribute towards the necessary services upgrades.

Storm water

The status quo as far as storm water run-off is concerned will be maintained with the new development. No new buildings will be constructed, the covered walkways to be erected will have a minimal additional roof area that will be created and the additional rain water run-off from these roofs will be catered for on site.

The majority of the area to be used as parking is currently paved. Very little additional run-off from the parking area will be created and this will be dispersed onto the adjoining lawn.

All storm water of the development will be handled on site and the pre-development and post development run-off will remain the same. There will thus be no need for new external storm water infrastructure.

Electricity

AVDM Consulting Engineer's services report confirmed that the Overstrand Municipality is the supply authority for electricity to this development. The existing electrical capacity allowed for the combined erven 3160 and 3161 is 70kVA.

Based on the information available to us, it is estimated that the demand of the new development will not exceed 70kVA. There is thus sufficient capacity in the existing supply network to accommodate this development.

The supply to the development will be made available as a bulk supply from the existing kiosk situated in front of erf 3160 Hermanus.

Every effort must be made to use energy saving equipment such as energy efficient lamps, equipment, solar water heating etc..

Solid waste

Refuse / waste are collected by the municipality on a weekly basis. The proposed refuse removal area is shown on the site development plan attached and will be accessed from 10th Avenue.

Bulk services contributions

Bulk Service Contribution Levies (BICL) are to be paid by the developer to supplement municipal services and amenities. Please refer to pages 4 and 5 of AVDM Consulting Engineers' Services Report for more information in this regard.

Conclusion

The bulk services for all services except the sewer infrastructure have enough capacity to accommodate the proposed development.

Certain minimum upgrades to the sewer bulk infrastructure downstream of this development will have to be implemented before this development can be accommodated in the sewer system. The possible upgrades of the bulk services were discussed with Mr Dennis Hendriks (Senior Manager: Engineering Services). Mr Hendriks confirmed that no upgrades of the bulk services are required to accommodate the proposed consolidation, rezoning, consent use and departure application.

3.8 TRAFFIC IMPACT, PARKING AND ACCESS

Access to the proposed development will be from 4th Street via a dedicated entrance and exit which leads to and from the on site parking area.

The proposed Lanzerac Beach Manor House will take access from 4th Street as indicated on the Site Development Plan. Currently there are two existing access points in 4th Street. The access point closest to the eastern boundary will be closed and moved farther east. The aforementioned access point will be used as entrance point only. The entrance will be situated approximately 80m from the nearest intersection. The access point closest to the western boundary (also an existing access to the garages) will remain and will be used as an exit point only.

The existing access point on the western boundary (where the carport is) from 10th Avenue will remain. This access point will be used by small delivery vehicles (bakkies) and for refuse removal purposes.

With reference to the Overstrand Zoning Scheme Regulations, 1 bay per bedroom plus an additional 10 parking bays per 100m² of public access areas will be required to accommodate the Lanzerac Beach Manor House with in-house spa and conference facilities on the subject property.

The required parking bays can be calculated as follow:

Land Use	Parking Bays Required	Parking Bays Provided
13 guest suites	13	13
100m ² public accessed area	0	0
Therapists and manager	3	5
TOTAL	16	18

All the proposed parking bays adhere to the design requirements of 5m x 2,5m with 7,5m manoeuver space behind each parking bay. Provision is also made for two parking bays for the disabled (parking bays no. 17 and 18) as required by the relevant scheme regulations.

The majority of the area to be used as parking is currently paved. Where applicable the paved area will be extended to accommodate the parking area as shown on the site development plan.

From the above it is evident that sufficient parking bays can be provided for on site. The impact on the traffic of the area will be kept to a minimum since guests never arrive and depart at the same time at guest houses. The services report compiled by AVDM Consulting Engineers also confirmed that the proposed access points should

suffice for the purposes of the application. The services report also confirms that the traffic impact of this development will be minimal and no traffic statement is required.

3.9 ARCHITECTURAL STYLE

The existing architectural style of all structures on erven 3160 and 3161 Hermanus will remain unchanged. Consequently the visual impact / street scape will remain unchanged.

3.10 TITLE DEED

Title deed no. T53506/2014 has no restrictions that need to be removed in order for this application to be approved. The condition that prohibits the operation of a business on the subject property was registered in favour of The Mossel River Estate Company – now the Overstrand Municipality. A removal of title deed conditions application does therefore not apply. The Overstrand Municipality only has to give their consent for the proposed land use since condition E. of title deed no. T26216/2013 and condition E. of title deed no. T26391/2013 is now registered in favour of the municipality. Conditions D(iii) in both the aforementioned title deeds only specifies avenue and street building lines. Consequently the aforementioned condition does not have to be removed to accommodate the lateral building line encroachment on erf 3161 Hermanus. Please refer to the conveyancer's certificate compiled by H.J. Mouton from Smith Tabata Buchanan Boyes Attorneys dated 3 May 2016 attached.

There are no bonds registered against erven 3160 and 3161 Hermanus.

3.11 FORWARD PLANNING & OTHER LAND USE DOCUMENTS

3.11.1 OVERSTRAND SPATIAL DEVELOPMENT FRAMEWORK (2006)

The Overstrand Spatial Development Framework (2006) earmarks the area where erven 3160 and 3161 Hermanus are situated, for residential purposes. The rezoning of consolidated erf 12213 Hermanus (erven 3160 and 3161 Hermanus) from Residential Zone 1: Single Residential to General Residential Zone 3 (bulk zone 2) will consequently be in line with the spatial planning guidelines for the Hermanus East area. The proposed in-house spa and conference facilities forms part of the residential land use of the proposed Beach Manor House and therefore the primary land use of the property will remain residential (hence the proposed residential zoning).

The proposed Lanzerac Beach Manor House will also be compatible with the existing residential land uses of the area.

3.11.2 OVERSTRAND MUNICIPAL GROWTH MANAGEMENT STRATEGY (2010)

Erven 3160 and 3161 Hermanus forms part of Planning Unit no. 3 as identified by the Overstrand Municipal Spatial Growth Management Strategy (OMSGMS, 2010).

Furthermore the OMSGMS (2010) stipulates that the area where erven 3160 and 3161 Hermanus are situated, allows for an increase in density for the area from 11 to 14,3 density units per hectare. Since the proposed consolidation, rezoning, consent use and departure will not have an impact on the density of the area the proposed application is consistent with the relevant spatial planning policy.

In the light of the above mentioned the proposed application falls within the existing planning for the Hermanus East area.

3.12 THE RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.12.1 HERITAGE VALUE AND IMPACT

The application involves changing the character of a site larger than 5 000m² (although all the proposed land use will be accommodated in the existing structures on erven 3160 and 3161 Hermanus). A Notice of Intend to Develop in terms of Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) was submitted to Heritage Western Cape for approval.

Erven 3160 and 3161 Hermanus are not situated within the Heritage Overlay Zone as determined by the Overstrand Heritage Report (2009) and as shown on the OMSGMS (2010) plans. The subject properties are also not earmarked for heritage conservation purposes.

The existing structures on the subject properties will remain unchanged. It is only proposed to add covered walkways and gazebos to link the separate structures on the subject property after consolidation. The only other new feature that will impact on the character / landscape is the proposed additional parking area for the Lanzerac Beach Manor House. Furthermore only minor renovation work will be undertaken to convert the existing structures into a thirteen bedroom Beach Manor House.

The subject properties are not associated with any important persons or groups or important events and activities. The subject properties have no known association with the history of slavery and are not used for living heritage. There exist no known or visible graves on the subject properties.

In the light of the abovementioned it is evident that the proposed consolidation, rezoning, consent use and departure will not have a negative impact on the heritage value of the Hermanus area.

3.12.2 ENVIRONMENTAL IMPACT

The proposed consolidation, rezoning, consent use and departure of erven 3160 and 3161 Hermanus do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

3.13 PLANNING PRINCIPLES

Spatial justice: The proposed Lanzerac Beach Manor House will create employment opportunities for local residents in town. Most of the staff who will benefit from the proposed Lanzerac Beach Manor House will be local residents living in the informal settlements of Hermanus (i.e. previously disadvantaged communities).

Spatial sustainability: the proposed Lanzerac Beach Manor House will be accommodated in an established residential area within existing structures on erven 3160 & 3161 Hermanus. The proposed application will have no impact on the conservation worthy areas of Hermanus. Spatially the land use will be in keeping with the residential character of the area.

Efficiency: The Lanzerac Beach Manor House is easily accessible and conveniently located close to the Hermanus CBD, Hermanus beaches and other tourist attractions in the area. Last mentioned makes travelling to the subject properties to make use of the proposed guest accommodation easy and accessible to everybody.

Spatial resilience: Not applicable to this application.

Good administration: Our firm is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process.

4. RECOMMENDATION

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

- The proposed consolidation, rezoning, consent use and departure are compatible with the existing built character of the area;
- The proposed land use is compatible with the land uses of the area;
- The impact on the traffic and services will be kept to a minimum;
- There are no environmental or heritage factors that prohibit the proposed land use;
- The proposed consolidation, rezoning, consent use and departure will not have a negative impact on the current character and land values of the surrounding erven;
- All the required parking bays are located on site;
- The proposed deviation from the land use restrictions (building lines) is to accommodate an existing structure (dwelling) only;
- The visual impact / street scape will remain unchanged;
- The proposed application complies with the spatial planning policies of the area;
- The proposed Lanzerac Beach Manor House can be seen as a low impact guest accommodation establishment.

With regards to the above mentioned it would be appreciated if Council would approve the proposed consolidation, rezoning, consent use and departure of erven 3160 & 3161 Hermanus.

AREA SCHEDULE

Main Building, DE	686.4m ²
Living Area	72.2m ²
Covered Terrace	56.3m ²
Exst. Covered Walkway	64.2m ²
New Covered Walkways	35.1m ²
Garport	
Main Building, EE	205.2m ²
Living Area	65.0m ²
Open Plaza / Balcony	
Colonnade 1	88.7m ²
Living Area	
Colonnade 2	159.5m ²
Living Area	48.7m ²
Covered Plaza	
OUTRELALES	130.2m ²
Gazebos	32m ²
Colonnade	
Main Building	789.9m ²
Colonnade 1	99.7m ²
Colonnade 2	206.2m ²
Living Area 1 & 2	130.2m ²
New Covered Walkways	35.1m ²
Total Footprint	1326.6m ²
Site (4957m ² + 991 m ²)	5948m ²
Coverage (1326.2/5648*100)	23.3%
FAAR (1627.5/5648*100)	27.20%
Bedrooms	13
Communal Area	
Restaurant	130.2m ²
Spa & Conference	127.47m ²
Communal Living Area excl. restaurant & spa	
Communal Covered walkway / patio and balconies	265.6m ²
	205.7m ²
Poolings Required:	
1 room + 5 SPA =	18
Height, double story	
Concur height restriction 7.5m	

THOMASHOFF + partner
 ARCHITECTS AND DESIGN CONSULTANTS
 - PO BOX 842 - BRICKLYN SQUARE - PRETORIA -
 015 261 4203 FAX: 015 261 4208
 - EMAIL: info@thomashoff.co.za

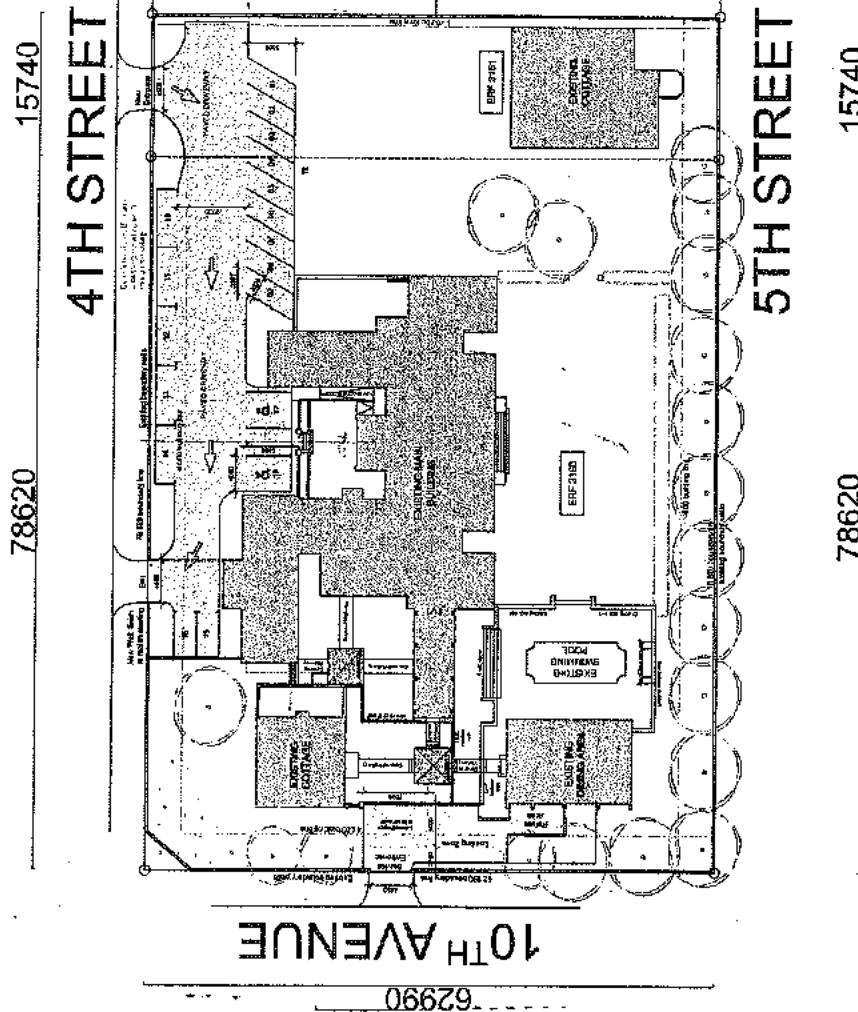
HERMANUS GUEST HOUSE

PROJECT: Proposed Upgrade

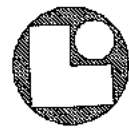
REF: 18013, Cor. 4th Str. & 10th Ave
 TOWNSHIP: Yvondale, Hermanus

DRAWN: JN SCALE: 1:500
 DATE: 06/07/2015 SHEET: A3
 DRAWING TITLE: SITE PLAN

DRAWING NO: 139-HEP-04-00 REV: A/A
 Project Number



SITE PLAN
 scale 1:500



AREA SCHEDULE

Main Building, BC	565.4m ²
Living Area	72.2m ²
Covered Terrace	56.2m ²
Extr. Covered Walkway	64.2m ²
New Covered Walkways	35.1m ²
Carport	
Main Building, BF	204.5m ²
Living Area	65.0m ²
Open Patio / Balcony	
Collage 1	59.7m ²
Living Area	
Collage 2	159.5m ²
Living Area	45.7m ²
Covered Patio	
Driveway Area	130.8m ²
Basement	32m ²
Coverage	
Main Building	793.5m ²
Collage 1	59.7m ²
Collage 2	200.2m ²
Open Area	130.8m ²
Garage 1 & 2	32.0m ²
New Covered Walkways	64.2m ²
Total Footprint	1228.2m ²
Site (4657m ² ± 981m ²)	5948m ²
Coverage (1326.255437100)	22.3%
FAR (1627.65648100)	27.27%
Bedrooms	13
Decorational Area	130.2m ²
Restaurant	127.47m ²
Spa & Conference	
Communal Living Area excl. restaurant & spa	226.6m ²
Communal Covered walkway / patio & balconies	205.7m ²
Parking Requirements:	18
Minimum = 3 cars =	
Height, double story	
Comax height restriction 7.5m	

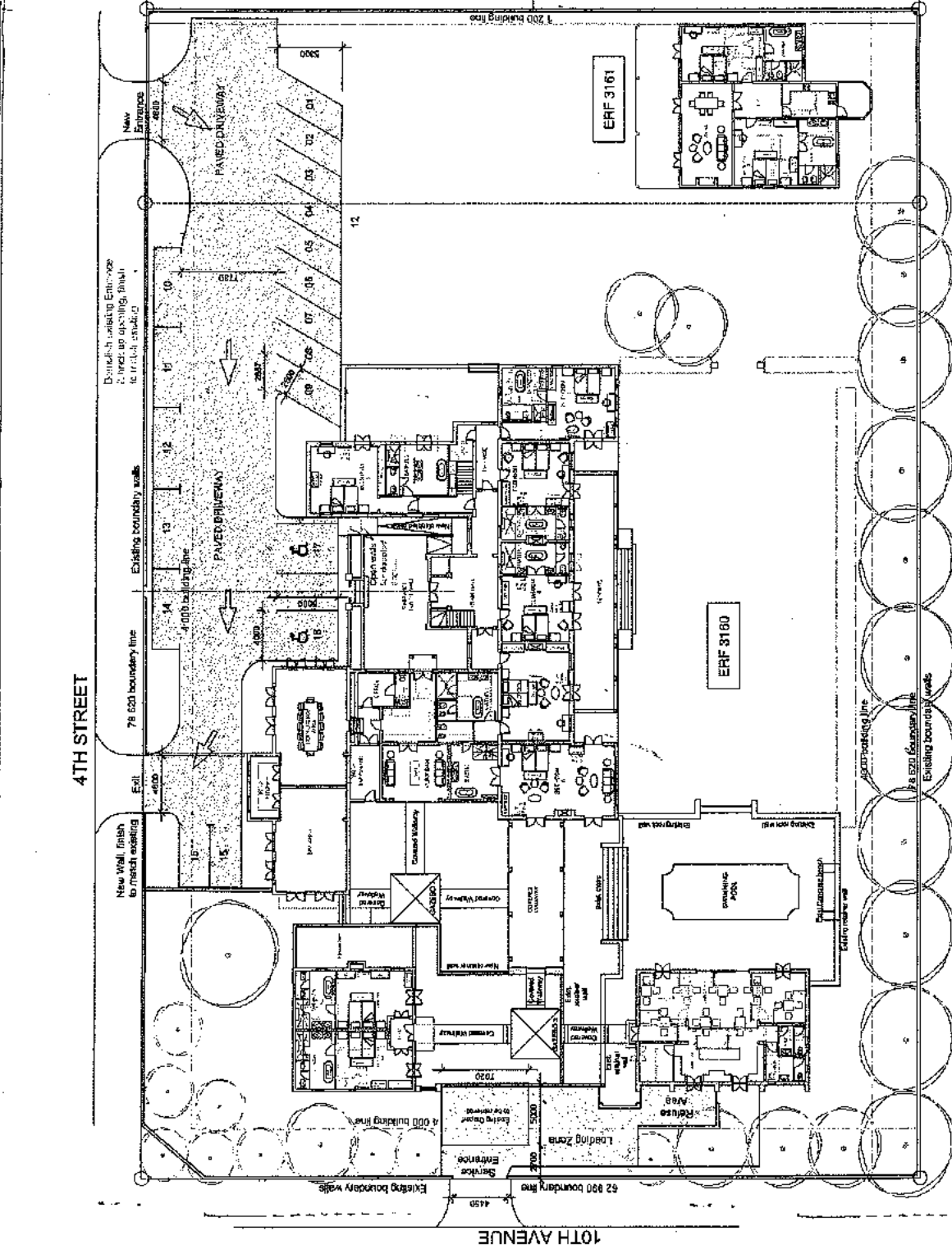
THOMASHOFF + partner
 ARCHITECT AND PLANNING DESIGN STUDIO
 100 BOX 267, BRACKEN SQUARE, PRETORIA
 TEL: 011 463 7400 FAX: 011 463 7888
 EMAIL: design@thomashoff.co.za

HERMANUS GUEST HOUSE

PROJECT: Proposed Upgrade

ERF NO. 3223, Co. 4th. ec. 1. 05b. ova
 ID: 100/10/100/100/100

BRANCH: JH	SCALE: 1:500
DATE: 18/07/2015	SHEET: 05
DRAWING TITLE: GROUND FLOOR LAYOUT PLAN	PROJECT: GUEST HOUSE
DRAWING NO. CD-100-01-100	Project Number



SITE & GROUND FLOOR PLAN scale 1:250



338

TP - A Theart
(P Roux)

Alida Calitz - JM & HAW Smith & Hauman- Vertoë 10de Laan

From: "Len Hauman" <len@twk.co.za>
To: <loretta@overstrand.gov.za>
Date: 2016/09/15 10:16 AM
Subject: JM & HAW Smith & Hauman- Vertoë 10de Laan



Loretta

As eienaars van Erf 2972 het ons geen beswaar teen die oprigting van gastehuis by erwe 3160 & 3161, 190 Vyfde Straat & tiende laan 32 Voëlklip nie, maar wat my wel bekommer is die verkeer wat definitief gaan toeneem in 10 de laan.

Dit is alreeds vir ons as inwoners n bekommernis aangesien die motorbestuurders ontsettend vinnig in 10de laan ry. Ongelukkig is dit die enigste pad wat regdeur tot bo gaan.

As ek 'n voorstel dan kan maak, is dat daar definitief spoedwalle in 10de Laan aangebring moet word, aangesien dit vir mens 'n dier rerig 'n gevaar inhou. Om sodoende die spoedvrate aan bande te lê.

Baie dankie.
Hester Hauman
02821 22305
083 887 9139

FILE NO:	Erven 3160 & 3161
	✓ Klip Hauman
SCAN NO:	24
COLLABORATOR NO:	937837

15 SEP 2016

15/09/16

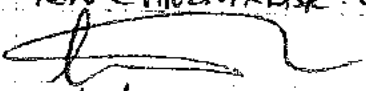
339



TP: A Thant
C Holivier

For ATTENTION: The Municipal Manager

C/O Town Planning Department, 16 Paterson Street, HERMANUS 7200

FROM:	
Owner/Part-Owner	R. I. COATES
Voëlklip Address	212, 4 th STREET, VOËLKLIP, HERMANUS
Contact address	PIB, 39, TOKAI ROAD, TOKAI, CAPE TOWN
Contact Tel No	082 785 2049
Contact E-mail	RON@PHOENIXRISK.CO.ZA
Signed	
Date	23/9/2016

Objection to the proposed consolidation, rezoning and consent use of Erven 3160 & 3161, 190 Fifth Street and 32 10th Avenue, Voëlklip, HERMANUS

The above proposed application can negatively affect the desirability, tranquility and value of my Voëlklip property, for the following reasons:

1. Playing with words by trying to call a hotel a "Beach Manor Guest House" is futile. A hotel is a hotel and by definition it, as well as a spa and a conference centre, are businesses, and they do not belong in a residential area intended for normal dwelling houses.
2. The motive for this hotel is purely to exploit a situation to make money, and is without any consideration for the neighbours and absolutely of no benefit to the entire neighbourhood.
3. The developers do not appear to have any regard for other people. From the plans provided the development does not even have a rest-room for the part-time managers or the staff.
Guest Houses by contrast are only allowed if the owners or a manager live on the site to keep proper control.
4. The ambience and tranquility of the area will be destroyed. Residents living near to 5 Bedroom Guest Houses can testify that even they are destructive with regard to noise and exhaust fume pollution as tourists move back and forth all day long and until late at night, unlike average residents that live more sedately.

FILE NO:	Erven 3160 & 3161
SCAN NO:	Heer
	01
COLLABORATOR NO:	940149

26 SEP 2016

5. Any rezoning from Residential 1 to Residential 3 (even with restrictions) opens the door for other developers to do likewise, and before you know it we will have 3 storey flats in our midst.
6. Any rezoning like this creates a permanent threat that the tranquil character of our residential suburbs can change and this will scare away any new residential buyers, resulting in the devaluation of property. They will go elsewhere if reckless zonings are allowed.
7. As much as tourism is very important, this must be done responsibly. Attracting permanent residents is 10 times more important as they contribute far more to the local economy over time and also allow the demand for services such as water and electricity to be far more stable without extreme peaks.
8. The hollow threat in the application that the alternative to the proposed evil is an even greater evil of 12 x 5 bedroom Guest House in one block is totally pathetic, as such a consent use will never be allowed by local residents. It just reflects the absolute arrogance of the applicant.

TP #341 Heart
(H Olivier)

E-mail to: alida@overstrand.gov.za



For ATTENTION: The Municipal Manager

C/O Town Planning Department, 16 Paterson Street, HERMANUS 7200

FROM:	U. KROGER
Owner/Part-Owner Voëlklip Address	32, 11TH AVE VOELKLIP HERMANUS
Contact address	As per P.O. Box 926 HERMANUS 7200
Contact Tel No	028 - 314 0181
Contact E-mail	
Signed	
Date	23.09.2016

Objection to the proposed consolidation, rezoning and consent use of Erven 3160 & 3161, 190 Fifth Street and 32 10th Avenue, Voëlklip, HERMANUS

The above proposed application can negatively affect the desirability, tranquillity and value of my Voëlklip property, for the following reasons:

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2. The motive for this hotel is purely to exploit a situation to make money, and is without any consideration for the neighbours and absolutely of no benefit to the entire neighbourhood.
3. The developers do not appear to have any regard for other people. From the plans provided the development does not even have a rest-room for the part-time managers or the staff.
Guest Houses by contrast are only allowed if the owners or a manager live on the site to keep proper control.
4. The ambience and tranquillity of the area will be destroyed. Residents living near to 5 Bedroom Guest Houses can testify that even they are destructive with regard to noise and exhaust fume pollution as tourists move back and forth all day long and until late at night, unlike average residents that live more sedately.

FILE NO:	Erven 3160 & 3161
SCAN NO:	Hermanus
	03
COLLABORATOR NO:	941132

TP
28 SEP 2016

28 SEP 2016

C. 342

5. Any rezoning from Residential 1 to Residential 3 (even with restrictions) opens the door for other developers to do likewise, and before you know it we will have 3 storey flats in our midst.
6. Any rezoning like this creates a permanent threat that the tranquil character of our residential suburbs can change and this will scare away any new residential buyers, resulting in the devaluation of property. They will go elsewhere if reckless rezonings are allowed.
7. As much as tourism is very important, this must be done responsibly. Attracting permanent residents is 10 times more important as they contribute far more to the local economy over time and also allow the demand for services such as water and electricity to be far more stable without extreme peaks.
8. The hollow threat in the application that the alternative to the proposed evil is an even greater evil of 12 x 5 bedroom Guest House in one block is totally pathetic, as such a consent use will never be allowed by local residents. It just reflects the absolute arrogance of the applicant.

169 4th Street
 Voelklip
 Hermanus
 7200
 23 September 2016

Municipal Manager
 Overstrand Municipality
 Po Box 20
 Hermanus
 7200

Dear Sir

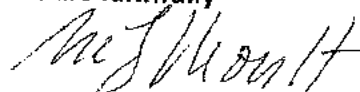
It has come to my notice that there is a proposed development of a hotel, namely 'The New Lanzerac Beach Manor Hotel' to be situated at 190 4th Street, bordering 5th Street and 10th Avenue, Voelklip.

I wish to lodge an objection to this development as this is a residential area and therefore a commercial development of this scale is not acceptable.

For residents living in the area between 9th Avenue and possibly up to 12th Avenue the only road to access our properties is via 10th Avenue. It is therefore a busy road. The added traffic of delivery vehicles plus the associated noise is another reason that I object to this development. In addition, staff, who will probably be working shifts, will be dropped off and collected at various times of the day and night thus increasing traffic and generally disturbing the peace of the neighbourhood.

I trust that my objections will be noted and taken into consideration.

Yours faithfully



Maureen Mout
 Tel: 028 314 0180
 Cell: 076 311 9644



TR A Theart
 (H Olivier)

FILE NO:	Even 3160 & 3161
SCAN NO:	Hermanus
	37
COLLABORATOR NO:	940451

OC 344

TR A Theart

CH Olivier

E-mail to: [redacted]



For ATTENTION: The Municipal Manager

C/O Town Planning Department, 16 Paterson Street, HERMANUS 7200

FROM:	
Owner/Part-Owner Voëlklip Address	S. C. & F BASSON 206 FOURTH STREET YOELKLIP
Contact address	206 FOURTH STREET, P.O. Box 1173 YOELKLIP HERMANUS HERMANUS 7200 7200.
Contact Tel No	029-314-0683
Contact E-mail	scfbasson@whak.co.za
Signed	Basson
Date	SEPT. 24, 2016

Objection to the proposed consolidation, rezoning and consent use of Erven 3160 & 3161, 190 Fifth Street and 32 10th Avenue, Voëlklip, HERMANUS

The above proposed application can negatively affect the desirability, tranquillity and value of my Voëlklip property, for the following reasons:

1. Playing with words by trying to call a hotel a "Beach Manor Guest House" is futile. A hotel is a hotel and by definition it, as well as a spa and a conference centre, are businesses, and they do not belong in a residential area intended for normal dwelling houses.
2. The motive for this hotel is purely to exploit a situation to make money, and is without any consideration for the neighbours and absolutely of no benefit to the entire neighbourhood.
3. The developers do not appear to have any regard for other people. From the plans provided the development does not even have a rest-room for the part-time managers or the staff.
Guest Houses by contrast are only allowed if the owners or a manager live on the site to keep proper control.
4. The ambience and tranquillity of the area will be destroyed. Residents living near to 5 Bedroom Guest Houses can testify that even they are destructive with regard to noise and exhaust fume pollution as tourists move back and forth all day long and until late at night, unlike average residents that live more sedately.

FILE NO:	erven 3160 & 3161
SCAN NO:	Hermanus 04
COLLABORATOR NO:	941136

TP
28 SEP 2016

28 SEP 2016

5. Any rezoning from Residential 1 to Residential 3 (even with restrictions) opens the door for other developers to do likewise, and before you know it we will have 3 storey flats in our midst.
- 345
6. Any rezoning like this creates a permanent threat that the tranquil character of our residential suburbs can change and this will scare away any new residential buyers, resulting in the devaluation of property. They will go elsewhere if reckless rezonings are allowed.
7. As much as tourism is very important, this must be done responsibly. Attracting permanent residents is 10 times more important as they contribute far more to the local economy over time and also allow the demand for services such as water and electricity to be far more stable without extreme peaks.
8. The hollow threat in the application that the alternative to the proposed evil is an even greater evil of 12 x 5 bedroom Guest house in one block is totally pathetic, as such a consent use will never be allowed by local residents. It just reflects the absolute arrogance of the applicant.

346
 TR A Theat
 (H Olivier)

E-mail to: alida@overstrand.gov.za



For ATTENTION: The Municipal Manager
 C/O Town Planning Department, 16 Paterson Street, HERMANUS 7200

FROM:	
Owner/Part-Owner Voëlklip Address	G. F. P. KEAY 298 FIFTH ST. VOELKLIP
Contact address	298 FIFTH ST. VOELKLIP HERMANUS
Contact Tel No	028 314 1499
Contact E-mail	georgek27@vodamail.co.za
Signed	<i>GFP Keay</i>
Date	26.09.2016

Objection to the proposed consolidation, rezoning and consent use of Erven 3160 & 3161, 190 Fifth Street and 32 10th Avenue, Voëlklip, HERMANUS

The above proposed application can negatively affect the desirability, tranquillity and value of my Voëlklip property, for the following reasons:

1. Playing with words by trying to call a hotel a "Beach Manor Guest House" is futile. A hotel is a hotel and by definition it, as well as a spa and a conference centre, are businesses, and they do not belong in a residential area intended for normal dwelling houses.
2. The motive for this hotel is purely to exploit a situation to make money, and is without any consideration for the neighbours and absolutely of no benefit to the entire neighbourhood.
3. The developers do not appear to have any regard for other people. From the plans provided the development does not even have a rest-room for the part-time managers or the staff.
 Guest Houses by contrast are only allowed if the owners or a manager live on the site to keep proper control.
4. The ambience and tranquillity of the area will be destroyed. Residents living near to 5 Bedroom Guest Houses can testify that even they are destructive with regard to noise and exhaust fume pollution as tourists move back and forth all day long and until late at night, unlike average residents that live more sedately.

FILE NO:	Erven 3160 & 3161
SCAN NO:	Hermanus
	05
COLLABORATOR NO:	941140

28 SEP 2016

28 SEP 2016

5. Any rezoning from Residential 1 to Residential 3 (even with restrictions) opens the door for other developers to do likewise, and before you know it we will have 3 storey flats in our midst.
6. Any rezoning like this creates a permanent threat that the tranquil character of our residential suburbs can change and this will scare away any new residential buyers, resulting in the devaluation of property. They will go elsewhere if reckless rezonings are allowed.
7. As much as tourism is very important, this must be done responsibly. Attracting permanent residents is 10 times more important as they contribute far more to the local economy over time and also allow the demand for services such as water and electricity to be far more stable without extreme peaks.
8. The hollow threat in the application that the alternative to the proposed evil is an even greater evil of 12 x 5 bedroom Guest House in one block is totally pathetic, as such a consent use will never be allowed by local residents. It just reflects the absolute arrogance of the applicant.

Municipal Manager
Overstrand Municipality
PO Box 20
Hermanus
7200

348

ANNEXURE D 11/43

TP-ATheart
(H Olivier)



RE ; PROPOSED DEVELOPMENT

THE NEW LANCERAC BEACH MANOR HOTEL

OBJECTIONS

NO - DEFINATELY NO HOTEL !!!

1. This is a quiet , peaceful residential suburb - NOT a commercial area !!
2. Above proposal is not for a B&B with maybe 1 – 4 guests over holiday periods & less,if any guests during quiet times. It will only be 5 stands away from our property !!
3. Fourth Street between 10 th and 12 th avenue, is one of the safest streets in Hermanus , where our children and grandchildren still can play safely in the street ,ride their bicycles, roller skating, skate boarding etc due to very light traffic , even during high season. The very smooth surface of the road , is an extra bonus and is very popular amongst kids.
4. This Hotel , with all the necessary requirements , will definitely decrease the value of our properties . This safe and quiet environment is one of the prominent, positive factors for buying and selling properties here. The extra workforce will definitely decrease the safety of our area.
5. This hotel ,with all the increased flow of guests, workers,motor vehicles , delivery trucks etc , can only ruin every positive aspect. The increased , annoying and unwanted movement and noise levels will be responsible for this.
6. This is NOT A BEACH AREA . take this hotel down to the beach where it should be !!!

SC & F Basson
206 Fourth Street
Voëlklip
Tel ; 028 314 0683

PO BOX 1173
HERMANUS
7200

FILE NO:	Even 3160 & 3141
SCAN NO:	Heru
	11
COLLABORATOR NO:	939953

TP 26 SEP 2016

TP - A Theart
(Hollister)
349

Alida Calitz - Erf 3160 & 3161, 190 Fifth Street and 32 Tenth Avenue, Voelklip, Hermanus:
Proposed consolidating, rezoning etc



From: Sue Harrison <sue.harrison@uct.ac.za>
To: "alida@overstrand.gov.za" <alida@overstrand.gov.za>
Date: 2016/09/26 10:55 PM
Subject: Erf 3160 & 3161, 190 Fifth Street and 32 Tenth Avenue, Voelklip, Hermanus:
Proposed consolidating, rezoning etc
Cc: Sue Harrison <sue.harrison@uct.ac.za>, "jdh1461@gmail.com" <jdh1461@gmai...

To whom it may concern

Regarding: Erf 3160 & 3161, 190 Fifth Street and 32 Tenth Avenue, Voelklip, Hermanus, Overstrand
Municipal Area: Proposed consolidating, rezoning, consent use, departure

In general, we, the owners of Erf 5564 (31 10th Avenue), do not object to the proposal for an upmarket 13 bedroom Beach Manor House which respects the quiet residential character of the Voelklip area. As a whole, the proposal does not appear problematic, however, it is raised that the proposed service entrance on Tenth Avenue has the potential to compromise the quiet residential nature of the street if it is not sensitively designed. As our house on Erf 5564 (31 10th Avenue) is opposite and overlooking the proposed Tenth Avenue service entrance, this is cause for concern. There is also some concern that this yard become a noisy 'staff hang-out' which would have a negative impact on the surrounding homes and conflict with the nature of the area.

Thus, we note no objections on the following condition:

- The service yard is screened such that it blends in with the surrounding residential fabric and does not appear to be 'back-of-house' in character and aesthetic,
- The refuse area is kept clean, neat and quiet. It is understood that typically a refuse area should be covered or enclosed.

Yours sincerely
Prof Sue Harrison

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FILE NO: <i>Erfen 3160 & 3161 - HVK</i>
SCAN NO: <i>28</i>
COLLABORATOR NO: <i>940354</i>

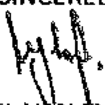
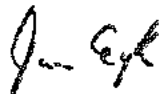
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OBJECTION TO NEW LANZERAC BEACH MANOR HOTEL DEVELOPMENT

WE WISH TO OBJECT TO THE PROPOSED DEVELOPMENT OF THE ABOVE ON THE GROUNDS THAT;

- IT WOULD HAVE AN ADVERSE EFFECT ON THE NATURE OF THE AREA WHICH IS VERY MUCH A QUIET RESIDENTIAL PART OF VOELKLIP WITH VERY LIMITED SMALLER GUEST HOUSES.
- THE CURRENT INFRASTRUCTURE IS LACKING IE. FREQUENT BURST WATER PIPES,ROADS WITH POT HOLES,NO CURBS AND NO WATER BORNE SEWERAGE (STILL OPERATING ON SEWERAGE TANKS).
- SHOULD THE DEVELOPMENT BE APPROVED BY THE MUNICIPALITY IT WOULD CAUSE A GREATER VOLUME OF TRAFFIC IN THE AREA RESULTING IN A ROAD SAFETY ISSUE ESPECIALLY FOR THE CHILDREN WHO BIKE IN THE AREA, FOR HIKERS AND THE ELDERLY WHO WALK THEIR DOGS.
- A LIQUOR LICENCE WOULD IN ALL PROBABILITY BE GRANTED WITH THE USUAL ASSOCIATED PROBLEMS OF NOISE,EXTENDED HOURS OF OPERATION,UNDESIRABLE ELEMENTS,CONFERENCE FACILITIES,EXTRA STAFF LIVE IN OR OTHERWISE, TO ATTEND TO THE GUESTS.
- THE NOISE FACTOR WOULD ESCALATE AND THE HOURS OF OPERATION WOULD NOT BE CONDUCIVE TO A LARGELY RESIDENTIAL QUIET AREA.
- ADJACENT TO THIS PROPOSED DEVELOPMENT ARE 6/8 VACANT STANDS WHICH BELONG TO ONE OWNER.ACCORDING TO INFORMATION WE HAVE THE OWNER OF THE PROPOSED HOTEL HAS ALREADY EXPRESSED INTEREST IN PURCHASING THESE WHICH COULD BE INCORPORATED INTO THIS HOTEL.THIS WOULD MAKE IT LARGE AND SPRAWLING WHICH IS NOT IN KEEPING WITH THE CHARACTER OF THIS BEAUTIFULLY QUIET NEIGHBOURHOOD AND TOTALLY OUT OF SCALE WITH THE HOMES IN THIS AREA.
- AS THE NAME INPLIES IT SHOULD BE SITUATED CLOSER TO THE BEACH WHERE OTHER SUCH BOUTIQUE HOTELS ARE LOCATED.
- IT WOULD ALSO IMPINGE ON THE BEAUTIFUL MOUNTAIN VIEWS IN THIS AREA WHICH ARE SEEN FROM A NUMBER OF THE SURROUNDING HOMES.

YOURS SINCERELY,

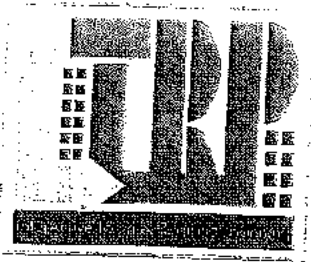
MICHAEL VAN EYK AND THERESE VAN EYK

OWNERS OF 200 AND 202 SIXTH STREET VOELKLIP

P.O. BOX 2000 HERMANUS 7200

EMAIL mtvaneyk@gmail.com





0. 351

InterActive Town & Regional Planning
P.O. Box 980
Hermanus
7200



TP - A The
(Phout)

Date: 27 September 2016

Reference: 3185 Voëlklip

Erven 3160/1-Her	
COLLABORATOR NO:	
29	ON NO:
941416	FILE NO:

Attention: Mr P Roux (Town Planner)

ERVEN 3160 AND 3161 VOËLKLIP, HERMANUS: OBJECTION TO THE PROPOSED CONSOLIDATION, REZONING, CONSENT USE, DEPARTURE APPLICATION

The notice in terms of Section 47 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 refers.

InterActive Town and Regional Planning has been appointed by Mr MC Fauël, the owner of Erf 3185 Voëlklip, Hermanus, to investigate and object to the above-mentioned application (see attached Power of Attorney).

1. Introduction:

A business (hotel / guest house) is proposed on Erven 3160 and 3161 Voëlklip, Hermanus which is not compatible with the existing Single Residential land-use on Erf 3185 Voëlklip Hermanus and similarly used properties in the vicinity of the application area.

The establishment of a hotel in the heart of a mature and well established residential area will undoubtedly have a profound negative impact on this area of the Voëlklip residential suburb. A hotel is an income generating concern, operating 24 hours a day, 7 days a week and 365 days a year and is not aligned with the "Place Making" elements of this residential area where people choose to live for the primary reason of tranquility and privacy.

A fundamental concern of this application is that the proposed land-use is **misrepresented** in the application report. The proposed land-use (the hotel-business) is presented as a low impact residential use and subsequently based on this incorrect assumption and accordingly incorrectly motivated in terms of the relevant statutory guiding policy documents.

To make a right decision on this important matter; correct, complete and relevant information is required. An incorrect decision on this application can negatively impact the future of this area and will most likely be irreversible. Therefore relevant, complete and comprehensive information is required to make a correct decision on this application.

29 SEP 2016

26 SEP 2016

In response to the above, InterActive Town and Regional Planning, on behalf of the owner of Erf 3185, objects to the application for the consolidation, rezoning, consent use and departure application to accommodate a hotel (guesthouse) on Erven 3160 and 3161 Voëlklip, Hermanus.

The following specific objections are made to this application in support of the overarching objection to the subject application:

- i. The existing character of the area and land-uses are misrepresented in the application report.
- ii. The proposed land-use (hotel) is misrepresented in the application report.
- iii. The proposed land-use for a hotel is not supported in terms of the relevant statutory spatial planning documents.
- iv. The proposed land-use of a hotel on Erf 3185 Voëlklip Hermanus is not compatible with the existing land-use of Erf 3185 Voëlklip, Hermanus or the existing character of the area.
- v. The application is also flawed as restrictive title conditions do exist and the application is subject to a removal of restrictive title conditions application.
- vi. The incorrect application of the parking ratios in terms of the Overstrand Zoning Scheme Regulations for the zoning is applied for and subsequently the Site Development Plan is incorrect.
- vii. Lack of proof through a traffic study compiled by a registered and professional traffic engineer that the traffic impact is acceptable.
- viii. Incorrect and inappropriate motivation of the planning principles for the application is presented

For the decision-makers to objectively and rationally evaluate an application, it is considered most important that a clear understanding of the function, nature, extent and impact of the proposed land-use and its location is obtained. It should also be clear for the decision-maker to know what is envisaged / planned for the area in terms of the statutory development plans for that area. The knowledge and comprehension is vital for the decision-makers to make an objective decision on such an application.

Furthermore it is important to understand that a city or town is a complex functional system of mutual linked urban components such as residential, commercial, industrial, public services, educational, recreational and transport land-uses. For the optimal and harmonious functioning of these different land-uses it is most important that the different characteristics in terms of erf sizes, residential units and types, land values, building values, floor area, building design, land ownership and socio-economic population characteristics are taken into account when urban areas are planned. This contributes to particular land-use patterns, population and morphological structures. These components should be orderly sited to obtain the most balanced and efficient utilization, functioning and development of land. Land is a scarce resource. Therefore it is imperative that every portion of land be utilized effectively and optimally.

Normative directives in layout planning have however tended to change as technological innovation, rates of urbanization, economic growth, and environmental destruction has altered the context within which urban development occurs. It can be thus be argued that within the South African context the development of urban settlements should be motivated by the satisfaction of human needs and for an improvement in human conditions, the sustainable relationship between urban settlements and their surrounding land-uses (natural and built) and for the most efficient use of resources.

It is also considered vital that the urban planning principle of "Place Making" would have been taken into consideration as part of this application.

Place Making as described in the handbook "Making Urban Places" written by Roger Behrens and Vanessa Watson is about **environmental quality**, or in other words, the development of urban environments that enrich the lives of the people who live in, and experience them.

The mentioned handbook states that the term "place making" is used to refer to the creation of or urban environments with a unique sense of place. The concept of place making lies at the heart of the issue of environmental quality in urban settlement formation. The creation of urban settlements which reflect a sense of place and express the unique nature of their natural and cultural setting, **should be one of the central concerns** of layout planning and, in fact, a central concern of all professions concerned with the urban environment.

The creation of a sense of place is neither a luxury nor a romantic concern – it is essential. The concept does not equate simply to the creation of picturesque landscapes or pretty streets, but to the recognition of the importance of a sense of belonging. Different places offer different life experiences, and these experiences mould peoples' perceptions, values and self-identity. Urban places are records and expressions of the cultural values and experiences of those who create and live within them. In essence, the place of which people are a part of, is a part of them."

In the light of the above, each of the objections will be dealt with separately to provide a clear understanding why the support of this application will not be advantageous to the area or Hermanus and inconsistent with the statutory spatial plans dealing with the area.

2. The Objections / Reasons for comments in terms of Sections 51 and 52 of the By-Law on Municipal Land Use Planning, 2016.

In this section the reasons of the objections here-above are motivated.

One of the most significant and fundamental points of objection / concern to this application is that the proposed land-use is misrepresented. This is considered as a fundamental flaw in this application.

Furthermore, the context / information of the area and the vicinity presented are vague, incomplete and in some cases even contradicting.

It is also evident that fundamental incorrect assumptions resulted thereto that incorrect statutory planning criteria were used.

Incorrect interpretations of the prescribed planning principles contribute to a deficient and subsequently flawed application.

In the light of the above it is requested that this application be rejected.

The reasons / motivation for these objections are the following:

- a. The existing land-uses and character of the area in the vicinity of the application area are misrepresented and vaguely described in the application report

The full content of the section describing the character of the area (Paragraph 3.5. page 11) consists of 10 lines of which only 3 lines actually deals with the character of the area of application. These three lines read as follows:

"The subject properties are situated at the foot of the mountain in the quiet Voëlklip area. The Voëlklip area is characterized by single dwellings and recreational facilities (mountain biking trials, hiking trials, etc.)...."

It is clearly evident that in an application where a profound / drastic change in land-use is proposed, a substantially more comprehensive description of the area should have been provided. This information is truly insufficient to take a decision on.

Some additional information on the character of the application area was found in the application report. The following paragraphs of the application report were extracted where the applicant described the character of the application area:

Par 3.3 Land Use P3. "The subject properties are currently being used for single residential purposes.

Surrounding properties are mainly used for single residential purposes. Other surrounding land uses are public roads and public open spaces."

Par 3.4 P6. "The proposed General Residential 3 (bulk zone 2) zoning was discussed with the Overstrand Municipality to ensure that the zoning is in line with the ambiance and character of the area. Since the majority of the surrounding erven are zoned for single residential purposes, the proposed zoning of General Residential 3 (bulk zone 2) but with land use restrictions of Residential Zone 1: Single Residential was deemed most suitable to accommodate the guest suites, in-house spa and conference facilities on the subject properties."

"The existing Lanzerac brand is also known to ensure a tranquil and peaceful environment for the guest accommodation they offer. The look and feel of the proposed Beach Manor House will resemble the look and feel of the Lanzerac Hotel and Spa in Stellenbosch – the same exclusive and luxurious accommodation in a tranquil setting close to nature, separate units with beautiful landscape gardens and amenities such as a swimming pool and conference facility available to guests – but only on a smaller scale."

Par 3.5 Character of the environment p 11 "The subject properties are situated at the foot of the mountain in the quiet Voëlklip area. The Voëlklip area is characterized by single dwellings and recreational facilities (mountain bike trials, hiking trials, etc).

Par 3.6 The potential of the property (Desirability of the proposed utilization) P12. "The subject properties are situated in the picturesque Voëlklip and last mentioned is known as a popular area for guests visiting and staying over in Hermanus....."

Par 3.12 The Relevant Legislation for consideration of the application, 3.12.1 Heritage value and impact P20.

"This application involves changing the character of a site larger than 5000 m² (although all the proposed land use will be accommodated in the existing structures on erven 3160 & 3161 Hermanus)."

"The only other new feature that will impact on the character / landscape is the proposed additional parking area for the Lanzerac Beach House Manor House. "

The above information only provides a vague and limited overarching view of the application area. No mention is made of the socio-economic character of the area; distances to community facilities or the nature of the open spaces are provided. Mention is however made of the ambiance, but it is not described. The recreational facilities of a mountain bike trial and hiking trial is part of the Fernkloof Nature Reserve and is not really part of this section of the Voëlklip area. The impression is created that there are more recreation facilities in the area. The impression is also created that the beach is very close to the proposed application site, by generally stating that it is only 5

minutes' walk away, but in actual fact the Grotto Beach is 1 kilometer from the application site which implies an average walking time closer to 15 minutes.

Furthermore, cognizance must be taken that there are some guesthouses in the area of the application site, but the area is not a concentrated holiday accommodation area as found along the coastal areas of Hermanus.

A matter which can also not be ignored is that Voëlklip is a rather large area where significantly differences in character of the suburb are found. Difference in appearance, vegetation, land-use, density, traffic, investment, value and general nature is found within the different areas of Voëlklip. The area along the coast differs substantially from the area along 7th Street, and the area along 7th Street differs substantially from the area adjacent to the mountain etc. The applicant describes the area in the immediate area of the application site as if the whole Voëlklip is the same.

In essence, for the purposes of this application, it should be known that the area in the vicinity of the application area is a high income, low activity area. Therefore, any change in land-use where the density and/or activity will increase, will change the character of the area.

It is indisputably obvious that the character of the area is not clearly presented to the decision makers by the applicant, thus being vague and incorrect, resulting to a misrepresentation of the true character of the area.

b. The proposed land-use for the hotel / large guesthouse is misrepresented and distorted in the application report.

The proposed hotel is incorrectly presented by the applicant as a large guest house or a Beach Manor House with a low impact on the area.

In this section a summary of the different (flawed) arguments used by the applicant to motivate that the proposed impact on the land-use is outlined here-below. A breakdown of the proposed land-uses is also provided which clearly illustrate that the proposed land-use will without doubt have a significant impact on the area in contrast with the applicant's motivation that it will have a low impact. Following the above a motivation for each of these misrepresented statements are provided to illustrate that they are in actual fact misrepresented.

As mentioned here-above the following misrepresented descriptions of the proposed land-use is found in the application report:

- i. Generally unfounded statements are made that the proposed land-use will have a low impact,
- ii. Describe the hotel as a large Guesthouse and a Beach Manor House,
- iii. Makes a comparison of the impact between that of the proposed hotel and the property subdivided into 12 portions with each portion being used as a 5 bedroom guest house

- iv. Stating that the proposed use will be a smaller scale Lanzerac hotel
- v. Using the Overstrand Town Planning Scheme to justify the proposed use as a guest house and not a hotel
- vi. Using conflicting information

The following paragraph provides for a breakdown of the facilities proposed to be offered on the application site:

- a 13 bedroom Beach Manor House with an in-house spa and conference facility as a guest suites, "tourist accommodation alternatives for people (tourists) visiting the Hermanus Area" with landscaped gardens, communal amenities such as dining areas
- Bedrooms 1-9 accommodated in the main dwelling on Erf 3160 and bedrooms 10 and 11 on in the existing cottage, 12 and 13 in the existing dwelling on Erf 3161.
- Swimming pool and gardens used exclusively for use by the guests
- Male and female lavatories, a kitchen, store room and dining area
- Two dining areas- one in main dwelling house other in existing gym next to swimming pool.
- Conference facility- max 20 people
- Parking and walkways and gazebos to link the existing structures
- Luxurious and exclusive accommodation
- The look and feel of the proposed Beach Manor House will resemble the look and feel of the Lanzerac Hotel and Spa in Stellenbosch.- the same exclusive and luxurious accommodation in a tranquil setting, close to nature, separate units with beautiful landscape gardens in between and amenities such as a swimming pool, spa and conference facility available to guests – but on a smaller scale.
- Similar brand than Lanzerac

- i. The following paragraph extracts from the application report illustrates that the numerous unfounded statements are made that the proposed land-use will have a low impact:

Par 3.4 P11"The proposed consolidation, rezoning, consent use and departure will have a low impact on the surrounding erven as the subject property's zoning will be restricted to the Beach Manor House (thirteen bedroom guesthouse with amenities) and the proposed Beach House will be accommodated in the existing structure on the subject properties.

The proposed consolidation, rezoning, consent use and departure will have a low impact on the environment and traffic of the area. We therefore do not anticipate any problems with the application."

Par 3.5 Character of the environment p 11 "The subject properties are situated at the foot of the mountain in the quiet Voëlklip area. The Voëlklip area is characterized by single dwellings and recreational facilities (mountain bike trials, hiking trials, etc). The subject properties' character will remain unchanged since it is proposed to accommodate the proposed land use in the existing structures on erven 3160 & 3161 Hermanus. We are therefore of the opinion that the impact on the existing character will be kept to a minimum. The proposal to establish upmarket, luxurious guest accommodation (similar to Lazerac Stellenbosch – refer to their website: [www. Lazerac.co.za](http://www.Lazerac.co.za)) on the subject properties will add values to the area and we do not foresee a negative impact on the surrounding values."

Par 3.6 The potential of the property (Desirability of the proposed utilization) P12. "The subject properties are situated in the picturesque Voëlklip and last mentioned is known as a popular area for guests visiting and staying over in Hermanus....."

As previously mentioned the alternative to the proposed thirteen bedroom Lanzerac Beach manor House (i.e. if the subject properties were to be developed to its full potential) would imply the following: "subdivision of the said properties into 12 erven and then used for 5 bedroom guest houses individually which will then accommodate 120 guests or developing a second dwelling on all twelve properties. "Therefore, when weighing the two alternatives against each other, it is evident that the proposed thirteen bedroom Lanzerac Beach Manor House will have a lower impact on the surrounding environment. The aforementioned implies that the adjacent property values and the character of the area protected."

These general statements also form part of the attempts the applicant make to convince the relevant authorities that the proposed use will not have a huge impact on the area. **These statements are clearly not substantiated and no proof is provided that the impact of the proposed use (hotel) will be low from these statements. It is without doubt evident that the proposed land-use is in actual fact substantial.**

- ii. The applicant described the proposed hotel as a guesthouse and not as a hotel.

The impact of the proposed hotel is purposely downplayed in the application report stating that the proposed use will only represent a large guest house and not a hotel.

The definition of a "hotel" and "guesthouse" in the Overstrand municipal town-planning scheme is provided to inter alia distinguish the **scale and character / nature** between these two facilities for the purposes of impact and compatibility within an urban environment.

In order to enlighten the above argument the said definitions are quoted here-below:

The definition of a hotel and guesthouse in terms of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 reads as follows:

"hotel" means a property used as a temporary residence for transient guests, where lodging and meals are provided, and may include;

- (i) A restaurant or restaurants,
- (ii) Associated conference and entertainment facilities that are subservient and ancillary to the dominant use of the property as a hotel, and
- (iii) Premises which are licenced to sell alcoholic beverages for consumption on the property; but does not include an off-sales facility;

"guest house" means a dwelling house, or second dwelling unit which is used for the purpose of temporary lodging of guests or lodgers on compensation, the provision of meals for guests, visitors or tourists, and is occupied by the owner or occupant, or manager of the property, and may include an in-house cash bar and restaurant, provided that these facilities are only for the use of the bona fide guests or lodgers and may not be accessible to the general public, but does not include a hotel, guest rooms or boarding house;

It is clear from the above definitions that the main difference between these two land-uses are the scale and the fact that a guest house's character will remain that of a single residential dwelling house.

The character of a single residential dwelling will disappear with what is proposed on the application site. It is clearly evident that a land-use substantially bigger than a guesthouse is proposed on the application site. Therefore it is once again clear that the proposed land-use is misrepresented in the application report.

In the following extracts of the policy for guest houses vital matters in terms of guest houses should also to be taken into consideration to understand the importance of the scale and nature of a guest house in comparison with that of a hotel:

"Guest house operators

As these people fulfil an important function not only in economic development but also in job creation. They further fulfil an important role in satisfying the demand for alternate holiday housing. They are also crucial in the development of tourism and the development of the Overstrand's economy."

"Although the development of Tourism and economy are crucial, one should not leave the primary factor namely the residents from the equation. These people insist on the peacefulness and amenity of a residential neighbourhood according to its primary use of Single Residential.

These people's right should be the highest priority and any impact on their privacy and general living conditions should be restricted or mitigated to acceptable standards."

Tourists themselves

Lastly, the tourists and visitors to these accommodation establishments are also very important.

They should be assured of quality and value for money when making use of an accommodation establishment in the Overstrand."

"... the reason for restricting Accommodation Establishments to 5 bedrooms is the fact this activity is allowed in a Single Residential area where the characteristics should be preserved."

".....should an Accommodation Establishment cease its activity, the house should revert back to its original use of Single Residential."

"Should a person wish to conduct more than the prescribed 5 bedrooms on a Single Residential erf, he should apply for a Rezoning."

Evident from the above policy is that the applicant did follow the route of rezoning the property but the proposed used and activities exceeds the intension of that of what is meant by a guesthouse by far. The primary function of the application site is clearly not to accommodate a family anymore, but a business of accommodating tourists and associated activities. The nature and living conditions of a dwelling house differs like day and night from a only tourist facility where an atmosphere of vacation is normally the trend. **Therefore this is a hotel and not a guesthouse proposed which is undoubtedly a misrepresentation of the proposed land-use.**

- iii. The applicant attempts to convince the decision makers that the proposed land-use will have a low impact by comparing the proposed land-use with the subject properties subdivided and used for single residential purposes with 5 bedroom guesthouses on each of them. This argument is flawed in many ways for the following reasons:

The applicant incorrectly states that the extent of Erf 3160 Hermanus is equivalent to ten minimum sized erven in the vicinity.

It would imply erven of less than 500m² each. The likelihood of erecting a 6 bedroom dwelling with parking for 7 vehicles on site is practically impossible. Thus this argument of the applicant is irrational and null and void and flawed.

This argument clearly proves that the applicant misrepresent the land-use proposal. As part of the applicants failed argument, they also forsake to mention the impact of the comparison of smaller groups of visitors together (especially where tourist groups are together) compared to larger groups- i.e. noise from late night social activities- on a suburb.

The impact of the land-uses proposed will in actual fact be significant and not low as stated by the applicant resulting to a misrepresentation of the proposed land-use.

iv. Stating that the proposed use will be a smaller scale Lanzerac hotel

The applicant describes the proposed land-use as "The look and feel of the proposed Beach Manor House will resemble the look and feel of the Lanzerac Hotel and Spa in Stellenbosch- the same exclusive and luxurious accommodation in a tranquil setting, close to nature, separate units with beautiful landscaped gardens in between and amenities such a swimming pool, spa and conference facility available to guests- but only on a smaller scale."

It is clear from the site development plan that the proposed buildings will be smaller than that of the Lanzerac Hotel in Stellenbosch, but it is obvious that with a facility similar activities will need to be provided to be successful- also the reason why a pool and entertainment areas like the patio are proposed on the outside. Evidence of these facilities were extracted from the Facebook website illustrating the uses and activities of the Lanzerac Hotel outside Stellenbosch. These are all facilities and activities which can be used 24 hours of the day throughout the year.



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Photos from Lanzerac Hotel & Spa's post
in Timeline Photos

Options Share Send Like

Photograph extracts from Lanzerac Facebook Website

Even on a smaller scale, the activities associated with the proposed land-use stating that it will have a low impact on the adjacent properties are clearly misrepresented. The applicant mentions in his application report that the conference facility and Spa will be for the resident guest only. Subsequently the two restaurant will then be accessible for the general public. Such restaurants will have a severe impact on the character of the area in terms of noise, traffic, safety and security and more.

The above activities are not tranquil activities, even if it is on a smaller scale.

Furthermore to manage or police such activities is almost impossible, even more so with the manager not residing on the premises. The fact that the premises is proposed to cater for exclusive and luxurious accommodation does not guarantee that noise and activities will not cause any nuisance or impact the area. In addition to the above, the business vehicle, deliveries, cleaners apart from the residents that will travel to and from the application site will further contribute towards a change in character from the existing character.

Therefore the statement that the impact of the proposed land-use will be low on the existing character of the application site as well as the area is incorrect, false, misleading and a misrepresentation of the proposed land-use.

v. Using the Overstrand Town Planning Scheme to justify the proposed use as a guest house and not a hotel

It should be taken cognizance that the said zoning scheme does not make provision for a hotel in Single Residential zoning category, or a General Residential Zone 1 or 2 category, but only in General Residential Zone 3: Flats category where floor factors of up to 3 and 100% coverage and 12,5 m height with 4 storeys are permitted. Although the applicant applies for a lesser floor factors, coverage and height which gives a clear indication of the extent of the proposed land-use is a profound and intense use – surely the reason why a hotel is categorized under a General Residential Zone 3 Zoning and not a lesser zoning category.

It is thus clear and evident that the proposed use is not within the same league as that of the surrounding single residential zoned properties and will clearly not be compatible with the surrounding land-uses. This is also the reason why the serious objection is made that the proposed use is misrepresented.

Therefore it is clear that this proposed hotel / large guesthouse is a business and not a residential use and without doubt the land-uses and activities proposed are not compatible with the existing character of the surrounding single residential zoned and used properties.

vi. Using conflicting, vague and incorrect information

The application report is also found to be misrepresented and confusing by *inter alia* stating the location details being in 5th Street Voëlklip whilst the entrance is proposed to be in 4th Street Voëlklip. Furthermore only mention is made that the conference facility and spa is only meant for use by the resident guests, but the information that the restaurants are accessible to the general public is withheld. The vague information on the character of the area is also a misrepresentation of the land-use.

Given the above, this application is considered seriously misrepresented and subsequently flawed.

- c. The proposed land-use for a hotel is, contrary to the motivation in the application report, not supported by the Overstrand Municipal Wide Spatial Development Plan, 2006 and the Overstrand Municipal Spatial Growth Management Strategy, 2010

The applicant acknowledges and states it clearly in the application report that both the Overstrand Municipal Wide Spatial Development Plan, 2006 and Overstrand Municipal Spatial Growth Management Strategy, 2010 identify the application area for residential purposes. However, it has been undoubtedly clear that the proposed hotel / large guest house is a business and not a residential land-use.

Thus is the application inconsistent with the spatial development policies for the area.

In the Overstrand Municipal Spatial Growth Management Strategy, 2010 specific areas of economic activity have been identified. The positioning of such a hotel would be much more acceptable within the economic areas along the coastal edge Hermanus.

- d. The application is also flawed as restrictive title conditions do exist and a removal of restrictive title conditions application is required.

Although the Mossel River Estate Company Limited does not exist anymore and was deregistered, the Overstrand Municipality does not fulfil the role of the deregistered Mossel River Estate Company Limited. This was determined in a legal opinion from the Overstrand Municipality as quoted here-below:

"LEGAL OPINION IN RESPECT OF TITLE DEED T98708/99

As stated in the memorandum the title deed indicates that the municipality is the authority due to deregistration of the River Company. By implication consent is required should building lines be relaxed or departed from. Accordingly the question relates to the necessity to remove the restrictive conditions in the title deed, in the circumstances where the municipality gives it consent to the departure and relaxation of building lines.

Restrictive conditions have the same implications for the owners and neighbors. They regulate the way and extent to which the property is to be used and developed by the owner. It describes the rights, obligations and privileges in owning the property. **The purpose of restrictive conditions is to not only protect local amenity and character of the area.**

On this basis that title deed restrictive condition encompasses a form of statutory development control it will be more **restrictive and onerous**, and will thus **override and take precedence over development and building parameters.**

Even if these restrictive conditions are outdated they still remain in effect. In the circumstances Council may not approve a development proposal if it is in conflict with a condition in the properties title deed. This is applicable even if the municipality is the authority due to the de - registration of the developer. The restrictive condition remains in effect.

Cognizance needs to be given to the Malan and Another v Ardconnel Investments (Pty) Ltd judgment wherein the court stipulated that it must be borne in mind that a town planning scheme **does not overrule restrictive conditions in title deeds**. Moreover, consent by a local authority in terms of the town planning scheme **does not per se authorize the user of an erf contrary to its registered restrictive condition**.

It is common cause that restrictive conditions takes precedence over municipalities zoning and planning schemes. As stated previously restrictive conditions ensure for the benefit other erven. The restriction must be construed as a **property right to the neighboring properties**. They are inserted for the **public benefit**, and to **preserve the character of the area**. We should thus take due consideration that adjoining property owners presently enjoy the benefit of the restrictive conditions. In the circumstances if their **rights are to be removed on the basis of a repository of power**, there will be a definite risk of an appeal.

In conclusion the aforementioned restrictive conditions override any development decision, and remain vested until removed or amended. "

It is apparent that the said condition needs to be removed in order to allow any change in land-use. The application is thus flawed.

- e. The incorrect application of the parking ratios in terms of the Overstrand Zoning Scheme Regulations for the zoning is applied for and subsequently the Site Development Plan is incorrect

As the principles of a hotel is used in the zoning, the parameters for a hotel need to be applied consistently for parking as well.

The parking proposed to be provided amounts to 18 parking bays whilst additional parking for the public access area also need to be supplied at a ratio of 10 parking bays per 100m² of public access area. The areas relevant to the public access areas are considered the communal areas as per the plan attached to the application document (i.e. restaurant, spa & conference area and the communal living area excluding the communal covered walkways, patio and balconies). These areas subsequently equate to 484.27 m². As per the parking requirement in terms of the Overstrand Zoning Scheme

Regulations an additional 48 parking bays are required to comply with the zoning scheme requirements. This implies an additional parking area of approximately 960m² to be used for parking.

Thus the requirement will imply that more parking is required, changing the character even more than currently will be the case in the proposal.

- f. Lack of proof through a traffic study compiled by a registered and professional traffic engineer that the traffic impact is acceptable.

In the application mention is made that the civil engineer indicated that the traffic impact will not be significant. A professional registered traffic engineer is required to determine the impact of traffic of the development supported by traffic counts and modelled by the relevant and acceptable computer program and interpreted accordingly to declare the impact of an application.

This application is thus flawed by this incorrect procedure.

- g. Incorrect and inappropriate motivation of the planning principles for the application

In terms of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016, an applicant is required to motivate the application in terms of the prescribed planning principles.

The applicant's interpretation and comprehension of the planning principles are clearly incorrect and thus not consistent and compliant with the said by-law.

3. Conclusion:

A significant business operation is proposed on Erven 3160 and 3161 Voëlklip, Hermanus which is completely incompatible and conflicting with the nature and character of the Single Residential Zoned property on Erf 3185 Voëlklip, Hermanus and the area in the immediate vicinity of the said application site.

The character of the proposed land-use and the area, as described by the applicant, is **misrepresented** in the application report being incorrectly portrayed as a low impact land-use which will hardly impact on the character of the area.

The development proposal consists of a 24 hour a day business operation, where the behavior of guests cannot be managed, entertainment and social functions will be held regularly within an existing mature and tranquil and well established residential suburb. This proposed use is completely conflicting with the existing land-use of Erf 3185 Voëlklip Hermanus and the surrounding properties and considered as an undesired infiltration of an incompatible land-use and activity.

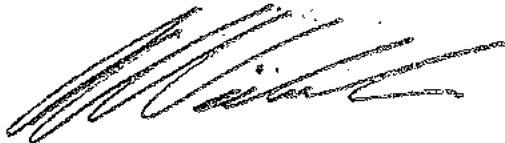
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In addition to the above, the application is also flawed as the application is not consistent with the statutory guiding spatial planning development policies or the title deed conditions, incorrect parameters are used in terms of the relevant planning By-Law and the planning principles are incorrectly interpreted and motivated.

Therefore it is requested that an accountable and responsible decision be taken to reject this application in order to retain the harmonious place making environment of this unique area in Voëlkop, Hermanus.

Should you have any questions in this regard please do not hesitate to contact me.

Kind Regards



Andre Wiehahn Pr Pln A/927/1996

Telephone: 028 312 1668 **Cellphone:** 082 466 0490 **Fax:** 086 602 7558
E-Mail: wiehahn.a@gmail.com

SPECIAL POWER OF ATTORNEY

*I/We Michiel Cornel Fauel

..... the undersigned

do hereby nominate, constitute and appoint ANDRE MARIUS WIEHAHN, of INTERACTIVE TOWN AND REGIONAL PLANNING with power of Substitution to be *my/our lawful representative in *my/our application for:

- **SUBMITTING OBJECTIONS TO THE APPLICATION FOR THE CONSOLIDATION, REZONING, CONSENT USE, DEPARTURE OF ERVEN 3160 AND 3161, VOËLKLIP, HERMANUS TO ESTABLISH A 13 BED GUESTHOUSE WITH A SPA AND CONFERENCE FACILITY**

In addition to make other necessary application and further to represent *me/us at any inquiry in relation to the abovementioned matters and generally do whatever may be necessary or desirable to procure the approval of the application, by virtue of those present and whatever our said representative have to date done herein.

Signed at Hermanus on this 27 day of September 2016

Signed [Signature]

In the presence of the undersigned witnesses:

As Witnesses:
[Signature]
[Signature]

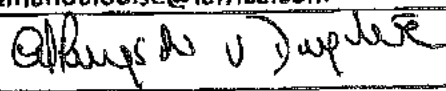
*Delete whichever is not applicable.

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E-mail to: alida@overstrand.gov.za

For ATTENTION: The Municipal Manager

C/O Town Planning Department, 16 Paterson Street, HERMANUS 7200

FROM:	
Owner/Part-Owner Voëlklip Address	Amanda Ruysch van Dugteren 205 4 th Street, Voelklip, Hermanus and 144 4 th Street, Voelklip
Contact address	5 Alphonse Close, Constantia 7806
Contact Tel No	083 228 0449
Contact E-mail	amandalouise@iafrica.com
Signed	
Date	29 September 2016

Objection to the proposed consolidation, rezoning and consent use of Erven 3160 & 3161, 190 Fifth Street and 32 10th Avenue, Voëlklip, HERMANUS

In our capacities as joint owners of Erf 3847 203 4th Street, Voelklip, we are not opposed in principal to the approval of plans to operate a guest house as proposed on erven 3160 and 3161, Voelklip, Hermanus ("the property"). We are, however, extremely concerned that re-zoning the property from Single Residential to General Residential Zone 3 poses a threat to the residential character of the area in the medium or long term.

Our concern is that if, in future, the current or subsequent owners decide to apply for the lifting of the proposed restrictions in order to build a block of flats, the "heavy lifting" will already have been done: that is, the more onerous task of rezoning will already have been achieved and there will be less scope for neighbours to object to such an application. Such a building would be such an obviously undesirable outcome for the area that the municipality ought to move extremely carefully to ensure that any decisions taken now do not increase the likelihood of that outcome later on.

We also wish to note our concern about an apparent error relied on in the application. Our research indicates that single stand dwellings may be used for two-room guest houses, not five-room guest houses, as stated in the application. (item 6.1.5 of Overstrand Zoning Scheme Regulations, 29 November 2013 refers to item 5.1.6). This figure features prominently in motivating the application. If indeed it is incorrect, it is a significant error made by the professionals whose submissions are relied on by members of the public when considering whether or not to object to applications. Whether the error was genuinely made or mala fides, it impacts materially on the process, and raises the spectre that other, less obvious, errors are contained elsewhere in the application.

FILE NO:	870
SCAN NO:	Hermanus
COLLABORATOR NO:	942171

WRAP

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Wright Approach
Investments (Pty) Ltd

Reg No:

016-3002/040745/23

Our Reference: 16/83
Your Reference: 3160 & 3161 HVK (3296)

29 September 2016

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Attention: Mr Petrus Roux

**ERVEN 3160 AND 3161, VOËLKLIP, HERMANUS: PROPOSED
CONSOLIDATION, REZONING, CONSENT USE AND DEPARTURE.**

Your letter dated 25 August 2016, addressed to Mr T Cloete, owner of Erf 7544, Hermanus, refers.

We've been instructed by Mr Cloete to formally object to the proposed consolidation, rezoning, consent use and departure applied for on Erven 3160 and 3161, Voëlklip, Hermanus (refer Annexure A).

Mr Cloete's address is:

Postnet Suite 295
Private Bag X16
HERMANUS
7200

We base our objection on the following:

2. LAND-USE PLANNING DECISION MAKING CRITERIA:

Section 42 of the Spatial Planning and Land Use Management Act (SPLUMA), 2013, expressly provides that in considering and deciding an application the competent authority must *inter alia*:

- be guided by the **development principles** set out in Chapter 2 of SPLUMA;
- 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**; and

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- (c) take into account –
 - (i) the **public interest**;
 - (ii) the constitutional transformation imperatives and related duties of the state;
 - (iii) the facts and circumstances relevant to the application;
 - (iv) the respective **rights and obligations of all those affected**;
 - (v) the state and impact of engineering services, social infrastructure and open space requirements; and
 - (vi) any factors that may be prescribed, including timeframes for making decisions.

1.1 Development principles:

In terms of Section 7 of SPLUMA, the development principles include spatial justice, spatial sustainability, efficiency, spatial resilience and good administration.

Any application needs to be sufficiently motivated that the application is in line with these development principles and the competent authority would have discretion to reject an application, on balance, if any one of the development principles is not fulfilled.

1.2 Municipal Spatial Development Framework:

In terms of Section 22 of SPLUMA, a municipal planning tribunal or any other authority required or mandated to make a land development decision is not allowed to make a decision which is inconsistent with a municipal spatial development framework (SDF).

Subject to Section 42, a Municipal Planning Tribunal or any other authority required or mandated to make a land development decision, may depart from the provisions of a municipal spatial development framework only of site-specific circumstances justify a departure from the provisions of such municipal spatial development framework.

Although recent case law such as *Parkhurst Village Association vs. M.A. Capela, Hollberry Props 3 (Pty) Ltd and City of Johannesburg Case No 09/32813* provided that Municipal SDF's are not prescriptive and do not have force of law, the provisions of SPLUMA now provide that municipal SDF's are not discretionary guides, but are prescriptive land-use planning instruments that need to be adhered to.

1.3 Public interest and the rights and obligation of those affected:

The competent authority is required to take into account a number of requirements in terms of the public considerations and a failure to demonstrate that one of these requirements has not been taken into account, would be sufficient grounds for a review.

1.4 Basis of assessment of land use applications in terms of the Western Cape Land Use Planning Act (LUPA), 2014:

In terms of Section 55 of the Western Cape Land Use Planning Act (LUPA), 2014, the **desirability** of those aspects of the proposed land development must be considered with specific reference to:

- (i) the applicable spatial development frameworks;
- (ii) the applicable structure plans;
- (iii) the principles referred to in Chapter VI; and
- (iv) guidelines that may be issued by the Provincial Minister regarding the desirability of the proposed land development.

The aforementioned principles replace the decision making criteria that was found in Section 36 of the Land Use Planning Ordinance, 15 of 1985 and held in case law such as

Hayes v Minister of Finance and Development Planning (Western Cape) 2003 (4) SA 598 (C). Most important when considering if a development is desirable or not is if it is in the context of the applicable spatial development framework.

2. FACTS AND CIRCUMSTANCES WHICH EXPLAINS THE OBJECTION:

The subject properties are situated in 4th Street Voëlklip which is predominantly a higher income residential area with mostly upmarket single residential dwellings.

The Overstrand Municipality Growth Management Strategy states that *an outstanding feature of the Hermanus East demarcated area is the small variety of non-residential zoned land within this planning area.*

Erven 3160 and 3161, Hermanus is located in Planning Unit 3 and in terms of residential densification the following is proposed:

Incremental development through subdivision to allow second and third dwelling units (housing typologies B1 and B2 respectively) is proposed for an assumed 20% of the area/dwellings units in this planning area.

No provision is made in this planning unit for any additional local economic opportunity.

2.1 The undesirable effect which the application will have on the area:

2.1.1 Location:

The operation of a hotel in a residential area such as Voëlklip is considered undesirable for the following reasons:

- a) Establishments such as hotels are bound to be noisy with people frequently visiting and using the facilities, as these are normally open to the public and not just for guests staying at the hotel. The restaurant, bar area, television lounge and swimming pools are also visited especially when live music is played or sports events are shown on television. It is possible to provide all these facilities under the definition of a hotel in terms of the Overstrand Zoning Scheme. The applicant in their motivation report page 8, also stated that it is only the spa and conference facilities that will not be accessed by the general public and will be for the exclusive use of guests.
- b) The above situation normally doesn't occur in guest houses as their facilities are not open to the public and are limited to guests and as guest houses are limited to five bedrooms a maximum of 10 people could be accommodated at a time. In guest houses it is also compulsory for an owner/manager to reside on the premises, and better supervision is then possible in comparison with a hotel where it is not compulsory for the manager to reside on the premises. The applicant in their application indicated that the manager will not reside on the premises.
- c) For the above two reasons the municipal zoning scheme makes provision for guest houses to be established on Residential Zone 1 erven by means of a consent use application only, but hotels can only be permitted if the property is appropriately zoned. The implication of this is that guest houses are considered to be compatible with a single residential area while hotels should rather be established in appropriate locations such as business locations situated on activities streets and routes and within commercial nodes and complexes such as the CBD.
- d) A quick survey of the township of Voëlklip has revealed that there are a number of guest houses in and between residential properties but there are only two hotels in

the area and both are situated on the outskirts of the suburb, overlooking open areas or the sea and none of them are so completely surrounded by residential properties as the subject property.

- e) Fourth Street, which will be the main access road to the proposed facility, is not a wide road and has a narrow tarred strip and cannot really cater for the large number of vehicles that will be generated by the proposed hotel. As this is predominantly a single residential area, it is found that children play and seniors walk in the streets and the additional traffic created will pose a danger for them and take away the peaceful and quiet situation that they are presently enjoying. It is important to note that there are no sidewalks along the streets and children and seniors walk on the already narrow tar surface and as mentioned this will create an even more dangerous situation.

2.1.2 The motivation report:

The following aspects in the motivation report need to be highlighted:

- a) The applicant made it quite clear in the motivation report that application is made for a hotel and that it will be part of the Lanzerac Group in Stellenbosch. At the same time in their report under heading 3.4 paragraph 8 it is stated:
"The proposed General Residential Zone 3 (bulk zone 2) does not make provision for a Beach Manor House as a primary right on the subject property. Therefore a simultaneous application for the consent use of the consolidated property is lodged to accommodate a Beach Manor House on the subject property. The closest definition of the proposed land use would be a "hotel". It should however be noted that this application proposes a Beach Manor House which is intended to be operated as a large guest house. Reference is made to a Beach Manor House instead of a hotel due to the lower impact and scale the proposed development will have."

It is very well for the applicants to say that the proposed facility will be operated as a large guest house but at the same time if their application is approved, they will obtain the development rights for a hotel. Once the rights are in place nothing can stop the owners of the facility to operate a full scale hotel on the property, with all their facilities open to the general public.

The Overstrand Zoning Scheme defines a hotel as follows:

"hotel" means a property used as a temporary residence for transient guests, where lodging and meals are provided, and may include:

- (i) A restaurant and restaurants;
- (ii) Associated conference and entertainment facilities that are subservient and ancillary to the dominant use of the property as a hotel; and
- (iii) Premises which are licensed to sell alcoholic beverages for consumption on the property, but does not include an off-sales facility.

A hotel is only allowed as a primary use under Business Zone 1 & 2: General Business along with other primary uses such as *business premises, conference facility, flats, guest house, place of assembly and place of instruction*. All land uses associated with business, normally located in an area predominantly zoned for business.

Heading 3.4, paragraph 10 further states "Currently guests staying at the Lanzerac in Stellenbosch visit Hermanus on a regular basis. Our clients identified the need to

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accommodate these guests in their own accommodation brand in Hermanus instead of booking their guests into guest houses in the vicinity."

This paragraph makes it even clearer that the proposed facility will be a hotel with the facilities of a hotel and any efforts from the applicants to disguise this fact is eradicated by the above statement.

It is also strange that the applicants stated in the above paragraph that the Lanzerac wishes to accommodate their guests in their own accommodation brand in Hermanus instead of booking them into a guest house but at the same time they say that the Beach Manor House will be operated as a large guest house.

This again raises the suspicion that this is going to be a full scale hotel, disguised in the application as a guest house. The mere fact that the applicants also mentioned that the facility will be operated as a guest house and not a hotel shows that they are also of the opinion that a hotel will not be ideal in this position but they are disguising the situation just to get the application approved.

- b) In clause 3.4 of the motivation report the applicant stated that if the hotel is not permitted, the alternative would be to subdivide the consolidated erf into 12 stands and then built a guest house on each which would lead to a larger number of guests than in the case of the proposed hotel. They have however omitted to mention what the financial implications would be for such a step and one just have to take into account the cost of purchasing the existing property, demolition costs, subdivision costs, bulk infrastructure contributions, installation of services, connection fees and the constructions costs of 12 guest houses, to see that it would not be financially viable.

3. ASPECTS OF THE APPLICATION WHICH IS NOT CONSIDERED CONSISTENT WITH APPLICABLE LEGISLATION, POLICIES AND FRAMEWORKS

3.1 Development principles (Section 42 of SPLUMA)

3.1.1 Spatial justice

It is not clear how the reference to the fact that most of the staff who will benefit from the proposed development will be local residents living in the informal settlements of Hermanus are addressing the improved **access of land** by such residents of informal settlements?

3.2 Municipal spatial development framework (Section 42 of SPLUMA)

The Overstrand Municipality Growth Management Strategy (OMGMS) is a policy document adopted as part of the Overstrand Spatial Development Framework. The OMGMS not only give guidance to where and how densification should be implemented as stated in the application, but also identifies areas for local economic opportunity.

No provision is made in the Planning Unit where the subject properties are situated, for any additional local economic opportunity. Although the application is for the rezoning to General Residential Zone 3, the consent use for a hotel which is regarded as a commercial land use and our opinion is that it is therefore not in line with the OMGMS and the Overstrand SDF.

We are further of the opinion that the application is flawed as it does not contain an application for the amendment of the Overstrand Spatial Development Framework.

In a recent circular from the Department of Environmental Affairs and Development Planning it was suggested that as the amendment of the SDF leads to the simultaneous amendment of the Integrated Development Plan (IDP), this process should rather precede a development application, which will require such an amendment. Otherwise it must be dealt with as an ad-hoc amendment of the SDF, for which no procedure was yet adopted by the Overstrand Municipality.

3.3 Public interest (Section 42 of SPLUMA)

Except for the members of the public that will visit the proposed hotel as guests and the few jobs it will create, it is not clear how the establishment and operation of the hotel will be in the public interest, especially to the residents of Voëlklip. The opposite, in other words, how their rights will be affected, will be discussed in more detail in paragraph 3.4.

3.4 Rights of all those affected (Section 42 of SPLUMA)

Our client, as most of the residents of Voëlklip, bought property in the area, due to the character of the area, being predominantly single residential in nature. We are of the opinion that the following rights of our client will be affected:

3.4.1 The character of the area:

The proposed hotel will definitely change the character of the area with specific reference to the change of the use of the subject properties. Current land uses include those associated with Single Residential, but the rezoning and consent use for a hotel will bring commercial land uses and the character associated therewith.

3.4.2 Impacts relating to increased traffic, parking and noise:

Traffic and noise will increase, not only by vehicles accessing and egressing the property, but also the visual impact of 13 guest cars parked on the property and an additional 10 parking bays (parking requirements for a hotel), excluding cars of staff that may also be parked on the property. This must be compared to the traffic impact of a single family currently residing on the property.

3.4.3 Noise:

Thirteen rooms being occupied in the hotel will add an additional 26 people on the premises utilising facilities such as the swimming pool etc which will bring additional noise to the neighbourhood. Guests may also visit restaurants in Hermanus at night, returning at different times, creating additional noise.

3.4.4 Refuse:

Refuse in the area is removed only once a week as is the case with all other residential areas within the Overstrand municipal area. The fact that a hotel will be operated on the subject property will not change this arrangement, which means that the refuse of the hotel will be removed on the same day as the rest of the neighbourhood. Refuse generated by a hotel with 13 rooms, kitchen and bar, will be put on the sidewalk to be removed by the refuse truck and will definitely not be limited to two bags which will create another undesirable visual impact and situation on refuse removal days.

3.5 Desirability (Section 55 of LUPA)

Section 55 of LUPA reiterates the fact that part of evaluating desirability is to have regard to the applicable Spatial Development Framework, already discussed under paragraph 3.3 above (Section 42 of SPLUMA).

4. CONCLUSION AND RECOMMENDATION

As motivated in the aforementioned paragraphs it is very clear that the application:

- 4.1 Is not in line with the development principles as set out in Chapter 2 of SPLUMA;
- 4.2 Is not in line with the Overstrand Spatial Development Framework and does not contain an application for the amendment thereof;
- 4.3 Is not in the public interest;
- 4.4 Will be affecting the existing rights of people;
- 4.5 Is not desirable.

We recommend that this application therefore not be approved.

Yours faithfully



PINE PIENAAR
(Pr. Plan A/409/85)

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POWER OF ATTORNEY

I, the undersigned

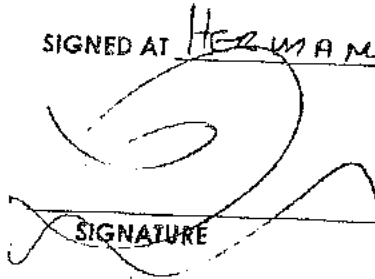
NAME: THEO CLOEZEID NUMBER: 6809075246080

In my capacity as the owner of ERF 7544 hereby nominate, constitute and appoint Wright Approach Investments 136 CC (Reg No. 2002/060745/23) trading as Wright Approach (WRAP) Consultancy, with power of substitution, to be the duly authorised attorney and agent in name, place and stead, which may be necessary in order to sign documents and to perform all such acts which may be necessary in connection with:

OBJECTION TO THE APPLICATION FOR REZONING OF ERVEN 3160 AND 3161 HERMANUS

and generally for effecting the purposes aforesaid, to do or cause to be done whatever shall be requisite, as fully and effectual, for all intents and purposes as I might or could do if personally present and acting herein - hereby ratifying, allowing, confirming, promising and agreeing to ratify, allow and confirm all and whatsoever my said Agent shall lawfully do, or cause to be done, by virtue of these presents.

SIGNED AT HERMANUS ON THIS 26 DAY OF SEPTEMBER 2016


SIGNATURE


WITNESS

TR A T 379
(H Olivier)

Alida Calitz - OBJECTION: Proposed consolidation, etc of Erven 3160,3161



From: Lettie Velthuisen <letsvelt@gmail.com>
To: <alida@overstrand.gov.za>
Date: 2016/09/30 08:23 AM
Subject: OBJECTION: Proposed consolidation, etc of Erven 3160,3161.

For ATTENTION: The Municipal Manager

C/O Town Planning Department, 16 Paterson Street, HERMANUS 7200

FILE NO:	Erven 3160 & 3161
SCAN NO:	Herm
	17
COLLABORATOR NO:	941740

I, Mrs E A Velthuisen,

Part-Owner of Voëlklip residence situated in 210 Third Street

with contact number 028 314 1617 / 028 314 0355(W)

Do herewith strongly object against the proposed consolidation, rezoning and consent use of Erven 3160 & 3161, 190 Fifth Street and 32 10th Avenue, Voëlklip, HERMANUS

The above proposed application will negatively affect the tranquillity and peace and value of our properties in the Voëlklip area.

1. Once you, as our Town Planners, give the green light to rezoning of Residential 1 to Residential 3 (even with strong restrictions) you will never again be able to say no to any one who asks for rezoning!! And before you and we as Voëlklip residents know it, we will have yet another Sea Point in Hermanus!! We already have to make peace with the fact that the beautiful little Fisherman's Village is becoming yet another BIG Holiday Resort instead of a place where we can have peace and quiet.
2. The ambience, tranquillity and peace of our area will be destroyed. Residents living near to 5 bedroom Guest Houses can testify that even they are destructive with regard to noise, traffic and exhaust fume pollution as tourists and guests move back and forth all day long and even at night.
3. Our children and grand-children will no longer be able to safely walk in our streets on their own, they will no longer be able to ride on their tri-cycles, bikes, etc because of the added traffic – especially traffic of people who really do not care for our area – they are only visitors and do not have any responsibility towards our area, our residents or especially our children.
4. Any rezoning like this creates a permanent threat that the tranquil character of our residential suburb can change. This will definitely scare away any new potential buyers of residential property and this will result into devaluation of our properties.
5. Tourism is important – but not important enough to cause our local residents to move to quieter places where there are no threats of rezoning and where they know they can stay and live in peace and tranquillity. We do struggle enough to keep our locals in our country and not go hunting for safer places in other parts of the world.

30 SEP 2016

6. It seems as if the motive for this rezoning is purely to exploit a situation to make yet more money, and is without any consideration for the neighbours and absolutely of no benefit to the entire neighbourhood. Developers with their attitude of threatening locals if we do not consent, do not deserve to be able to exploit our area for their own benefit.

PLEASE, stick to our principles and property rules and regulations – a yes to one developer can only mean another yes to the second developer – why will you, as our Town Planners now consider rezoning of one property just for the sake of money and perhaps, PERHAPS, more tourists, more money, stronger economy, etc.?

We as locals and residents of this beautiful and peaceful area of Hermanus, are loyal residents to our City/Town council. We have voted for you with all the promises of looking after your locals and residents, etc.

Why now go back on your word?

We chose the Voëlkop area, above 7th Street, because of its peace and tranquillity – we chose to buy here because it is away from the hustle and bustle of even below 7th Street.

Yours sincerely

E A Velthuysen

Plan Active Town & Regional Planners
Stads- en Streeksbeplanners



6 Magnolia St / Str
PO Box / Posbus 296
HERMANUS
7200

Tel: (028) 313 1673

Fax / Faks: (028) 312 1351

Email: planactive@hermanus.co.za

Website: www.planactive.co.za

Our reference: PA15074/ML
Your reference: 3160 & 3161 HVK (3296)

TP-A Theart
(P Roux)

2 NOVEMBER 2016

THE MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY
P.O. BOX 20
HERMANUS
7200

FOR ATTENTION: PETRUS ROUX

Sir

FILE NO: Erven 3160 & 3161-HM
SCAN NO:
COLLABORATOR NO:
966 685

PROPOSED CONSOLIDATION, REZONING, CONSENT USE & DEPARTURE: ERVEN 3160 & 3161 HERMANUS

- **KINDOC INDUSTRIES PTY LTD**

Reference is made to our application dated 17 May 2016 as well as your letter dated 5 October 2016 with objections received attached thereto.

It should be noted that from the fourteen objections received, three of the objectors state that they have no objection to the proposed Lanzerac Beach Manor House subject to certain conditions. Four of the fourteen objections are imitator objections (i.e. exactly the same).

Before we proceed to respond to the objections, we would like to emphasize important factors when considering this application:

- *The subject property is situated in Voëlklip (north of Seventh Street).*
- *Zoning: Residential Zone I: Single Residential (SR1).*
- *Erf 3160 Hermanus is 4957m² in extent - equal to 10 standard Voëlklip erven. Erf 3161 Hermanus is 991m² in extent - equal to two standard Voëlklip erven. Consequently the consolidated erf will be **5948m² in extent (equal to 12 standard Voëlklip erven)**.*
- *Our client also owns Lanzerac Hotel & Spa in Stellenbosch and the application is an extension of the Lanzerac brand.*
- *The client's brief was to establish a thirteen bedroom guesthouse on the consolidated property with a spa and conference facility for use by guests only.*
- *There is an existing double storey main dwelling with garages, a cottage and gymnasium on erf 3160 Hermanus. There is an existing single storey dwelling on erf 3161 Hermanus.*

Divine Inspiration Trading 329 (Pty) Ltd. trading as Plan Active
Reg. No. 2006/030921/07
Vat. No. 4770250340

John Mc Lachlan: Ndip (Town Planning) Tech Witwatersrand; MSAPI
Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)
Meriké Lenné: B. Art et Scien. Dom Laude (Town Planning) UNW; SACTRP

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- *The proposed Lanzerac Beach Manor House will be accommodated in the existing structures on the subject properties. The existing separate structures on the consolidated property will be linked with new walkways and gazebos.*
- *The proposed spa and conference facility will not be public accessed areas.*
- *A manager will be on site at all times but will not live on the premises.*
- *Total extent of structures on ground floor: 1326,2m². First floor (main dwelling only): 320,3m².*
- *The existing dwelling on erf 3161 will encroach the 2m lateral building line after consolidation with erf 3160 Hermanus. Consequently the aforementioned deviation from the building lines is the only departure from the land use restrictions (to accommodate an existing structure - the lateral building lines were 1,57m in the old Hermanus Scheme Regulations).*
- *Parking required: 13 bays. Parking provided: 18 bays.*
- *Services report, GLS report and discussions with Overstrand Municipality's engineering services department confirmed available services for the proposed land use.*
- *NEMA is not triggered and Heritage Western Cape supports the application.*
- *The proposed application complies with the Overstrand SDF (2006) and the Overstrand Municipal Growth Management Strategy (OMGMS, 2010).*

A summary of the objections and our response to the objections taking into consideration the abovementioned factors is as follows:

1. The proposed land use will have a negative impact on the traffic of the area and will lead to unwanted noise levels associated with higher traffic: increased traffic, delivery vehicles making noise, drop off and collection of staff, unsafe for children playing in the street, etc. No traffic impact assessment was submitted. A suggestion is made to construct speed humps to lower the travelling speed in the area.

If our client chose to demolish all the structures on the subject properties a subdivision of the properties into 12 erven would be possible. The comments with regards to this being an unviable option due to costs involved, etc. are irrelevant and uncalled for since none of the objectors know the financial status of our client. Therefore, if he / new property owners only constructs a single dwelling on each new portion, this will amount to double the volume of vehicles and people to the area than anticipated with the proposed Beach Manor House. It should also be noted that it is a primary right to operate a two bedroom guesthouse / bed & breakfast on a SR1 property (i.e. without any further land use approvals required, an additional two vehicles can access each property after subdivision) and with a consent use up to 5 guestrooms per erf are allowed. This is most certainly not a misleading alternative since the aforementioned can be done by following a land use application. The impact of the proposed 13 bedroom Beach Manor House versus an alternative (viable) land use application definitely has to be considered. We are looking at a maximum of 18 vehicles entering the premises at different times of the day (i.e. traffic will be spread throughout the day). Guesthouses (even of this scale) generate low traffic volumes to residential areas. In most instances guests do not arrive or depart at the same time either.

Furthermore deliveries will be done in a professional manner to ensure that the impact on the guests as well as the adjacent property owners is kept to a minimum. The delivery vehicles would have been present regardless of this being a 13 bedroom or 5 bedroom guesthouse – the impact would

have been the same. Furthermore deliveries will be done during the day to limit any possible unwanted noise in the evenings.

The drop off and collection of staff will be done within the premises and not in front of the Beach Manor House in the streets to reduce the noise levels and security risks associated with the aforementioned. Once again it is in the best interest of the owner to ensure that the aforementioned is dealt with in a professional manner to avoid complaints from the guests and neighbours.

We are of the opinion that the noise generated will be low and in keeping with the residential character. It is in the best interest of our client to ensure good relations with neighbours as well as to ensure that noise levels are kept to a minimum for the guests' sake.

Pre-submission correspondence with the municipality and application correspondence up to date have not necessitated the submission of a Traffic Impact Statement or Assessment (TIS / TIA). It can therefore be assumed that the proposal does not trigger a TIS or TIA.

It should also be noted that although our client favours speed humps to restrict the speed on the roads in the area, speed humps are usually positioned in close proximity to schools and old age homes - none of the aforementioned is present in the immediate vicinity.

2. The objectors state that the applicant "plays with words" and "misrepresents" the proposed land use: Hotel versus Beach Manor House.

The objectors emphasized the misrepresentation of the application (hotel versus guesthouse). And yes, the application cannot meet the definition of a guesthouse (with reference to the amount of guestrooms, single interleading structure and a live-in owner / manager). But nor will this be a hotel since it also does not meet the criteria / definition of a hotel. A "Hotel" is defined as follows:

"means a property used as a temporary residence for transient guests, where lodging and meals are provided, and may include;

(i) A restaurant or restaurants;

(ii) Associated conference and entertainment facilities that are subservient and ancillary to the dominant use of the property as a hotel; and

(iii) Premises which are licensed to sell alcoholic beverages for consumption on the property; but does not include an off-sales facility."

The proposed Lanzerac Beach Manor House will not include a restaurant and nor will the associated conference and spa facilities be accessible to the general public. Provision is made for dining rooms for guests only (as with guesthouses) and the conference and spa facilities will not be public accessed areas but for the exclusive use by the guests. The proposed Lanzerac Beach Manor House does also not propose an open bar / lounge to the public. The Beach Manor House will be similar to a large guesthouse on a large property with an in-house spa and conference facility. No public access areas (spa / conference facility / restaurant / bar) are proposed.

The size of the proposed establishment as well as the size of the consolidated property must be taken into consideration. For example, a 40 bedroom hotel with an open bar / lounge and restaurant on a 500m² - 1000m² size property in this area will have a greater impact on the area. This application's proposal is however equal to 1 bedroom per standard sized Voëlklip erf! The application is not for a thirteen bedroom Beach Manor House on a single standard Voëlklip property

of 495m² in extent. The application is for a 13 bedroom Beach Manor House within the existing structures on a property of 5948m² in extent. It is also worth noting that other municipal areas (City of Cape Town Municipality) allows for a maximum of 15 guestrooms on a SR1 zoned property – subject to context of the area, size of the property, complying with land use parameters and parking etc. The size of the consolidated property was also the reason why the officials at the Overstrand Municipality did not object to the application during our pre-application discussions. The size of the consolidated property can therefore not be ignored when considering this application.

It should also be noted that the owners intend to establish a high graded tourism establishment (upmarket and luxurious) on the consolidated property.

Guesthouses on single residential zoned erven are limited to five guest rooms only. Furthermore the guest rooms can only be accommodated in one interleading dwelling and not separate structures. Furthermore a manager / the owner have to reside on the premises. To accommodate the thirteen bedroom guesthouse within the existing structures on the premises the only option was to rezone to another residential zoning that allows for a hotel (since we could not meet the definition of a guest house as per the aforementioned factors). The rezoning from SR1 to General Residential Zone 3 with a consent use for hotel was considered to be the most appropriate zoning to accommodate the proposed land use.

The choice of words (Lanzerac Beach Manor House) was done especially to emphasize that this will not be a hotel as per the definition, impact and intention thereof. It was in no way done to mislead the reader. The scale, proposed land use and exclusions as motivated in this response should be the determining factors for consideration – not the name of the establishment.

3. The proposed Lanzerac Beach Manor House will have no benefit for the neighbourhood and will negatively impact on the ambiance, tranquillity (with regards to noise, pollution from vehicles etc.) and land values of the area. According to one of the objectors the permanent residents is of more value to the economy of the area.

Hermanus is a popular tourism destination and although there are no other guesthouses in the immediate vicinity there are a few guesthouses in the Voëlkliip area.

The Lanzerac Beach Manor House is seen as a residential land use and therefore the property does not have to be rezoned for commercial purposes to accommodate the proposed Beach Manor House.

The establishment of a Beach Manor House in an upmarket area is not a strange concept in the Western Cape. Large guesthouses and boutique hotels is present in many upmarket residential areas in the Western Cape. The association of these guesthouses and hotels with a certain residential area is rather seen more positive than detrimental to the existing upmarket residential areas.

The objectors should also consider the alternative as described above: the subdivision of the subject properties into twelve erven. The other alternative is that the property can also be used by one large family on a weekend / holiday basis where no rules and regulations apply and where the municipality has no control over. With the Beach Manor House there are rules and regulations that the owner has to adhere to. The municipality then also has control over this land use and if it becomes problematic, the local authority can cancel the approved land use. The proposed Beach Manor House proves to be a more controlled environment than letting the subject property to holidaymakers on a short term basis.

It is also in the best interest of the owner to manage the Lanzerac Beach Manor House to high standards to ensure that guests return and that good relations with the neighbours are maintained. With single dwellings there are no guarantees that there will be no noise levels present on the subject properties. With establishments such as these the guests insist on a tranquil environment and therefore (as mentioned previously) it is in the best interest of the owner to ensure that the establishment creates a holiday destination where guests would like to return to in future. Why would the owner compromise one of the most important factors (tranquillity) that they are selling to potential guests? The proposed development will be a luxurious, upmarket development that will fit in with the upmarket neighbourhood it is positioned in. The proposed development will rather add to the value of the area and should not be seen as a negative investment in the area.

Guesthouses and hotels are seen as tourist accommodation establishments – thus it will definitely contribute towards the tourism sector of Hermanus by providing more tourist accommodation options for guests visiting the area.

Guesthouses and hotels generally also promote the area they are situated in to lure more guests to their establishments. Are there statistics available supporting the objections that the proposed land use will have a negative impact on the land values of the area. Are establishments such as the 12 Apostles (Camps Bay) and The Vineyard (Newlands), large hotels in residential areas, detrimental to the values of the surrounding properties? This is a smaller scale land use by far and it is anticipated that the Lanzerac Beach Manor House will add value to the area.

An upmarket, luxurious Beach Manor House will be in keeping with the character of the area. It should also be noted that land use parameters of SR1 will still apply to the consolidated property to ensure that the property is restricted to remain in character with the surrounding area.

Furthermore the statement with regards to the permanent residents versus guests / tourists to the area is merely that – a statement with no substantiating facts / statistics. It can then also be argued what the impact of the part time owners in the area is on the economy – they are only in Hermanus three weeks of the year! It is important to note that the proposed Lanzerac Beach Manor House will create ±20 employment opportunities for local residents. This will have a very positive impact on the social and economic growth of the area.

4. No provision is made for restrooms for the staff working there.

Our client acknowledges that they neglected to address this matter in the application and it will receive their attention. As mentioned in our motivation report a manager will be present 24 hours of the day, 7 days a week. How will this be different to a manager living on the premises permanently?

5. The proposed rezoning opens the door for future developers. Furthermore one of the objectors state that a hotel is only allowed on a commercial zoning.

The proposed rezoning will be restricted to ensure that the property is not used / developed for any other land use than what we applied for. The municipality will restrict the proposed land use to thirteen bedrooms only, will make the approval subject to the land use parameters of SR1 that will apply to this property (regardless of the higher order residential zoning granted) and restrict the associated conference and spa facilities for use by the guests only. Our client will therefore not have carte blanche to develop the subject property in future for any other purposes than the land

uses being applied for. Any future redevelopment will have to follow another land use application and consequently another public participation process.

In addition General Residential Zone 3 (bulk zone 2) allows for a "hotel" as a consent use. The statement from one objectors claiming that it can only be accommodated on a commercial zoning, is therefore irrelevant.

6. *The workforce and liquor licence on the property for the proposed land use will have a negative impact on the safety of the area (will attract unwanted elements).*

Lanzerac Beach Manor House's management will deal with unwanted elements (if any) on and outside their premises since it is in their own best interest to keep their property clean and safe. As previously mentioned the communal areas will not be open to the public and will be for the use of guests only.

7. *The service entrance in 10th Avenue refers. An objector requests that the service yard be screened from the street and that the refuse area is covered / enclosed and kept clean. An objector also asks how the visual impact of a lot of refuse versus the removal thereof only once a week will be addressed.*

The service yard and refuse area will be enclosed (behind walls) and this area will not be exposed to the adjacent properties. Once again it is in the owner's best interest to enclose and deal with the refuse in a manner that would not have a negative impact on the guests to the establishment or the neighbouring properties.

8. *The existing municipal infrastructure cannot accommodate the proposed land use.*

A civil services report and GLS report were submitted with the application. The availability of services was also extensively discussed with the Engineering Services department prior to submission of the application.

The bulk services for all services except the sewer infrastructure have enough capacity to accommodate the proposed development.

The services report confirmed that certain minimum upgrades to the sewer bulk infrastructure downstream of this development will have to be implemented before this development can be accommodated in the sewer system. The possible upgrades of the bulk services were discussed with Mr Dennis Hendriks (Senior Manager: Engineering Services). Mr Hendriks confirmed that no upgrades of the bulk services are required to accommodate the proposed consolidation, rezoning, consent use and departure application.

9. *The developer also intend to obtain the 6-8 erven adjacent to erven 3160 & 3161 Hermanus and incorporate the aforementioned in the current Beach Manor House proposal.*

Yes, the adjacent properties are for sale. Our client was approached to buy the subject properties. At this stage the owner has no intent to buy the adjacent properties.

10. The proposed Lanzerac Beach Manor House will impose on existing mountain views.

This objection is irrelevant since the proposed Beach Manor House will be accommodated within the existing structures on the subject properties. The visual impact will therefore remain unchanged.

11. The proposal is not compatible with the surrounding single residential land uses.

The proposed Lanzerac Beach Manor House will be restricted to thirteen guest rooms within the existing structures, no public accessed areas and SR1 zone land use parameters. The proposed development will be a luxurious, upmarket development that will fit in with the upmarket neighbourhood it is positioned in. The proposed development will rather add to the value of the area and should not be seen as a negative investment in the area.

An upmarket, luxurious Beach Manor House will be in keeping with the character of the area. It should also be noted that land use parameters of SR1 will still apply to the consolidated property to ensure that the property is restricted to remain in character with the surrounding area. The aforementioned, as well as the due consideration of the extent of the property as well as the alternative development options, proves that the proposal is compatible with the surrounding residential land uses.

In addition, please refer to our comments in section no. 3.

12. The proposed Lanzerac Beach Manor House is not in line with the relevant spatial planning policies for the area. The land use is seen as a commercial use. In addition the subject property is not earmarked for local economic opportunity purposes.

Since we needed to be sure that we address this matter adequately, we asked Mr Johan du Plessis from Du Plessis Hofmeyer Malan Attorneys for a legal opinion in this regard. The legal opinion was obtained to answer to the objections concerning the amendment of the spatial planning policies as well as to strengthen our motivation for not applying for the amendment of the spatial planning policies. We quote from the aforementioned legal opinion:

"Section 26 of the MSA describes the core components of an IDP. It inter alia requires that an IDP must reflect the municipal council's vision for the long term development of the municipality and a spatial development framework which must include "...the provision of basic guidelines for a land use management system for the municipality". According to section 35(1) of the MSA (which deals with the status of an IDP) an IDP adopted by the council of a municipality inter alia is "... the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development, in the municipality.

A SDF is one of the sectoral components of an Integrated Development Plan. As stated in par. 1 of the 2006 SDF the purpose of an SDF is to provide general direction and to guide decision making on an ongoing basis. Furthermore that the advantages included in the compilation of an SDF for the Overstrand Municipal area inter alia includes that:

- *"It will ensure the identification of a **common spatial vision** and a **set of objectives** focussed on a desired **orderly spatial development pattern for the area;**" and*

- "It will inform a **broad land use management policy**, which can be referred to and used to objectively assess the desirability of all future development applications".

It is noteworthy that the 2006 SDF is only one of several planning tools available to municipal government. Another example of the available planning tools is the Overstrand Municipal Growth Management Strategy, 2010 (the "2010 GMS"). The latter *inter alia* serves to direct detail planning and redevelopment of an area along identified development corridors and to identify new nodes for development, whilst the purpose of the 2006 SDF, as a planning tool, is not to direct detail planning of an area.

It is evident that the municipal vision for the area concerned is to maintain its residential character. At first glance it would therefore appear that the proposed land use will not be inconsistent with the 2006 SDF or its policies, as the primary use of the subject properties will remain for residential purposes. Existing structures will be used for the purposes described above. The character of the built environment will therefore not change as a result of approval of the applications.

The proposed in-house spa and conference facilities are secondary land uses. Land Use Management Schemes and Zoning Schemes generally provide for a number of non-residential land uses that Councils may permit by way of special consent in residential areas, because such uses are in principle regarded as compatible with a residential character. A SDF does not detract from the right to apply for and obtain special consent in terms of such schemes."

Seen in the light of the scale of the proposed land use within existing structures, the size of the consolidated property, the intention of the proposed land use, the exclusions being applied for (no public accessed areas; SR1 parameters) we are of the opinion that an amendment of the SDF is not required to accommodate the proposed land use applications.

However, the attorney continued his opinion as follows: "However, for purposes of this opinion we will assume that potential aspects of the land use proposal may be inconsistent with the 2006 SDF or relevant municipal policies, the question then is whether such inconsistency (if it exists at all) will give rise to a duty on the part of the municipality to refuse the applications (alternatively to require an application for amendment of the spatial policies or 2006 SDF before it may favourably consider the applications described above).

It should be abundantly clear from what have been stated above that policy guidelines are not binding rules, but basic or broad guidelines only and that they may not be applied inflexibly. The decision-maker is required to exercise discretion (i.e. to consider and weigh all the relevant facts, including *inter alia* the question whether, in the given set of facts, the municipal vision for the area will be materially and adversely compromised if the broad guidelines are not strictly adhered to).

In short, the policy guidelines and the SDF may be deviated from in appropriate circumstances. Even if the proposed land use deviates from those guidelines or the SDF concerned, the decision-maker may approve the applications at hand without formal amendment of the 2006 SDF or its policies. Not surprisingly therefore that Section 10 of the 2016 By-Law specifically sets the requirements that must be complied with when a SDF is deviated from."

A copy of the legal opinion dated 1 November 2016 is attached.

13. There are restrictive title deed conditions that have to be removed to accommodate the proposed application.

A conveyancer's certificate was submitted with the application. Furthermore the application was amended on request of the Overstrand Municipality prior to the commencement of the public participation process since the encroachment of the street building lines triggered a removal of the

relevant conditions in the title deed. Our client however confirmed that the structures that encroaches the title deed street building lines will be demolished.

The municipality was in agreement that no other title deed conditions have to be removed to accommodate the proposed land use application.

14. The parking ratio was interpreted and applied incorrectly. According to one objector the public access areas equates to 484,27m² and consequently 48 parking bays have to be provided.

Once again, the above mentioned objection is irrelevant. There are no public access areas proposed. Consequently the parking was determined as follows:

Land Use	Parking Required	Bays	Parking Bays Provided
13 guest suites	13		13
100m ² public accessed area	0		0
Therapists and manager	3		5
TOTAL	16		18

From the above it is evident that sufficient parking bays can be provided for on site. It should also be noted that staff will be transported to the premises and dropped off and collected on the premises (for noise and security purposes). Guests will also be transferred from the Lanzerac Hotel in Stellenbosch where applicable. But regardless of the aforementioned, sufficient parking can be provided for on site.

15. A traffic impact statement (TIS) was not submitted with the application.

Only 13-18 parking bays are required to accommodate the proposed land use. The proposal does not trigger more than 50 trips per hour and consequently a TIS / TIA is not required. The application was circulated to the municipality's engineers and additional information will be provided if requested.

16. Incorrect and inappropriate motivation of the planning principles (with special reference to spatial justice).

- Spatial justice: We agree that the proposed development will not give previously disadvantaged communities access to land. However, the proposed Lanzerac Beach Manor House will create employment opportunities for local residents in town. Most of the staff who will benefit from the proposed Lanzerac Beach Manor House will be local residents living in the informal settlements of Hermanus (i.e. previously disadvantaged communities). The aforementioned cannot be ignored.

The proposed development is located within an existing built environment and does not result in any negative impacts with reference to exclusion, segregation or discrimination.

- **Spatial sustainability:** It is submitted that the proposed Lanzerac Beach Manor House is compatible with the character of the area and does not impact negatively on the rights of anyone else. The impact on the biophysical environment will also be kept to a minimum (i.e. no impact on natural or agricultural resources). Furthermore the extent of the subject property, the location of the subject property, the proposed restrictions to ensure the compatibility with the surrounding residential land uses (i.e. no public access areas, the proposed land use will be accommodated within the existing structures and SR1 land use restrictions), compliance with the spatial planning policies for the area, etc. allows for the consideration and approval of the proposed rezoning, consent use and departure without having an adverse impact on the spatial sustainability of the area. The proposed addition is to a brown fields / improved erf within an established residential area and therefore will not impact on urban sprawl, nor upon a sensitive environment.
- **Efficiency:** The subject properties are easily accessible and conveniently located close to the Hermanus CBD, Hermanus beaches and other tourist attractions in the area. Last mentioned makes travelling to the subject properties to make use of the proposed guest accommodation easy and accessible to everybody.

It is motivated that the proposed land use proofs to be efficient as it discourages the phenomenon of urban sprawl, encourages densification and more compact towns and cities, all of which relates to more responsible resource use or sustainable development. It also promotes a luxury thirteen bedroom Beach Manor House within the existing structures (only new walkways and gazebos proposed), which proofs to be more efficient than the alternative development options discussed previously. Furthermore the proposal is efficient in that it optimizes existing resources and continues the existing suburban development typology.

- **Good administration:** Our company is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation.
- **Spatial resilience:** Not applicable to this application.

17. How will the operation of the hotel / Beach Manor House be regulated and controlled to the restrictions as being applied for?

If the municipality approves the application, it will be subject to certain conditions. Our client will have to adhere to these conditions or risk forfeiting their land use rights. It is in their best interest to keep to the conditions of approval since any deviation from the aforementioned will alarm the neighbours and force law enforcement to act on any complaints.

18. The Lanzerac Hotel in Stellenbosch entails live entertainment, a restaurant, etc. The comparison with the Stellenbosch Lanzerac Hotel therefore confirms that the Lanzerac Beach Manor House will also boast these activities. The proposal is a full scale hotel disguised as a guesthouse.

Once again – no public access areas are proposed for the Lanzerac Beach Manor House. This means no bar or restaurant open to the public. The comparison to the Lanzerac Hotel in Stellenbosch was merely to give an indication that the look, feel and the luxury associated with the Lanzerac brand, will be the same (i.e. an upmarket Beach Manor House that will add value to the area). This information is now misused by the objector to say that the Lanzerac Beach Manor House will comprise of the same land uses as the Lanzerac Hotel in Stellenbosch.

The scale and land use of the two establishments differs considerably. The photos presented by the objector were taken in front of the function venue that can accommodate 200 people and live music. These photos and the intention thereof are considered misleading. The proposed conference facility can only accommodate the guests at the Beach Manor House. The function hall at Lanzerac Stellenbosch can therefore not be compared to the proposed conference facility at the Lanzerac Beach Manor House. The Lanzerac Beach Manor House will definitely not be a full scale hotel as motivated throughout this whole response.

To summarize, the application can be considered for your favourable evaluation based on the following factors:

- We are not proposing a thirteen bedroom Beach Manor House on a 495m² size property. The extent of the consolidated property (5948m²) therefore has to be taken into consideration when considering the application;
- Regardless of the name of the establishment (guesthouse versus hotel), the scale, proposed land use and exclusions as motivated in this response should be the determining factors for consideration;
- The owner will be restricted to 13 bedrooms within the existing structures;
- The owner will be restricted to SR1 land use parameters;
- The owner will be restricted to a spa and conference facility for use by guests to the Beach Manor House only. I.e. unlike a hotel, there will be no public accessed areas.
- The alternative development options for erven 3160 & 3161 Hermanus have to be considered;
- Provision is made for ample parking on site and the access points will suffice;
- The application is fully compliant with the planning principles described in the LUPA (2014);
- The application complies with the spatial planning policies and its objectives for the area;
- There are no title deed conditions that have to be removed to accommodate the proposed application;
- The available bulk services infrastructure can accommodate the proposed Beach Manor House;
- The proposed land use will add to the social and economic growth of the area (+20 employment opportunities created).

We trust that you will now be able to proceed with the processing of the application.

Yours faithfully



M. LERM Pr. Pln. (A/158/2009)
PLAN ACTIVE

393

DHM

du plessis • hofmeyr • malan
land law specialists

MEMORANDUM

TO

KINDOC INDUSTRIES (PTY) LTD

ABOUT PROCEDURAL ASPECTS

CONCERNING APPLICATIONS FOR THE PROPOSED USE

OF ERVEN 3160 – 3161 HERMANUS

LEGALLY PRIVILEGED AND CONFIDENTIAL

PREPARED FOR THE RENDERING OF LEGAL ADVICE

INTRODUCTION

1. Consultant is Kindoc Industries (Pty) Ltd, the owner of erven 3160 and 3161 Hermanus (the "Properties") on which certain buildings exist.
2. Plan Active on the instructions of Consultan applied to Overstrand Municipality for the consolidation and rezoning of the Properties from Residential Zone 1: Single Residential to General Residential Zone 3 (bulk zone 2), for a consent use and for a departure (building line relaxation) to permit the use of the Properties as a thirteen bedroom Lanzerac Beach Manor House with an in-house spa and conference facilities.
3. It is noteworthy that in terms of the applications made the *existing buildings* on the Properties will be used to accommodate all of the above uses.
4. The applications were advertised as part of the public participation process. A number of objections were received against the applications.
5. The question that has arisen is whether, in addition to the abovementioned applications, Consultant should also have applied for the amendment of the municipal Spatial Planning Policies and/ or the 2006 Overstrand Municipal Wide Spatial Development Framework ("2006 SDF").
6. Consultant instructed us to prepare a legal opinion in this regard.

SPATIAL DEVELOPMENT FRAMEWORKS

7. In terms of section 25(1) of the Local Government: Municipal Systems Act, 32 of 2000 (the "MSA") each municipal council is required to adopt a single, inclusive and strategic plan for the development of the municipality (referred to as an Integrated Development Plan or "IDP").
8. Section 26 of the MSA describes the core components of an IDP. It *inter alia* requires that an IDP must reflect the municipal council's vision for the long term development of the municipality and a spatial development framework which must include "...*the provision of basic guidelines for a land use management system for the municipality*" (my underlining).
9. According to section 35(1) of the MSA (which deals with the status of an IDP) an IDP adopted by the council of a municipality *inter alia* is "... *the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development, in the municipality ...*" (my underlining) and "... *binds the municipality in the exercise of its executive authority, except to the extent of any inconsistency between a municipality's integrated development plan and national or provincial legislation, in which case such legislation prevails ...*".

10. Section 36 of the MSA requires that a municipality must give effect to its IDP and conduct its affairs in a manner which is consistent with its IDP.
11. A SDF is one of the sectoral components of an Integrated Development Plan. As stated in par. 1 of the 2006 SDF [1] the purpose of an SDF is to provide *general direction* and to *guide decision making* on an ongoing basis. Furthermore that the advantages included in the compilation of an SDF for the Overstrand Municipal area *inter alia* includes that:
- 11.1 "It will ensure the identification of a **common spatial vision and a set of objectives** focussed on a desired **orderly spatial development pattern for the area;**" and
- 11.2 "It will inform a **broad land use management policy**, which can be referred to and used to objectively assess the desirability of all future development applications".
12. It is noteworthy that the 2006 SDF is only one of several planning tools available to municipal government. Another example of the available planning tools is the 2010 Overstrand Municipal Growth Management Strategy (the "2010 GMS"). The latter *inter alia* serves to direct detail planning and redevelopment of an area along identified development corridors and to identify new nodes for development, whilst the purpose of the 2006 SDF, as a planning tool, is not to direct detail planning of an area.
13. The objective of the 2006 SDF is to formulate strategic spatially based policy guidelines and proposals aimed at managing changes, needs and growth in the area in a manner beneficial to the environment and its inhabitants. [2] It contains a number of Land Use Policies and Guidelines (e.g. an Urban Land Use Policy which is dealt with in Section 5.5 of *Volume II: Development Strategy* of the 2006 SDF).

POLICY

14. Our Courts accept the adoption of policy guidelines by state organs to assist decision-makers in the exercise of their discretionary powers as legally permissible and eminently sensible. This is particularly so where the decision is a complex one requiring the balancing of a range of competing interests or considerations, as well as specific expertise on the part of a decision-maker.[3]

¹ 2006 SDF Volume II: Development Strategy: Par. 1 - Statutory Context.

² See Section A: Background on p.1 of Volume II of the 2006 SDF.

³ See for example MEC for Agriculture, Conservation, Environment and Land Affairs v Sasol Oil (Pty) Ltd & Another 2006 (5) SA 483 (SCA) at par 19.

15. The formulation and adoption of policy documents "... is a valuable tool of government". [4] "This is especially true in the sphere of land use and planning. A properly researched and formulated policy aids rational, coherent and consistent decision-making". [5]
16. As a general proposition therefore, decision-makers may apply the policies contained in the 2006 SDF when determining zoning-related, departure and subdivision applications in terms of the 2016 Overstrand Municipal Planning By-Law (the "2016 By-Law").
17. The general proposition is subject to the proviso that policy is not applied in a manner which excludes decision-making involving the conscientious exercise of the relevant discretion. The decision-maker is required to heed s 6(2)(f)(iii) of the Promotion of Administrative Justice Act 3 of 2000. "There is nothing inherently wrong in an administrative decision-maker pursuing a policy, provided the policy is not, either in its nature or in its application, such as to preclude the decision-maker from taking into account relevant considerations, or such as to involve the decision-maker in taking into account irrelevant considerations." [6]
18. Nugent JA [7] summarised the position thus: "A public official who is vested with a discretion must exercise it with an open mind but not necessarily a mind that is untrammelled by existing principles or policy... [G]enerally, there can be no objection to an official exercising a discretion in accordance with an existing policy if he or she is independently satisfied that the policy is appropriate to the circumstances of the particular case. What is required is only that he or she does not elevate principles or policies into rules that are considered to be binding, with the result that no discretion is exercised at all." [My underlining].

OPINION

19. The first logical question is whether or not the proposed land use is consistent with the 2006 SDF and more particularly the relevant municipal policies contained therein. We have not been provided with adequate information to answer this question, but suffice it to say the following in this regard.

⁴ See, for example, Britten & Others v Pope 1916 AD 150 at 158 (per Innes CJ) and at 172 (per De Villiers AJA), the MEC for Agriculture, Conservation, Environment and Land Affairs v Sasol Oil (Pty) Ltd & Another 2006 (5) SA 483 (SCA) at par 19.

⁵ Per Rogers, J in Booth and Others v Minister of Local Government: Environmental Affairs & Development Planning and Another. City of Cape Town v William Booth Attorneys and Others 2013 (4) SA 519 (WCC) at par 29.

⁶ See Sasol-case *supra* at par 18 and the long line of cases which require that policy guidelines not be applied inflexibly (Britten v Pope 1916 AD 150).

⁷ In Kemp NO v Van Wyk 2005 (6) SA 519 (SCA) at par 1.

- 19.1 In our view the proper approach to this question is a purposive one. This analysis is to be undertaken and the purpose of the policies in question is to be sought by reference to the character and larger objects of the policies themselves, to the language chosen to articulate the specific policy guidelines.
- 19.2 The interpretation should be a generous rather than a legalistic one, aimed at fulfilling the purpose of the policy and securing for the general public the full benefit of the protection intended by the policy.
- 19.3 In terms of our understanding of the factual situation the municipal vision for the area concerned is to maintain its residential character. At first blush it would therefore appear that the proposed land use will not be inconsistent with the 2006 SDF or its policies, as the primary use of the Properties will remain for residential purposes.
- 19.4 As mentioned before existing structures will be used for the purposes described above. The character of the built environment will therefore not change as a result of approval of the applications.
- 19.5 The proposed in-house spa and conference facilities are secondary land uses. Land Use Management Schemes and Zoning Schemes generally provide for a number of non-residential land uses that Councils may permit by way of *special consent* in residential areas, because such uses are in principle regarded as compatible with a residential character. A SDF does not detract from the right to apply for and obtain special consent in terms of such schemes.
- 19.6 However, for purposes of this opinion we will assume that potentially aspects of the land use proposal may be inconsistent with the 2006 SDF or relevant municipal policies. The question then is whether such inconsistency (if it exists at all) will give rise to a duty on the part of the municipality to refuse the applications (alternatively to require an application for amendment of the spatial policies or 2006 SDF before it may favourably consider the applications described above). I turn now to discuss this question.
20. It should be abundantly clear from what have been stated above that policy guidelines are not binding rules, but basic or broad *guidelines only* and that they may not be applied inflexibly. The decision-maker is required to exercise discretion (i.e. to consider and weigh all the relevant facts, including *inter alia* the question whether, in the given set of facts, the municipal vision for the area will be materially and adversely compromised if the broad guidelines are not strictly adhered to).
21. In short, the policy guidelines and the SDF may be deviated from in appropriate circumstances. Even if the proposed land use deviates from those guidelines or the SDF concerned, the decision-maker may in our considered opinion approve the applications at hand without formal amendment of the 2006 SDF or its policies. Not surprisingly therefore that

section 10 of the 2016 By-Law specifically sets the requirements ^[8] that must be complied with when a SDF is deviated from.

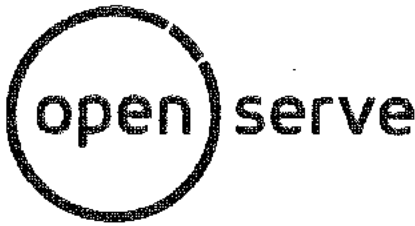
22. We advise accordingly.

DU PLESSIS HOFMEYR MALAN INC



PER: J P DU PLESSIS
1 November 2016

⁸ Requirements relating to the recordal of reasons for the deviation and keeping of a record of the decision and the reasons for the deviation.



ANNEXURE F 1/4
TR- A Theat
(C H Olivier)

FILE NO:	Even 3160/1
SCAN NO:	Hermanus
	38
COLLABORATOR NO:	938924

Division of Telkom SA SOC Ltd

10 Jan Smuts Drive
Pinelands
7404

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

Our Ref.: WWIP_WVKL3739_16
Your Ref.: 3160 & 3161 HVK (3296)

19 September 2016

Attention: S Muller

Overstrand Municipality
HERMANUS

TELKOM SERVICES: PROPOSED CONSOLIDATION, REZONING, CONSENT USE, DEPARTURE: 3160 AND 3161, 190 FIFTH STREET, 32 TENTH AVENUE, VOELKLIP, HERMANUS

With reference to your application received 25 August 2016.

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

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

Approval is granted, subject to the following conditions.

As per sketch attached, Telkom SA LTD infrastructure will be affected, consequently the conditions below and on the attached legend will apply.

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

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

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

As important cables are affected, please contact our representative Frederik Swart at telephone number 028 514 1199 / 081 363 7815 at least 48 hours prior of commencement on construction work.

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

Should Telkom SA infrastructure be damaged while work is undertaken, kindly contact our representative immediately.

All Telkom SA LTD rights remain reserved.

Yours faithfully



Selwyn Bowers

Operations Manager













Wayleave Management: Western Region

This wayleave, Reference Number WWIP WVKL3739 16 is valid for 12 months from date hereof and is subject to the following conditions:

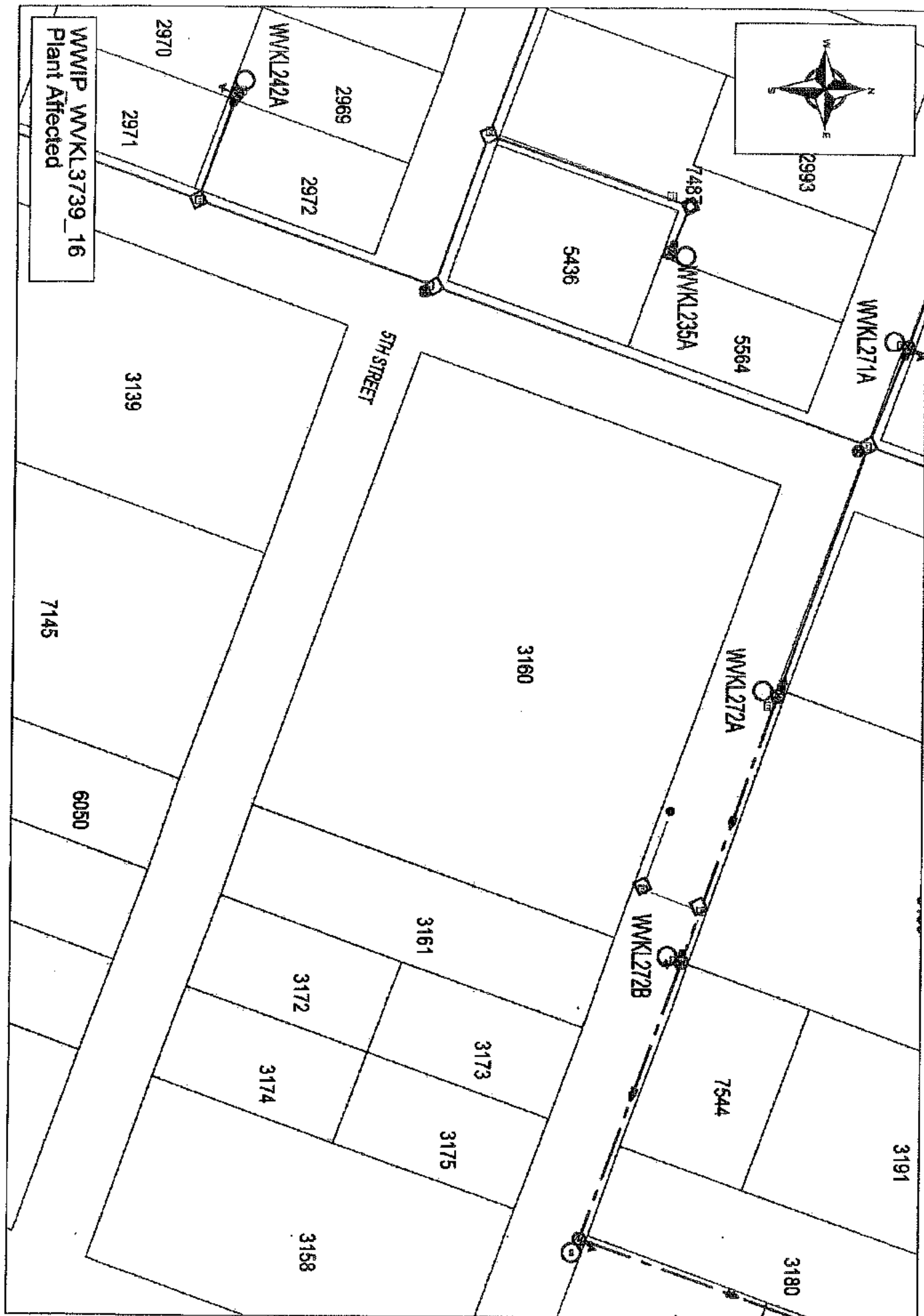
1. No mechanical plant or vibrator type compactors may be used within three meters of any Telkom Plant (I.E. any Telecommunication equipment above or below ground level).
2. The position of our plant affected by the proposal is indicated as approximate and Frederik Swart at Telephone No 081 363 7815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

Date: 2016/09/19

By: C Spammer
For Regional General Manager
Western Cape

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





**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR CONSOLIDATION, REZONING, CONSENT USE &
DEPARTURE: ERVEN 3160 & 3161, VOELKLIP (3296)**

Stormwater (SW)	:	In Order
Electricity	:	In Order
Water	:	According to GLS Report
Sewer	:	According to GLS Report
Roads and traffic	:	In Order

Conditions:

1. That a Bulk Services Contribution Levy (BICL) be paid by the developer to supplement municipal services and amenities in accordance with the relevant legislation and as determined by the Council. The BICL tariff is adjusted by Council annually. The total BICL payable will be the amount as determined by the BICL Policy and tariff at the date of **actual payment**. BICL amounts quoted in any document will normally be applicable to the particular year in which the document was compiled and Council will not be bound by the quoted amounts.

1.1 Developments containing Sectional Title Units/ Commercial Buildings (non-free standing properties – property is not to be subdivided)

The BICLs are to be paid in full **prior** to submission of the building plans. Building Plans will not be accepted unless the BICL is paid in full.

1.2 Developments with free standing properties (property that is subdivided and plots to be sold individually).

The BICLs are payable **prior** to clearance being issued by the Income Department of the Municipality.

The contribution according to the current policy (2016/2017) is as follows:

Freehold erven:

Roads	R 6 500.00 x 11.06	=	R 71 890.00
Water	R 21 500.00 x 5.80	=	R 124 700.00
Sewerage	R 14 496.00 x 4.35	=	R 63 057.60
Stormwater	R 7 500.00 x 5.91	=	R 44 325.00
Solid Waste	R 1 300.00 x 11	=	<u>R 14 300.00</u>
TOTAL (inclusive of VAT)		=	<u>R 318 272.60</u>

Note:

1.1 The above figures are estimates

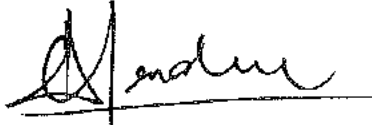
1.2 That Overstrand Municipality's Electrical Department be contacted regarding the bulk electricity cost.

2. that the developer at his cost constructs the internal municipal civil and electrical services for the development as well as any link or bulk municipal services that need to be provided;
 - 2.1 the Director: Infrastructure and Planning may require the developer to construct internal, link, and/or bulk municipal services to a higher capacity than warranted by the development for purposes of allowing other existing or future developments to also utilise such services, provided;
 - 2.2 the rates and prices of such work be established in terms of a system which is fair, equitable, transparent and cost effective;
 - 2.3 if link municipal services have already been provided, the developer to contribute towards the cost thereof, the Director: Infrastructure and Planning to determine the amount of such contribution in terms of a system which is fair and equitable;
3. that servitudes for municipal services be registered in favour of the Council at the developer's cost in respect of all main services to be taken over by the Council and all existing municipal services concerned crossing private property;
4. that the developer indemnifies and keep the Council indemnified against all actions, proceedings, claims and demands, costs, damages and expenses arising out of the establishment of the township, the provision of services to the township or the use of servitude areas or municipal property:
 - 4.1 for a period which shall commence on the date that the installation of the services to the township are commenced with and shall expire after completion of the maintenance period;
 - 4.2 the developer to submit an acceptable public liability insurance policy to the Council and to pay the premium in advance for the period as set out above before any work concerned may commence;
 - 4.3 the insurance to be to an amount which shall not be less than that required by the SAACE;
 - 4.4 such indemnification against loss, claims or damages, to include claims pertaining to consequential damages by third parties and whether as a result of the damage to or interruption of or interference with the Council's services or apparatus or otherwise;
5. that a plan of all existing services be submitted to the Director: Infrastructure and Planning, by the developer and that any of the services that need to be relocated, be done by the developer at his cost to the satisfaction of the Director: Infrastructure and Planning;
 - 5.1 way-leaves must be obtained from the Operational Manager;

- 5.2 such way-leaves to be obtained prior to any excavation on public property or property where existing services are located;
6. that the developer may enter into an agreement with the Council to install or upgrade bulk and/or link municipal services and amenities at an agreed cost, subject to the following:
 - 6.1 such costs to be established in accordance with a system which is fair, equitable, transparent, competitive and cost effective;
 - 6.2 such costs shall be set-off against (part or full) development contributions payable in respect of engineering services;
 - 6.3 to the extent that such costs exceed the development contributions payable, the Council will refund the developer the difference with interest calculated at the prime rate, when funds are available;
7. that plans of all the internal municipal civil and electrical (high and low voltage supply) services and such link services as required by the Director: Infrastructure and Planning, prepared by an ECSA registered professional engineer/technologist, be submitted to the Director: Infrastructure and Planning for his prior approval;
8. the "Guidelines for the Provision of Engineering Services in Residential Townships" (Blue Book), SABS 1200 specifications and the Design and Construction Standards for civil and electrical services of the Council to be used as the standard design and construction criteria with which such plans must comply;
9. the Director: Infrastructure and Planning to be notified in writing of all deviations from the Standard Design and Construction Criteria when plans are submitted for his approval and such deviations to be separately approved in writing by the Director: Infrastructure and Planning;
10. the successful completion of such works to be supervised and certified by an independent professional civil engineer/technologist i.e. a professional civil engineer/technologist who has no direct financial interest in the development, other than payment as standard professional fees for the work concerned; and
11. such independent professional civil engineer/technologist to furnish the Director: Infrastructure and Planning with satisfactory proof of his professional indemnity insurance to an amount which shall not be less than that required by the SAACE and which insurance shall be valid for the relevant contract and maintenance period;
12. that all municipal civil and electrical services installed or constructed by the developer, be maintained after completion thereof for a maintenance period, as described in the General Condition of Contract for works of Civil Engineering Construction – 2004, of 12 months, and

13. that a Certificate of Completion together with as-built services plans be provided by the independent professional engineer/technologist to the Overstrand Municipality. As-built plans to be on quality paper, together with a DXF file thereof;
14. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
15. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
16. that an approved refuse collection area/room to sufficiently accommodate the refuse generated by the development and which is to be proved with the following:
 - a. properly ventilated;
 - b. a cement floor;
 - c. a tap and running water, as well as a drainage point which is connected to the sewer network;
 - d. at a position nearest to an access road for the development and be accessible for the refuse truck at all times, to the satisfaction of the Director: Infrastructure and Planning;
17. that the refuse collection area be constructed in accordance with the requirements of the Overstrand Municipality;
18. that a stormwater management plan, which may include attenuation facilities to ensure that the pre-development run-off is not exceeded and that erosion and pollution is minimised, be submitted to the Director: Infrastructure and Planning for approval and that the approved management plan be implemented by the developer at his cost to the satisfaction of the Director: Infrastructure and Planning;
19. that the above stormwater management plan include the following:
 - 19.1. pre-development run-off from the catchment area;
 - 19.2. post-development run-off from catchment area;
 - 19.3. existing stormwater reticulation system and the capacity thereof;
 - 19.4. connection of internal stormwater reticulation system;
overland escape routes;
20. that the connection to the stormwater reticulation system be provided according to the stormwater management plan, by the developer at his cost and approved by Overstrand Municipality ;
21. that a minimum stacking distance of 6m be provided at the entrance of the proposed development;

22. that no on-street parking will be allowed;
23. that damage to the existing roads, used as routes for access to the development, for the provision of services, be repaired by the developer.



DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

18/10/2016
DATE