

4.4**ERF 3725, ONRUSTRIVIER MAIN ROAD, ONRUSTRIVIER, OVERSTRAND MUNICIPAL AREA: REZONING AND SUBDIVISION: MESSRS WRAP ON BEHALF OF GA MUSSON****3725 HON (3058/2019)****H Olivier****(028) 313 8900****Hermanus Administration****15 November 2019**

1. EXECUTIVE SUMMARY

An application was received on 13 May 2019 from Messrs WRAP on behalf of GA Musson on Erf 3725, Onrustrivier in terms of the Overstrand Municipality By-Law on Land Use Planning, 2015 for the following:

- rezoning in terms of Section 16(2)(a) of the above-mentioned By-Law from Agriculture Zone I : Agriculture to Subdivisional Area (SA) to create residential erven, and
- subdivision in terms of Section 16(2)(d) of the abovementioned By-Law, to create 2 Residential Zone I erven.

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 3725, Onrustrivier is zoned Agricultural Zone I and is developed with one (1) dwelling. The property measures approximately 4901m² in extent.

4. SUMMARY OF APPLICANT'S MOTIVATION

- ❖ The subdivision and use will be in harmony with the urban form, fabric and prevailing character of the area.
- ❖ Services such as water and sewerage are available in the area.
- ❖ Access will be obtained from Onrustrivier Main Road, and the one portion will obtain access via a servitude right of way of 4m wide over the other portion.
- ❖ It is in line with the need and desirability criteria in terms of Section 55(b) of LUPA, as it will have a positive economic impact, is compatible with surrounding uses and will increase security in the area.
- ❖ Will have no environmental impact as the nearest wetland edge is 68m away.
- ❖ No listed heritage activities are triggered.
- ❖ In line with Section 42(c) of SPLUMA site specific requirements.
- ❖ The proposal is in line with the Overstrand SDF, 2006 providing for some form of appropriate densification, while maintaining the village character.
- ❖ In line with the Overstrand Municipality Growth Management Strategy, 2010 in that it will promote optimal land use.
- ❖ Planning and align with spatial proposals.
- ❖ Is in line with planning principles as follows:

Spatial Justice

Employment opportunities will create a more spatially just urban landscape.

Spatial Sustainability

The site is located within a spatially sustainable area.

Efficiency

The additional erven will promote efficient use of services, land, infrastructure and resources.

Spatial Resilience

Proposal is in line with PSDF, SDF and OMGMS.

Good Administration

The Municipality has a good public participation record.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Press	Yes	31 July 2019	6 September 2019
Notices	Yes	31 July 2019	6 September 2019
Ward councillor	Yes	31 July 2019	6 September 2019
Total comments	TWO (2)		
Total letters of support	NONE		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			Yes
Was the application processed correctly (if no, elaborate below):			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			Yes

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

Name	Date received	Summary of comments
Engineering Services	17/09/2019	See Annexure F.
Environmental Management	12/09/2019	See Annexure G
Building Control	31/07/2019	Supported
Fire Department	17/08/2019	No objection.
Eskom	7/08/2019	See Annexure H.

Telkom	20/08/2019	See Annexure I.
Department Agricultural: Western Cape	9/10/2019	See Annexure J.
Department Agricultural: National	25/11/2019	See Annexure K.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION.

Two (2) letters of objection were received and the applicant was provided an opportunity to respond to the objections, which can be summarized as follows:

- 1. The consent of the Department of Agriculture, which is required, was not attached to the application and therefore the Municipality cannot approve the application.**

Applicant's response

The property is situated in an area which is exempt from Section 1(a) of Act 70/1970.

Town Planners' comment

Although this agriculturally zoned property is situated within the urban area, the comments of Department Agriculture: Western Cape and National was obtained. The Department Agriculture: Western Cape indicated they had no objection, whilst Department Agriculture: National indicated the property is not subject to Act 70 of 1970.

- 2. An incomplete application was circulated, which is misrepresentation and does not enable the objector to provide a detailed objection therefore, Section 48 of the By-Law has not been complied with.**

Applicant's response

The Municipality is not obliged to send out the entire application with notices in the post. The notice however clearly states that the full planning application can be viewed at the Municipal Town Planning Offices.

Town Planners' comment

The comments are noted, and the applicant's response is supported.

- 3. No building plans were submitted with the application for consideration of impact, and this is a contravention of SPLUMA and LUPA.**

Applicant's response

No indication is provided what provisions of SPLUMA/LUPA is contravened. Building plans does not have to be submitted for a subdivision application to Residential Zone I. Only after planning approval can building plans be submitted to the Building Department for consideration of the plan.

Town Planners' comment

This application is to rezone the agricultural zoned land to create two (2) Single Residential Zone plots. Development on these plots will then be controlled in terms of the restrictions in the Zoning Scheme for the Residential Zone I zoning.

The scale and proposed zoning does not require the applicant to submit building plans at this stage, and it would in all possibility not be possible if there is no buyer for the land at this stage. Building plans have never been requested for similar applications, and it is not considered a requirement to determine

- 4. Cannot determine the impact of traffic, parking and related considerations if no building plans are available.**

Applicant's response

Considering that only one (1) additional property with a Residential Zone I zoning will be created, only a main and second dwelling can be created, which would require three (3) parking areas in terms of the Zoning Scheme. Impact will therefore be minimal.

Town Planners' comment

The applicant's response is supported.

- 5. For the Municipality to consider the desirability of the application impact on surrounding neighbours must be considered, which is not possible without building plans.**

Applicant's response

Any building that will be constructed will have to comply with the parameters as defined in terms of the Zoning Regulations. This is the same rights as surrounding property owners and would not lead to infringement or deprivation of other property owners' rights.

Town Planners' comment

The applicant's response is supported.

- 6. The potential environmental impact on the wetland cannot be considered without a plan outlining parameters for the development, dealing with environmental impact with acquisition of construction materials, introduction and use of such materials and introduction of construction workers and heavy machinery. No information was provided about sustainable waste disposal and good access control.**

Applicant's response

The subject property is 68m from a wetland, and the construction of a dwelling will not impact the wetland. A letter was also obtained from Lornay Environmental Services confirming that there is no critically endangered vegetation present on the erf.

Town Planners' comment

The applicant provided an opinion from Lornay Environmental Consulting, who indicated that no listed environmental activities will be triggered. The letter was provided to the Municipal Environmental Department who indicated that they have no objection against the application.

7. **The constitution protect existing property rights, and this application will impact on the property owners said use and enjoyment which will be interrupted and/or diminished by disturbances associated by the construction of the proposed residential dwelling. The construction will also impact on property owners' legitimate expectation of privacy.**

Applicant's response

The property owner will still enjoy his existing property rights. The construction of the dwelling will also be done in a manner considering neighbours and limiting disturbances.

Town Planners' comment

The objectors' opinion is not supported. Should it be considered that all construction work on neighbouring properties affect property owners' rights in the vicinity of a property, then no new building work or additions to any properties can ever be allowed. Also, considering the scale of the development is only to create two (2) residential plots, of which the one portion closest to the objectors' property has already been developed with a dwelling. Impact during the construction phase should therefore have a limited effect on objectors' properties.

8. **The Municipality can include the following condition: "*The development is granted subject to the condition that a draft building plan is circulated by the applicant to all affected persons indicating the parameters and necessary detail of the proposed development.*"**

Applicant's response

Building plans is only required after planning approval. It only is circulated to neighbours as part of a planning application if plans exceed permissible development parameters.

Town Planners' comment

If the Municipality start imposing such type of a condition, and such a plan is circulated to possible affected neighbours, who will ultimately determine that the plan will be acceptable. Building plans must comply with Zoning Scheme restrictions when submitted and be further evaluated in terms of the National Building Regulations.

9. **The Municipality can include the following condition: "*That the development is granted subject to the condition that the dwellings to be constructed are not constructed in a way which impacts the privacy of the neighbouring properties.*"**

Applicant's response

The new dwelling will be in line with the height restriction and building line restrictions, therefore the objectors' privacy will be protected and this condition is thus not needed.

Town Planners' comment

See answer in Point 8 above.

- 10. The Municipality can include the following conditions: "*That the development is granted subject to the condition that no window is constructed on the proposed dwelling facing the property.*"**

Applicant's response

This is an onerous restriction that will place a restriction on this new property, but such restriction is not applied on other property owners in Onrustvriër limiting their rights.

Town Planners' comment

As indicated in Point 8, the Zoning Scheme parameters is considered sufficient control.

- 11. Not clear which side of the new property will be built on.**

Applicant's response

The construction of the new dwelling will be on Portion A

Town Planners' comment

This objector's question relates more to where the new dwelling on Portion A will be constructed. This will only be known when building plans will be submitted, should this rezoning and subdivision application be approved.

- 12. There are rumours of the development of a boutique hotel, which would lead to an increase in traffic and discomfort for neighbouring properties.**

Applicant's response

The application does not include the construction of a boutique hotel.

Town Planners' comment

The application that was submitted is to create two (2) new Residential Zone I erven, and therefore only the impact of two (2) new Residential Zone I erven can be considered in this application.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

As 7. above.

9. MUNICIPAL ASSESSMENT OF COMMENTS

The application was supported by all internal municipal departments and external provincial and semi-state institutions.

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

10.1 Background

N/A

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

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

The objectives relating to:

Spatial Justice

N/A

Spatial sustainability

The application is within the urban edge and will not impact on agricultural land or environmentally sensitive areas. It will also help to alleviate urban sprawl by way of infill planning.

Efficiency

The property is surrounded by an existing road network and services infrastructure, and will require no additional infrastructure to be developed. It will lead to the more efficient use of existing services.

Spatial Resilience

The approval of this development and units will ensure additional rates will be obtained by the Municipality to maintain existing infrastructure, thereby lowering the financial pressure on surrounding property owners and also the Municipality. It is also in line with the Overstrand Municipality SDF, 2006 and Growth Management Strategy, 2010.

Good administration

Good procedure was followed and with a good public participation.

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

Same as Point 10.2 above.

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

The area is indicated for residential purposes in terms of the SDF allocation and is also indicated for high density residential area in terms of the GMS.

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

N/A

10.6 Impact on Municipal engineering services

The area is already serviced and sufficient bulk capacity exists to accommodate the development. The application is supported by the Engineering Department.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

There are already a mix of Residential Zone I and General Residential Zoned uses in the area.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12. THE DESIRABILITY OF THE PROPOSAL

The application is to rezone Erf 3725, Onrustrivier from Agriculture Zone I to Subdivisional Area, to create two (2) Residential Zone I erven.

The two (2) new proposed erven will measure 2312m² (Portion A) and 2589m² (Remainder) respectively. The proposal is to register a right of way servitude over the existing driveway over the property over Portion A, to provide access to the Remainder. It is to be noted that there is an existing dwelling on the Remainder. The rest of the property is grassed area.

The objectors' had some concerns about environmental impact, but the applicant did provide a report that no environmental impact is required.

Most of the objections are directed at the fact that no building plans were attached, and the opinion is the impact on neighbours can therefore not clearly be determined. The other main objection is impact on neighbours during construction. Some recommendations are also made to insert conditions to limit impact on neighbours. These objections were discussed in the town planner's comments, and will only briefly be dealt with further in this evaluation.

Erf 3725 is zoned Agriculture Zone I, but as was indicated by the Department of Agriculture: National, not subject to Act 70 of 1970. It is situated in an urban area and is identified for residential development in terms of the Overstrand Municipality SDF, 2006 and also identified for high density residential development (more than 30 unites per ha) in terms of the Overstrand Municipality Growth Spatial Management Strategy, 2010. This is therefore clearly identified for infill residential development in terms of Council's Policies.

The Remainder that will be created from the subdivision is already developed with a dwelling, and this dwelling is already close to the objectors' properties being Erven

5411, 3885 and Portion 335 of Farm 581. The owner may at this stage enlarge this existing dwelling further, which may include double storey portions.

Newly proposed Portion A which will be the vacant residential portion is situated much further north from the objectors' properties, and it is difficult to see how a new building on Portion A would influence privacy and the enjoyment of the objectors' properties. It is also to be noted that two (2) of the objectors properties being Erven 5411 and 3885 have not been developed with dwellings, so it is difficult to understand how the submission of building plans with this application would be used to evaluate impact on the objectors' properties. The objectors' opinion that building plans should have been submitted with the application to consider the desirability of the application is therefore not supported.

The objector then proposed specific conditions that should be inserted of how building plans should be evaluated and limitations placed, should building plans only later be submitted. As indicated under the town planner's comments and objections, the Municipality cannot place itself in such a position, as if two (2) parties do not concur about a plan, it could lead to a long and difficult process to resolve such process. It is basically impossible for the Municipality to impose and police such conditions.

The objectors' comment that neighbours' privacy and enjoyment of their properties will be affected during the construction phase is noted. Any form of construction has an impact on a surrounding area, but it is a temporary hindrance. If the viewpoint is that construction of any kind impact on neighbours' privacy and rights, then not even vacant residential erven could be developed. Construction is a temporary situation, and after construction such impact would have stopped.

Considering the above, the application is in line with Planning Policy for this area, and it is the opinion that it would not have a negative effect on the character of the area or surrounding properties.

13. RECOMMENDATION

1. that the application in terms of Section 16(2)(a) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015 to rezone Erf 3725, Onrustrivier from Agricultural Zone I to Subdivisional Area (SA), and for a subdivision in terms of Section 16(2)(d) of the above-mentioned By-Law, read with Section 22 into two (2) Residential Zone I portions, Portion A measuring $\pm 2312\text{m}^2$ and Remainder measuring $\pm 2589\text{m}^2$ in extent, **be approved** in terms of the provisions of Section 61, subject to the following conditions:
 - (a) that development be in line with Plan 5 dated April 2019 submitted with this application;
 - (b) that the access servitude and if so required a service servitude be registered to the satisfaction of the Engineering Department, prior to the registration of the first erf;
 - (c) that a minimum of 2 (two) parking bays be provided on each erf, to municipal standards and satisfaction;
 - (d) that this decision does not absolve the owner/applicant from compliance with any other relevant legislation;

- (e) that all the conditions of Telkom (attached as Annexure I), be complied with;
 - (f) that all the conditions imposed by Eskom (attached as Annexure H), be complied with, and
 - (g) that all conditions in the Services Report (attached as Annexure F), be complied with.
2. that the applicant and objectors be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above decision.

14. REASONS FOR RECOMMENDATION

REASONS FOR APPROVAL

- ❖ The application is supported by the Department of Agriculture: Western Cape and National.
- ❖ The application will not have a negative environmental impact as no environmental listed activities are triggered.
- ❖ The proposed development is in line with the Overstrand Municipality SDF, 2006 which earmark this area for residential purposes and the Overstrand Municipality Growth Spatial Development Framework, 2010 which earmark this area for residential development with densities over 30 units/ha.
- ❖ Sufficient information was provided to consider the desirability of the application and the objectors' opinion that impact on neighbours' rights such as privacy and enjoyment cannot be measured without building plans being submitted is not supported. The scale of the application (subdivision into two (2) residential erven), and the fact that the new vacant portion will be situated north of the existing dwelling on the erf and buffer the new land portion from the objectors' three (3) properties, makes it highly unlikely that the objectors' privacy and enjoyment will be impacted on.
- ❖ Concerns regarding the impact of surrounding property rights during construction, such as privacy and enjoyment are directed to a temporary situation which is not considered a valid reason to consider the application not to be desirable.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Layout Plan
Annexure D:	Objections received
Annexure E:	Applicant's comments on objections
Annexure F:	Services Report
Annexure G:	Comments: Environmental Section
Annexure H:	Comments: Eskom
Annexure I:	Comments: Telkom
Annexure J:	Comments: Department Agriculture: Western Cape
Annexure K:	Comments: Department Agriculture: National

SIGNATURE**AUTHOR:**Name: **HENK OLIVIER**SACPLAN Reg No: **B/8128/2004**

Signature: _____

Date: _____

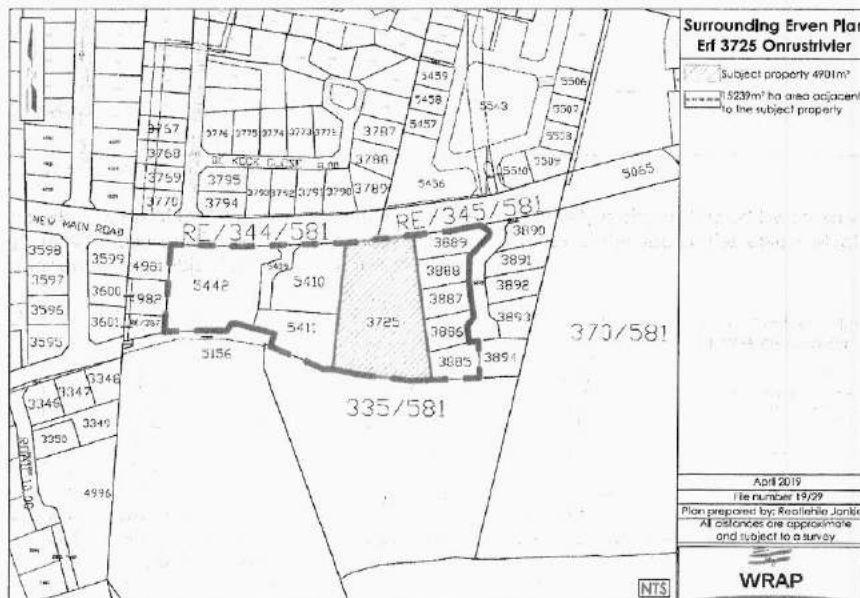
REGISTERED PLANNERName: **H VAN DER STOEP**SACPLAN Reg No: **A/1708/2013**

Signature: _____

Date: _____

6. URBAN FORM AND URBAN FABRIC

The urban form of Onrustrivier adjacent to the subject property is characterized by erven which are rectangular and have polygon shapes. The categories of the size of the erven which are adjacent to the subject property are the following:



Size	Number of erven	Percentage
Between 500m ² and 1000m ²	5	62,5%
Larger than 1000m ²	3	37,5%

The proposed subdivision is in harmony with 37,5% of the adjacent erven and is in harmony with the valued urban form of Onrustrivier and is not out of character.

The urban fabric within the delineation illustrated above is characterized by dwellings which have different housing typologies and are aesthetically appealing. This proposal for erven which are proposed to be zoned Residential Zone 1: Single Residential are in harmony with the prevailing urban fabric of the area.

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7. ZONING

The proposed Portions A and the Remainder are proposed to be zoned Residential Zone 1: Single Residential and will comply with all the development parameters which are applicable to the subject zoning.

8. SERVICES

The proposed services connections will be addressed in the section below. The prescribed bulk services levy for each additional erf which that will be created on the subject property will be payable.

8.1 Electricity

Portion A

The erf will be connected to the Eskom electricity network upon the approval and implementation of this proposal.

Remainder

The dwelling on the property is currently connected to the Eskom electricity network and will not be altered upon the approval and implementation of this proposal.

8.2 Water

Portion A

The subject erf is proposed to be connected to the reliable potable water network which is provided by the OM.

Remainder

The Remainder is connected to the reliable potable water network provided by the OM.

8.3 Sewage

Portion A

The subject erf is proposed to be connected to the reliable OM sewage network.

Remainder

The subject property is connected to the existing reliable OM sewer network and system.

8.4 Traffic impacts, parking access and other transport related considerations

Access and egress to the subject erven is proposed to be gained from Main Road via an access servitude which is 4m wide. A right of way servitude does not require the approval of the OM in terms of Section 26.(1)(g)(v). The OM must however certify that the right of way servitude is exempt in terms of Section 26.(2). It is therefore requested that the OM confirm that the proposed 4m wide right of way servitude is exempt.

The dwelling which will be constructed on the proposed Portion A will comply with the parking requirements of the OMZS.

9. NEED AND DESIRABILITY

Section 66.(1)(c) of the By-Law read with Section 55.(b) of LUPA highlights that each town planning application must motivate the desirability of a proposal in accordance with provincial guidelines. DEADP issued the "Provincial support document on Relevant Considerations 2015" which should be considered before the Municipality takes a decision. The desirability guideline in the document was used to assess the desirability of the approval and implementation of this proposal.

Element for consideration	Motivation of the impact of the approval and implementation of this proposal.	Impact Positive or Negative
Economic impact	The approval and implementation of this proposal will lead to construction materials being purchased from local businesses and subsequently lead to an additional income and a positive economic impact. Employment opportunities which will be created during the implementation of this proposal can be regarded as a positive economic impact.	Positive
Scale of the capital investment	The owner of the subject property will be investing a substantial amount of money in the planning, surveying and paying for the bulk services levies of the proposed Portion A. The scale of the capital investment which the property will invest in the subject property illustrates the property owner's commitment to the built environment.	Positive
Compatibility with surrounding uses	The surrounding land uses are all residential and this proposal is compatible with the surrounding land uses.	Positive
Impact on safety, health and wellbeing of the surrounding community;	The family which will reside in the proposed dwellings will be additional surveillance in the street scape of Onrustvriër and will contribute to increasing the safety of the area. The proposed residential erf will not in any way result in the establishment of noxious land uses and will therefore not compromise on the health and wellbeing of the residents.	Positive
Environmental considerations	There are no environmental constraints on the subject property and the nearest wetland edge is located 68m away from the subject property (refer Plan 6).	Positive
Impact on heritage	No listed activities in terms of the National Heritage Resources Act is triggered.	Positive
Whether the imposition of conditions can mitigate an adverse impact of the proposed land use	The imposition of conditions of approval on the subject proposal is essential as it will ensure that the land use rights which surrounding property owners enjoy are not deprived.	Positive

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MOTIVATION

	<ul style="list-style-type: none"> • That all development parameters in the applicable Residential Zone 1: Single Residential and other title deed restrictions be complied with. This will ensure that the scale of the subject development remains within reasonable bounds; • That building plans for the proposed Portion A be submitted to the Building Control Department for approval as that will ensure that buildings are designed in accordance with prescribed legislation; • That all prescripts of the fire department be complied with to ensure that the subject building does not become a fire risk to the occupant as well as clients; • That all land uses on the subject premises not interfere with the peace, comfort or become an unbearable nuisance to surrounding property owners; and • That all other relevant legislation be complied with. 	
Aspects which impact on quality of life (including views, sunlight, privacy, visual impact, character)	The subject property is currently zoned Agriculture Zone 1: Agriculture which permits agricultural buildings which measure up to 12m high. The owner of the subject property may as of right also breed farm animals such as pigs, cows, chickens etc as a primary right. The proposal for the two even to be zoned Residential Zone 1: Single Residential will limit the height on the property to 8m and only allow residentially related land uses on the subject property. The approval and implementation of this proposal will therefore have a lower impact on adjacent property owners in terms of quality of life, views, sunlight, privacy and visual impact. The approval and implementation of this proposal is also in harmony with the prevailing character of the surrounding area.	Positive

10. SPLUMA MOTIVATION REQUIREMENTS

Section 42 (c) of SPLUMA highlights that town planning applications must be motivated on the following grounds with due consideration for the site-specific circumstances.

Criteria	Motivation
(c) (i) the public interest	<p>The approval of this proposal would be in the interest of the residents of Onrustrivier for the following reasons:</p> <ul style="list-style-type: none"> • The subject property will be visually enhanced which will be to the benefit of neighbouring property owners; • The rates which the OM will charge the prospective property owner of Portion A and the Remainder will be substantially

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WRAP

MOTIVATION

	<p>higher than rates derived from the subject property which is zoned Agriculture Zone 1: Agriculture. The approval and implementation of this proposal will therefore lead to more money being available in the OM which will be used to further enhance service delivery in the area; and</p> <ul style="list-style-type: none"> • The subject property is large compared to other adjacent properties as illustrated in Section 5 of this report and is currently out of harmony with the prevailing urban form and fabric which is valued by the residents of the area. This proposal is therefore intended to bring this proposed development in harmony with the prevailing residential character of Onrustrivier which residents in the area value. This proposed character harmonisation is in the interest of the residents in Onrustrivier.
(c) (i) the constitutional transformation imperatives and the related duties of the state.	<p>The transformational agenda of the state includes creating an enabling environment for developers to create more residential opportunities within the urban edge which subsequently contributes to a more equitable land market. The approval of this proposal will therefore enable the owner of the subject property to implement the constitutional transformation imperatives of the state.</p>
(c) (iii) the facts and circumstances relevant to the application.	<p>The proximity of the subject property to the following land uses make it ideal for residential purposes and enable prospective residents to reside in Onrustrivier in comfort.</p> <ul style="list-style-type: none"> • Curro Hermanus Independent School; • Shopping Centre; • Fuel station; • Doctors consulting rooms; • Vet; • Real estate agencies; and • Variety of open spaces along the lagoon and beach. <p>This variety of land uses which surround the subject premises which the prospective residents will have access to makes the subject property ideal for residential development as residential land uses are complementary to the land uses listed above.</p>
(c) (iv) the respective rights and obligations of all those affected.	<p>The principle of common law will be used to assess the impact and implementation of this proposal on the land use rights which are enjoyed by surrounding property owners.</p> <p>Common law dictates that a property owner may not use his/her land in such a way as to interfere with the rights of others, particularly neighbours (sic utere tuo ut alienum non laedas). A nuisance occurs when a land use interferes with a neighbour's or communities health, wellbeing or comfort in the occupation of his/her land. There must however be evidence of material interference and the complainant must not be oversensitive.</p>

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	The test applied is one of reasonableness. In other words, would a reasonable man who is the neighbour or public believe that a residential development within a residential area which is contextually appropriate complain about the land uses. In other words, would the subdivision of two erven which is applied for, negatively affect the wellbeing of the neighbours or the public in the occupation of their land? Considering the merits and scale of the land uses which are applied for, a reasonable person would not be deprived of his/her right of occupation and wellbeing should this application be approved.
(c) (v) the state and impact of engineering services, social infrastructure and open space requirements.	The proposed engineering services are elucidated in Section 7 of this report and the property owner will pay the prescribed bulk services levies if this application is approved.
(c) (vi) any factors that may be prescribed, including timeframes for making decisions.	The time frames which pertain to Municipal decision making are prescribed by the OM By-Law and the OM will comply with these timeframes.

11. SPATIAL PLANNING POLICIES

The PSDF, SDF, OMGMS were perused and the compliance of this proposal with the spatial planning policies will herewith be illustrated.

PSDF

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

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

- **"Capitalise and preserve unique local built form and natural typologies, character and heritage"**

The proposed rezoning and subdivision are in synchrony with the prevailing local built form and character of the adjacent properties in Onrustrivier. The dwelling which will be constructed on the proposed Portion A will be in harmony with the prevailing housing typology of Onrustrivier which consists of houses which differ in the architectural character and create an aesthetically appealing built form.

- **"Focus on creating connections to economic and social opportunity to promote spatial and socio-economic integration"**

The residents of Onrustrivier are connected to an existing functional social and economic capital which ensures upward socio-economic mobility. The future residents of the proposed erven will ensure that residents are able to tap into the exiting social and economic capital of the area.

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

Access to the proposed subdivided erven can be gained from Main Road which is the street which has the highest traffic volumes in Onrustrivier. This ideal location of this property therefore ensures that accessibility to the proposed erven is promoted at all scales.

SDF

The objective of the SDF is to formulate strategic spatially based policy guidelines and proposals where the needs, changes and growth in the area can be managed to benefit the inhabitants and the environment in the Overstrand Municipality. The consistency of this proposal with the SDF is herewith motivated.

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

- **Promote the provision of a range of residential housing types and appropriate densification strategies in order to retain the character of Greater Hermanus, while ensuring appropriate growth to address the growing populations housing needs.**

This proposal is intended to create an additional residential opportunity in Onrustrivier while retaining the valued character, urban form and urban fabric of the suburb and address the pressing housing needs for the growing population.

- **Maintain the unique village character of Greater Hermanus.**

This proposal is in harmony with the prevailing unique character of the Onrustrivier as prescribed by the SDF.

- **Contain development within the urban footprint of Hermanus.**

The subject proposal is within the urban footprint of Hermanus.

- **Spatial proposal plan**

The subject property is designated for residential purposes in the spatial proposal plan and this proposal is in harmony with this land use designation.

OMGMS

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

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

- **"The built environment of Onrustrivier should be enhanced and well managed."**

The prospective property owner of Portion A will construct aesthetically appealing buildings which will be well maintained and contribute to an enhanced built environment in Onrustrivier.

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

This proposal is intended to ensure that the future dwelling on Portion A will accommodate an additional family which will make use of the services on the subject property in an optimal manner within the services capacity limits of the site.

- ***"Ensure that the scale and character (in terms of bulk, height and architectural styling) of the higher density areas are appropriate to the immediate context.)"***

The land use rights of the proposed Residential Zone 1: Single Residential zoning are in harmony with the character, bulk, height and architectural styling of the immediate surrounding.

- ***"Spatial proposal plan."***

The spatial proposal plan designates the subject property for residential purposes. The property is currently zoned for agricultural purposes, and this proposed rezoning and subdivision is intended to bring this proposal in harmony with the spatial proposal plan.

12. PLANNING PRINCIPLES

The proposal was analysed for consistency with the planning principles to provide a recommendation to the competent deciding authorities for the application in terms of Section 42 of SPLUMA and Chapter VI of LUPA.

Spatial Justice

Refers to the need to redress the past apartheid spatial development imbalances and aim for equity in the provision of access to opportunities, facilities, services and land. The additional employment opportunities relating to the construction of the future dwelling will mostly benefit the historically economically marginalised. This will enable individuals who are currently unemployed to derive an income which enables access to opportunities, quality services, facilities and housing made possible by the additional income. The approval and implementation of this proposal will therefore contribute to addressing spatial development imbalances caused by apartheid land use and spatial planning.

Spatial Sustainability

Spatial sustainability in the context of land use planning means promoting mixed use environments which allow for a functional space economy to flourish. Onrustrivier has a variety of land uses which are clustered together in a complementary way which enables a functional space economy to flourish in a sustainable manner. The future occupants of the proposed Portion A will reside in this spatially sustainable area which is regarded as ideal.

Efficiency

Efficiency refers to the need to create rural areas that optimise on the use of space, energy, infrastructure, resources and land. The additional residents who will reside in the dwelling which will be constructed on the proposed Portion A will contribute to the optimal use of space, energy, infrastructure, resources and land in a manner which protects the exiting character of Onrustrivier and within the services capacity limits of the area.

Spatial Resilience

This proposal is not in conflict with any spatial resilience development proposals for the subject site highlighted in the PSDF, SDF and OMGMS. The location of the proposal within Onrustrivier which has a diversity of land uses will contribute to the proposed subdivided even being resilient in times of economic and environment shock.



MOTIVATION

Good Administration

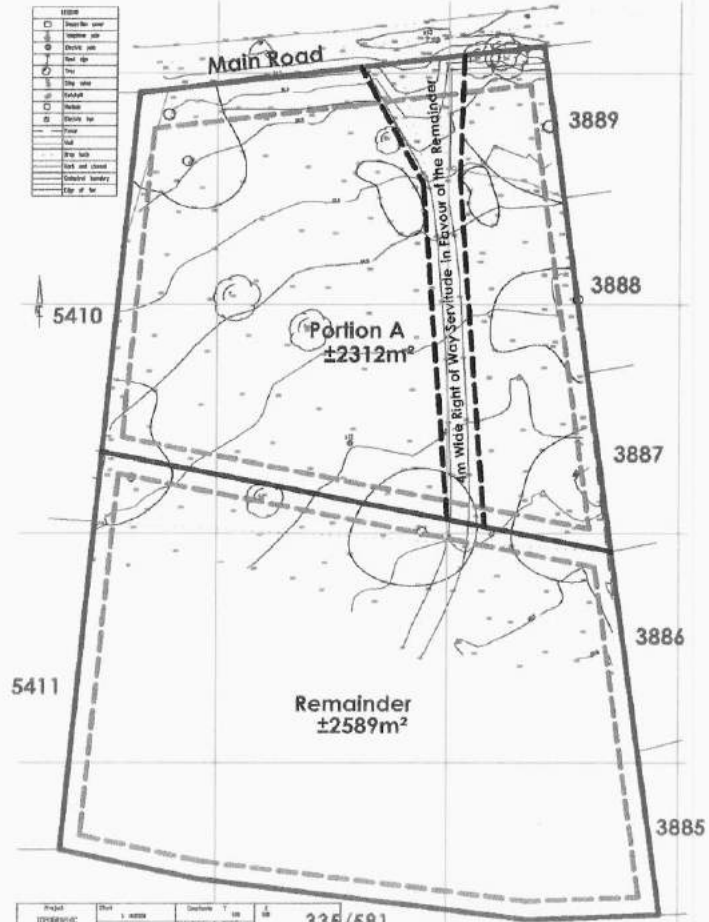
Good administration in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure a joint planning approach is pursued. The proposed development will promote consultative planning as the Municipality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

Plan 7: Proposed Subdivision and Survey Plan
Erf 3725 Onrustrivier

	Subject property 4901m ²
	Proposed subdivision lines
	Building lines



Based on a survey by Geomatics Africa
April 2019
File number 19/29
Plan prepared by: Reofelile Jankie
All distances are approximate and subject to a survey





Symbol	Description
	Boundary line
	Proposed subdivision line
	Building line
	Road
	Servitude
	Other features

Project	335/581
Client	
Surveyor	
Date	
Scale	
Sheet	
Drawn by	
Checked by	
Project No.	
Sheet No.	
Scale	
Drawn by	
Checked by	

NTS

Plan 3: Proposed Subdivision Plan Erf 3725 Onrustrivier

-  Subject property 4901m²
-  Proposed subdivision lines

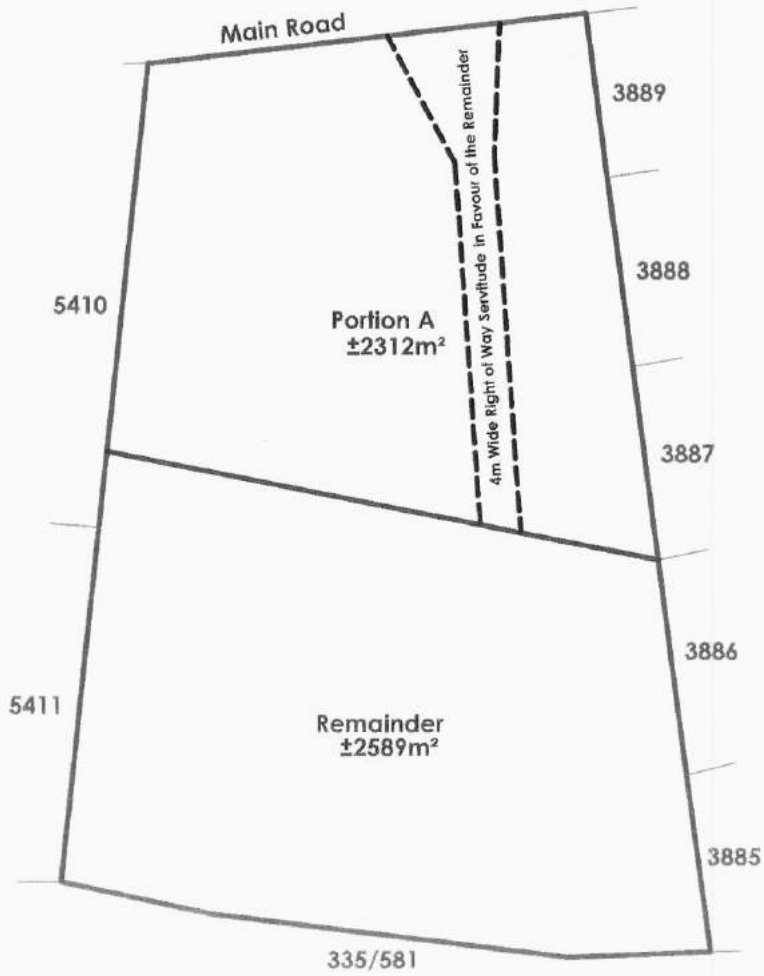
April 2019

File number 19/29

Plan prepared by: Reahele Jankie

All distances are approximate
and subject to a survey


WRAP



Scale 1 : 500

TP N. (Noone)
(L. Gillion)



Loretta Gillion - Object to Application ID 3058/2019 File ref 3725 HON

From: Shiloh Noone <shilohnoone@gmail.com>
To: <loretta@overstrand.gov.za>, Motorcomm <teddyk@vodamail.co.za>, Riaan va...
Date: 05/09/2019 04:56 PM
Subject: Object to Application ID 3058/2019 File ref 3725 HON

Rezoning ERF 3887

Hi Loretta , please clarify the rezoning **as to what side they will build on** as their is a Mountain stream between Under The Oaks Estate and Mrs Glenda Musson's land , any building has to be 30 meters from that stream ? (I notice you have not indicated this Mt Stream)

I would assume the building would take place on the larger section, but need clarification and also , how many houses ? or the rumors of a Boutique Hotel ? What related industry regarding the building ? The traffic above us has tripled in the last year and after countless applications for speed bumps nothing has transpired, we are concerned as to the impact of this also.

Clarification to this will make me rethink my objection ?

No 8 Under The Oaks Estate

FILE NO:	AF 3725
	Onsivia
SCAN NO:	
COLLABORATOR NO:	1321164

TP

- 6 SEP 2019



TP D. Theat 2/7
(I. J. Olivier)

11 Buitengracht Street Cape Town 8001
PO Box 695 Cape Town 8000
South Africa
Dx 5 Cape Town
T +27 (0)21 481 6300
F +27 (0)21 481 6388
E ctn@cdhlegal.com
W cliffdedekkerhofmeyr.com

Also at Johannesburg

Overstrand Municipality
16 Paterson Street
Hermanus

FILE NO: **OF 3725**
Onrus Wiel ✓
 SCAN NO:
 COLLABORATOR NO:
1320780

Our Reference D Fyler
 Account Number
 Your Reference 3058/2019
 Direct Line +27 21 405 5084
 Direct Telefax +27 21 481 6537
 Direct Email daniel.fyler@cdhlegal.com
 Date 5 September 2019

Attention: S Muller, Director: Infrastructure and Planning
 By Email: loretta@overstrand.gov.za

Dear Sir

ERF 3725, ONRUSTRIVIER, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REZONING AND SUBDIVISION: WRAP OBO GLENDA ANNE MUSSON

- We act for the owner of Erven 581/335, 5411 and 3885 Onrustvriër ("the Property"), hereinafter referred to as "the Client".
- Our instructions are to review and comment on the application for rezoning and subdivision on behalf of our Client, as we hereby do, against the application made on behalf of GA Musson ("the Applicant") to the Overstrand Municipality ("the Municipality") for:

Rezoning

Application on Erf 3725, Onrustvriër from Agriculture Zone 1: Agriculture to Subdivisional Area in terms of Section 16(2)(a) and of the Overstrand Municipality By-Law on Municipal Land Use Planning 2015, to create Residential Zone 1 Erven.

Subdivision

Application on Erf 3725, Onrustvriër to create Portion A (±2312m²) and the Remainder (±2312m²) for Residential Zone 1 purposes in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015."

- Our comments, and ultimately objection, are structured as follows:

3.1 The Application;

CHAIRPERSON TG Fuhrmann CHIEF EXECUTIVE OFFICER B Williams CHIEF FINANCIAL OFFICER ES Burger

DIRECTORS: JOHANNESBURG M Aphiri JA Aucema G Bakhuizen-Barbosa R Beerman E Bestler P Bhagoljee BSS Balkanyo R Bonnet TE Brincker G Brown N Cara HLE Chang CWJ Charier NS Coetzee CJ Daniel J Darling EP Demmeler S Dickson L Erasmus P Erasmus JJ Fens TS Fletcher L Franca TG Fuhrmann F Galloo MZ Galloo SB Gore J Govender L Granville AJ Hofmeyr Q Honey WH Jacobs JCA Jones T Jordaan BK King J King Y Kleinman AM Le Grange FE Leppan* Cj Lewis HJ Louw G Miesha NN Mchunu B Meyer WJ Mogley Z Mohamed R Moodley A Moodlan MB Muthwa MG Mphahleli KT Nkaisang BP O'Connor A Patel GH Pienaar V Pillay DG Pincock NA Preston AW Pretorius TZ Rapolung AG Raai N Serfontein P Singh-Dhiman TP Siml L Smith FP Swart T Tosen M Trounchi R Valsayathan HR van der Merwe WPS van Wyk JG Webber JG Whittle DA Wilken B Williams MP Yeates

DIRECTORS: CAPE TOWN F Arner-Ma TN Baker TJ Brown MR Collins A de Lange W de Vries LF Egoji S Francis DF Fyler J Gilmer JW Green AJ Hevrie AM Helweg PB Hesselink RC Horn S Immsman JAD Jorge A Koenig KJ Koenly JA Krige LJ Leasing GC Lumb RE Marcus NS Mbambisa SI Meyer A Mvungu T Moodley FT Newham G Orie* CH Pienaar* AP Pillay L Roodie MB Rodgers JP Scitica S Singh BPA Strauss DM Thompson CW Williams

EXECUTIVE CONSULTANTS: AC Alexander RD Barndse VMM Cadman M Chene HS Coetzee PJ Corvée N Hancock WH Janse van Rensburg J Latsky NW Muller J Nesser JM Wills-Hewinson

CONSULTANTS: A Abererontie JMA Ebenhuis* Prof A Govindjee JH Jacobs Ed Kingdon FF Kiebs

SENIOR ASSOCIATES: S Adams RS Afhe ME Badenhorst A Beukampoum KA Biddulph JJ Brink CF Brockman JC Cameron L Chance LY Coffee E Cornelius BP Dripps C Duilloux F Edekon T Erasmus NK Fletcher GT Howard TC Joggels SM Kelly N Loopoo MM Mokohe B Mangate V Manke N Mia V Moodley V Moodley W Murray J Naidoo Z Ngqaleni VT Ngqabe AL Pienaar J Roberts J Strydom KB Thabanele O van der Westhuizen YA van Laave R Wobisai K Weyers CA Wood

CLIFFE DEKKER HOFMEYR SERVICES PROPRIETARY LIMITED DIRECTORS: GC Badenhorst ES Burger JA Cassette TR Cohen* AB Hoek MW Urington R Moubou B Williams

*Enlist =Dutch *Cape Town Managing Partner *Business Development Director

Cliffe Dekker Hofmeyr Inc. Reg No 2008/018923/21

TP - 5 SEP 2019

Overstrand Municipality
5 September 2019

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3.2 The Right to Property and the Right to Privacy;

3.3 The Proposed Condition; and

3.4 Conclusion.

The Application

Complete Application

(i) Proposed Subdivision

4 We note that in terms of section 3(a) of the Subdivision of Agricultural Land Act, No 70 of 1970, agricultural land shall not be subdivided unless the Minister of Agriculture has consented to such subdivision in writing.

5 The application has not been accompanied by the requisite written ministerial consent. For this reason, the Municipality would be acting *ultra vires* its powers should it approve the application. The Municipality is thus constrained to refuse the application in the light of the absence of the requisite ministerial consent.

(ii) Missing Pages

6 We note that all affected persons have not been availed with a complete copy of the application submitted to the Municipality. The copy provided begins at paragraph 6 on page 9 of the application. This being the case, we note that the incomplete version of the application does not provide our Client (nor any other affected person) with a fair and reasonable opportunity to object to, or at the very least comment on, the application.

7 Section 63 of the Overstrand Municipality By-Law on Municipal Land-Use Planning, 2015 ("the By-Law") provides, in relevant part, that –

- *(1) The agent [of the Applicant] must ensure that all information furnished to the Municipality is accurate.
(2) The agent [of the Applicant] must ensure that no misrepresentations are made.
(3) The provision of inaccurate, false or misleading information is an offence as contemplated in section 84 (1) (a)"

8 The circulation of an incomplete application constitutes a misrepresentation of the application itself as such incomplete application does not avail affected parties an opportunity to holistically consider the full parameters and potential impact of said application. This misrepresentation is unavoidably misleading as all information submitted to the Municipality by the Applicant has not been provided to all affected parties for due consideration.

9 For this reason, our client is of the view that, in terms of section 48 of the By-Law, the requirement that notice in respect of the application be served on all affected parties has not been met. Pursuant thereto, an approval of the subject application will be in contravention of the By-Law.

Building Plan

10 We note that the application is in respect of a proposed subdivision and rezoning of Erf 3725 Onrustrivier ("the Subject Property"), however, we deem it pertinent to iterate that said subdivision and rezoning is for the purpose of constructing residential dwellings. That is, the construction of the proposed residential dwellings is inextricably linked to the subdivision and rezoning of the Subject Property. In the light of this purpose we aver that the failure to circulate, at the very least, a draft building plan indicating the details of the proposed residential dwellings to all affected persons in respect of the impugned application has unfairly and unreasonably deprived each and every affected person the opportunity to genuinely, substantially and holistically consider and evaluate the full parameters of the potential impact of the proposed development on the amenity of their community as well as on their individual and collective quality of life.

11 This in turn is contrary to the object of serving on affected persons a copy of the application, this being to facilitate public participation in an administrative decision which will undoubtedly deeply impact them. This is

in direct contravention of the provisions of the the Spatial Planning and Land Use Management Act, No 16 of 2013 ("the SPLUMA") and the Western Cape Land Use Planning Act, No 3 of 2014 ("the LUPA"), LUPA, and the regulations and policies ancillary thereto, receptively.

- 12 For this reason, we, on behalf of our client, are of the view that, in terms of section 48 of the By-Law, the requirement that notice in respect of the application be served on all affected parties has not been met. Pursuant thereto, an approval of the subject application will be in contravention of the By-Law.

Traffic impacts, parking access and other transport related considerations

- 13 As noted above, all affected persons have not been availed, at the very least, with a draft plan canvassing the parameters of the proposed development. Consideration can therefore not be had for the potential impact of the proposed development on traffic, parking access and other transport related concerns from the Main Road.
- 14 At present, from the version of the application available, it is not possible to consider how many vehicles are to be, and actually can be, accommodated by the proposed development. Further, without a plan, it is not possible to consider whether the proposed accommodation for traffic and parking access is plausible; safe and reasonably accommodates the quality of life the members of the surrounding community currently enjoy.
- 15 For this reason, we, on behalf of our client, are of the view that, in terms of section 48 of the By-Law, the requirement that notice in respect of the application be served on all affected parties has not been met as the application provided does not avail affected parties an opportunity to holistically consider the full parameters and potential impact of said application. Pursuant thereto, an approval of the subject application will be in contravention of the By-Law.

Need and Desirability

- 16 Section 66(1)(c) of the By-Law provides that "*[w]hen the Municipality considers an application it must have regard to...the desirability of the proposed utilisation of land...*"
- 17 We note that it is not possible for the Municipality to holistically consider the impugned application – especially in respect of the desirability of the proposed land utilisation – without having considered a plan outlining the actual impact of the proposed development on both the Subject Property and the surrounding community.
- 18 Without a plan it is not possible for the Municipality to consider how the proposed development will ultimately impact the ownership interests of the Subject Property's immediate neighbours, specifically how the development will impact / potentially infringe the property and privacy rights currently enjoyed by said immediate neighbours.

Environmental Impact

- 19 On page 11 of the application, the Applicant has averred that –
- "There are no environmental constraints on the subject property and that the nearest wetland edge is located 68m away from the subject property".*
- 20 We note that, without having considered a plan outlining the parameters of the proposed development, it is not possible for the Municipality to holistically consider whether, in fact, the proposed development will have an adverse environmental impact on the Subject Property, the surrounding community and/or the wetland and, if so, to what extent. This oversight is further compounded by the fact that the Applicant acknowledges that construction materials will have to be acquired but fails to explain the potential environmental impact of: (a) the acquisition of those construction materials; (b) the introduction and use of those materials on the Subject Property (and in the surrounding community); and (c) the introduction of construction workers and heavy machinery.
- 21 Further, the Applicant has failed to explain what precautions, mechanisms and/or strategies (such as sustainable waste disposal and professionally administered access control) will be implemented to avoid, or even mitigate, the potential adverse economic impact occasioned by the proposed development.

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- 22 In the light of the above, it is not possible for the Municipality to consider the potential environmental impact of the proposed development and how this will impact / potentially infringe the property and privacy rights currently enjoyed by the members of the surrounding community.

The Right to Privacy and the Right to Property

- 23 In terms of section 7(2) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), "[t]he state must respect, protect, promote and fulfil the rights in" Chapter 2 (emphasis added). We note that Section 40(1) of the Constitution provides that "the government is constituted as... [inter alia] local spheres of government" and that in terms of section 151(1) of the Constitution "[t]he local sphere of government consists of municipalities". Therefore, the Municipality is an organ of state bound by the provisions of the Constitution.
- 24 Necessarily, municipal-planning and land-use governance function of municipalities within the Western Cape, are mandated and regulated by *inter alia* the SPLUMA and the LUPA are subject to, and must comply with, the Constitution.
- 25 Various fundamental rights are set out in Chapter 2 of the Constitution. For our purposes, two of those rights are focused on: the right to property and the right to privacy.
- (i) The Right to Property
- 26 Section 25 of the Constitution provides the right to property. This right embodies a negative property guarantee. This means that instead of expressly providing for a right to acquire, hold or dispose of property, section 25 expressly provides that property may not be restricted, unless certain requirements are met. For the purposes of this objection, it is unnecessary to canvass these requirements.
- 27 What is important to note is that the Constitution respects and protects private property rights, specifically ownership.² The Constitutional Court has explained that "[t]he purpose of section 25 has to be seen both as protecting existing private property rights as well as serving the public interest."³
- 28 As the owner of the Property, our Client is therefore entitled to the protections afforded to it in terms of section 25 of the Constitution, namely the protection of its interests i.e. its current use and enjoyment, in the Property, without said use and enjoyment being interrupted and/or diminished by disturbances and/or elements arising from and/or associated with the construction of the proposed residential dwelling development. Further, the owners of property in the surrounding community are entitled to these protections as well. To respect these rights, as they pertain to ownership, serves both the individual and the public interest.
- (ii) The Right to Privacy
- 29 Section 14 of the Constitution provides the right to privacy.
- 30 The Constitutional Court has held that the scope of a person's privacy extends *a fortiori* only to those aspects in regard to which a legitimate expectation of privacy can be harboured.⁴ This means that a person who relies on the right to privacy must be able to establish a subjective expectation of privacy and that society has recognised such a subjective expectation as objectively reasonable.⁵ Further, the Constitutional Court has recognised that the right to privacy both encompasses and extends beyond the "*inner sanctum of the home*."⁶

¹ Section 7(2) of the Constitution.

² *Ex parte Chairperson of the Constitutional Assembly: In re Certification of the Constitution of the RSA*, 1996 1996 10 BCLR 1253 (CC) at para 72.

³ *First National Bank of SA Limited v/a Wesbank v Commissioner for the South African Revenue Services and Another; First National Bank of SA Limited v/a Wesbank v Minister of Finance* [2002] ZACC 5; 2002 (4) SA 788; 2002 (7) BCLR 702 at para 50.

⁴ *Bernstein v Bester* 1996 4 BCLR 449 (CC) par 27.

⁵ *Bernstein v Bester* 1996 4 BCLR 449 (CC) par 75.

⁶ *Mogajane v Chairperson, North West Gambling Board* [2006] ZACC 8; 2006 (10) BCLR 1133 (CC); 2006 (5) SA 250; 2006 (2) SACR 447 at 42.

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- 31 We note that a legitimate expectation of privacy can be harboured in relation to one's property, especially property used as one's place of residence for whatever period. Further, it is trite to add that society has recognised such subjective expectation as objectively reasonable, as it relates to one's place of residence.
- 32 In this instance, our client's right to privacy necessarily includes its right to use and enjoy its property without said use and enjoyment being interrupted and/or diminished by disturbances and/or elements arising from and/or associated with the construction of the proposed residential dwelling development. This right to privacy necessarily extends to the owners of property in the surrounding community.

The Proposed Condition

- 33 Section 43(1) of the SPLUMA provides that "an application may be approved subject to such conditions" as are determined by the Municipal Planning Tribunal or may be prescribed. Similarly, Section 54(4) of the LUPA, in relevant part, provides that a land development application may be approved "subject to reasonable conditions that arise from the approval of the proposed utilisation of land." Further, section 67 of the By-Law provides that "[w]hen the Municipality approves an application subject to conditions, the conditions must be reasonable conditions".

- 34 We note that the SPLUMA, the LUPA and the By-Law make it clear that conditions imposed in terms thereof, respectively, are not limited to the examples provided therein, respectively. What this effectively means is that the only true limitation on a condition of approval imposed that any condition so imposed is "reasonable".

- 35 In the light of the above, together with the further reasons canvassed below, we have accordingly advised our client and our client now requests that the application not be approved, alternatively that approval be subject to the following conditions:

The development is granted subject to the condition that a draft building plan is circulated by the Applicant to all affected persons indicating the parameters and necessary detail of the proposed development.

That the development is granted subject to the condition that the dwellings to be constructed are not constructed in a way which impacts the privacy of the neighbouring properties.

That the development is granted subject to the condition that no window is constructed on the proposed dwelling facing the Property.

- 36 It is our view that, should the application be approved, the imposition of the above conditions would be reasonable as it would strike an appropriate balance between the Applicant's interests and the interests of our Client; and would be in compliance with the Municipality's constitutional obligations toward all affected persons in the surrounding community.

- 37 Further, we refer you to page 11 of the Applicant's application wherein the Applicant confirms that:

"The imposition of conditions of approval on the subject proposal is essential as it will ensure that the land use rights which surrounding property owners enjoy are not deprived."

- 38 In this way, the Applicant confirms: (a) our Client's rights, as well as the rights of all other affected persons; and (b) the fact that the Municipality has a duty to respect and protect our Client's rights, together with the rights of all other affected persons. Therefore, to approve the application to develop subject to the imposition of the conditions proposed above, would strike an appropriate balance between the interests of our Client and the surrounding community, on the one hand, and the interests of the Applicant, on the other, and would be in keeping with the Municipality's obligations to facilitate land-use within its area of jurisdiction in a way which respects both private and public interests.

Conclusion

- 39 For the reasons canvassed above, we submit that –

Overstrand Municipality
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- 39.1 the application circulated is incomplete and does not avail affected persons a fair and reasonable opportunity to respond thereto in its entirety;
- 39.2 the application does not provide any substantial and useful detail on the residential dwellings to be constructed pursuant to the subdivision and rezoning, and their potential impact, and therefore does not avail affected persons a fair and reasonable opportunity to respond to the application; and
- 39.3 an unencumbered approval of the application before you would be in direct contravention of our Client's rights, as well of the rights of the members of the surrounding community, and would be contrary to the obligations of the Municipality in terms of both the Constitution and the relevant land-use legislation.
- 40 In the premise, we submit that the correct outcome to this application would be a refusal, alternatively the imposition of the conditions outlined above.
- 41 We look forward to receiving confirmation of your decision.

Yours faithfully



DANIEL FYFER
CLIFFE DEKKER HOFMEYR INC



TP A. (Henk)
(1). Olivier



Project Office

Town Planning & Project Management

Our Reference: 19/029
Your reference: 3725 HON

23 September 2019

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

FILE NO:	CF 3725
	Onrustrivier
SCAN NO:	HON 3725
COLLABORATOR NO:	1326493

Attention: Mr Henk Olivier

ERF 3725 ONRUSTRIVIER: APPLICATION FOR REZONING AND SUBDIVISION

Comments and objections were received from:

- S Noone;
- P Aplon on behalf of the Environmental Management Department; and
- Cliffe Dekker Hofmeyr Inc.

The objections received were summarised and our response is the following:

Response to objections pertaining to Act 70 of 70 considerations.

Objection	Comment
The consent of the Minister of Agriculture is required in terms of the Subdivision of Agricultural Land Act, 70 of 70.	The Surveyor General's Office was contacted, and they confirmed that the subject property is situated within the Pre-Act municipality and is therefore exempt from Section 1(a) of Act 70/1970 (refer Annexure A).

25 SEP 2019

TP

Response to objections pertaining to alleged missing pages.

Objection	Comment
A circulation of an incomplete application constitutes a misrepresentation of the application and does not enable the objector to provide a detailed objection.	The OM is not obliged to circulate the entire application to the public via post. The notice which was sent to the objector highlights that the full details regarding the application are available for inspection during weekdays at the Department of Town Planning. The objector was therefore obliged to visit the Town Planning Department to view the complete motivation report.

Response to objections pertaining to building plans.

Objection	Comment
The absence of building plans being submitted with the application is a contravention of SPLUMA and LUPA.	The objector does not highlight which provisions of SPLUMA and LUPA are contravened as a result of building plans not having been submitted with the application. A subdivision application which allocates Residential Zone 1: Single Residential (SR1) land use rights on a property does not have to be accompanied by building plans. Building plans only have to be submitted to the Building Control Department once the town planning application has been approved, but before any building works commence.

Response to objections pertaining to traffic, parking access and other transport related considerations.

Objection	Comment
It is difficult to assess the impact that this proposal will have on traffic, parking and other traffic related considerations when there are no building plans submitted with the town planning application.	The SR1 zoning which will be conferred on the subject property permits requires 2 parking bays for a main dwelling and 1 additional parking bay if the property is improved with second dwelling unit as well. The approval and implementation of this proposal is therefore only projected to attract a maximum of three parking bays to the subject property which will be a minimal impact on the traffic of surrounding properties.

Response to objections pertaining to need and desirability.

Objection	Comment
It is not possible for the OM to consider how this proposal will impact/potentially infringe on the property and privacy currently enjoyed by the said immediate neighbours.	Any building which will be constructed on Portion A will have to comply with the development parameters prescribed in the SR1 zoning and the building regulations. The development rights on the property are therefore the same as development rights enjoyed by other property owners in Onrustvriër and will not in any way lead to the infringement or deprivation of rights



	which other property owners in the area enjoy.
--	--

Response to objections pertaining to environmental considerations.

Objection	Comment
It is not possible to figure out the impact of this proposal on the wetland and environment when there are no building plans which were submitted with the proposal.	Page 11 of the motivation report highlights that the subject property is located 68m from a wetland. Regardless of where a dwelling will be constructed on the subject premises, the existing wetland will not be impacted in any way.
The vegetation type on site is described as Overberg sandstone Fynbos, which is classified as critically endangered. The subdivision may trigger Environmental Impact Assessment regulations and the applicant is advised to submit an applicability checklist to the Department of Environmental Affairs & Development Planning.	A letter was received from Lornay Environmental Services confirming that no critical endangered vegetation is present on the erf (refer Annexure B).

Response to objections pertaining to property rights and privacy.

Objection	Comment
The objector has a right to property and the enjoyment of this right without any interruptions, disturbances caused by the construction of the future residential property.	The approval and implementation of this proposal will not in any way deprive the objector of any property rights which are currently enjoyed. The construction of the dwelling on the Portion A will be done in a manner which is considerate of land use rights enjoyed by neighbouring property owners without any disturbances.

Response to the proposed conditions of approval.

Objection	Comment
The development is granted subject to the condition that a draft building plan is circulated by the applicant to all affected persons indicating the parameters and necessary detail of the proposed development.	Building plans only need to be submitted to the OM Building Control Department for approval. The only instance in which the building plans will be circulated to surrounding property owners is if the plans exceed the permissible development parameters and when departures are sought.
That the development is granted subject to the condition that the dwellings to be constructed are no constructed in a way which impacts the privacy of the neighbouring properties.	The dwelling which will be constructed on Portion A will not exceed the 8m height restriction nor will there be any building line encroachments required. This therefore will ensure that the privacy of the objector is protected. There is therefore no need for this condition of approval to be inserted.



That the development is granted subject to the condition that no window is constructed on the proposed dwelling facing the property.	This proposed restriction is onerous as it seeks to limit the rights of owner of the subject property in a manner where no other rights of other property owners in Onrustvriër is limited.
--	---

Response to objections pertaining to the merits of the application.

Objection	Comment
Please clarify the rezoning as to what side they will build on.	The construction of a dwelling will occur on Portion A.

Response to objections pertaining to rumours.

Objection	Comment
There are rumours that there will be a boutique hotel on the subject property which will considerably increase traffic and be a discomfort to neighbouring property owners.	The application does not include the construction or operation of a boutique hotel on the subject property.

Yours faithfully

A handwritten signature in black ink, appearing to read "Rea Jankie", is written over a faint, illegible printed name.

REA JANKIE
TOWN PLANNER (B/8392/2017)

Annexure A



23 September 2019

PROPOSED SUBDIVISION, ERF 3725. ONRUS RIVIER

Dear Loretta,

Your comment dated 16/09/2019 regarding the proposed subdivision of Erf 3725, Onrus Rivier, has reference. Please note that although the site is classified as being characterised by Overberg Sandstone Fynbos, which is Critically Endangered, no indigenous vegetation will be removed as a result of the application. The site is completely transformed and characterised by domesticated lawn and associated vegetation.

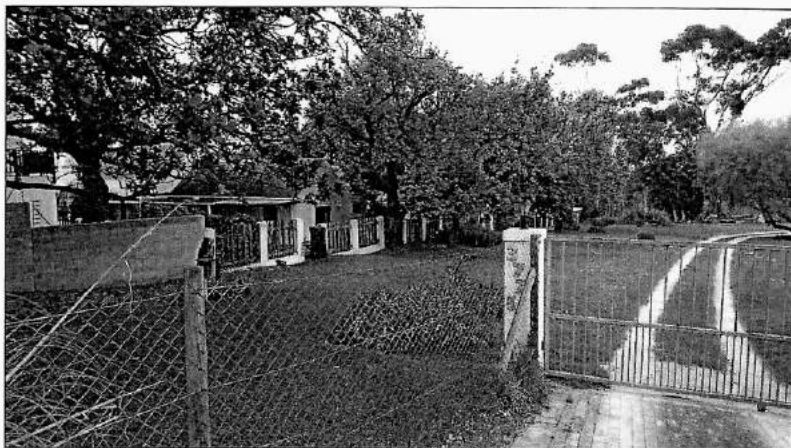


Photo 1. North eastern extent of subject property – no indigenous vegetation present

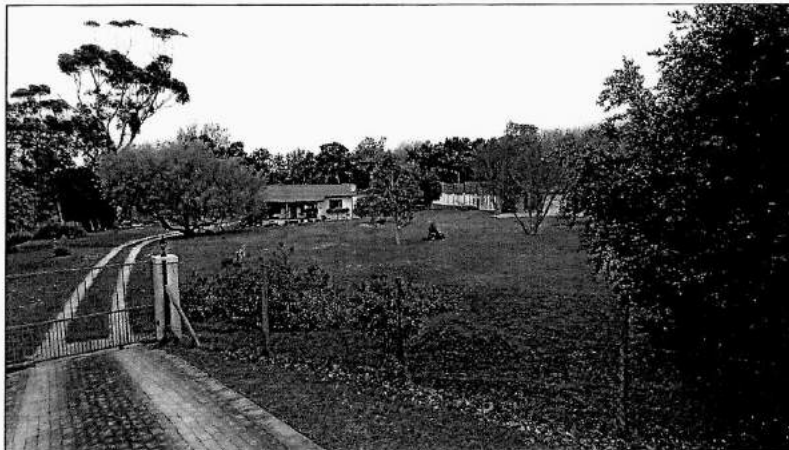


Photo 2. North western end of property – no indigenous vegetation present.

Based on the site inspection and subsequent photographic evidence above, I hereby confirm that Listing Notice 3; Activity 12 "The clearance of an area of 300 square metres or more of indigenous vegetation i. Western Cape i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004" is **not** applicable to the proposed subdivision or development of the erf and no Environmental Authorisation in terms of the National Environmental Management Act (NEMA) is required.

Trust you find the above in order. Please feel free to contact me, should you have any further queries.

Kind regards

A handwritten signature in cursive script that reads "mnaylor".

Michelle Naylor

Annexure B

From: SG Helpdesk Western Cape
Sent: Thursday, September 12, 2019 2:35 PM
To: Richard Kotze
Subject: RE: Erf 3725 Onrustrivier

Hi Richard

Erf 3725 Onrustrivier was situated within the pre-Act municipality and is therefore exempt Section 1(a) of Act 70/1970.

Regards

paul

PJN RYAN

Cadastral Information Services: Helpdesk
NGMS: Office of the Surveyor - General Western Cape
Division: Client Service Centre

9th Floor
90 Plain Street

Cape Town

8001

Telephone: 021 467 4893

e-mail: sghelpdeskwc@dtdlr.gov.za

website: <http://cspg.ruraldevelopment.gov.za>

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REZONING & SUBDIVISION: ERF 3725, ONRUS RIVER
(3058/2019)**

Stormwater (SW)	:	In order
Electricity	:	Eskom Area
Water	:	In order
Sewer	:	In order
Roads and traffic	:	In order

Conditions:

1. That a Bulk Services Contribution Levy (BICL) be paid by the developer to supplement municipal services and amenities in accordance with the relevant legislation and as determined by the Council. The BICL tariff is adjusted by Council annually. The total BICL payable will be the amount as determined by the BICL Policy and tariff at the date of **actual payment**. BICL amounts quoted in any document will normally be applicable to the particular year in which the document was compiled and Council will not be bound by the quoted amounts.
- 1.1 **Developments with free standing properties** (property that is subdivided and plots to be sold individually).
- 1.2 The BICLs are payable **prior** to clearance being issued by the Income Department of the Municipality.

The contribution according to the current policy (2019/2020) is as follows:

Water	R 22 925.00 x 1	=	R 22 925.00
Sewerage	R 15 457.00 x 1	=	R 15 457.00
Roads	R 6 931.00 x 1	=	R 6 931.00
Stormwater	R 7 997.00 x 1	=	R 7 997.00
Solid Waste	R 1 386.00 x 1	=	<u>R 1 386.00</u>
TOTAL (inclusive of VAT)		=	<u>R 54 696.00</u>

Note:

- 1.2.1 The above figures are estimates and do not include connection fees.
2. That the applicant must comply with all statutory requirements that may be applicable to the undertaking of the proposed development of Erf 3725, Onrus River.
3. that the existing water connection, sewer conservancy tank and sewer connections be utilised to service the Remainder of Erf 3725, Onrus River.
4. that Portion A of Erf 3725, Onrus River be provided with individual and separate metered water connections as well as sewer conservancy tanks which must comply with the standards of the Department: Operational Services;

5. that a new suction point for the sewer conservancy tank, which must comply with the standards of the Department: Operations must be provided for Portion A of Erf 3725;
6. 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;
7. that servitudes for municipal services be registered at the developer's cost in respect of all existing municipal services concerned crossing private property;
8. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 10400 – P: 2010: Drainage;
9. that on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services;
10. that any additional and / or extended vehicle entrances will be for the developer's account;
11. that, should any upgrading and / or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;
12. that stormwater be allowed to discharge through the proposed erven, unobstructed.


DENNIS HENDRIKS
SENIOR MANAGER: ENGINEERING SERVICES


DATE

ANNEXURE G 1/2

Loretta Gillion - Re: DRINGEND : Versoek vir finale kommentaar - Erf 3725 Onrustrivier (3058/2019)

From: Penelope Aplon
To: Gillion, Loretta
Date: 21/11/2019 08:36 AM
Subject: Re: DRINGEND : Versoek vir finale kommentaar - Erf 3725 Onrustrivier (3058/2019)

Good morning,

Based on the evidence provided by the EAP, I hereby amend my comments submitted on 12 September 2019. This office has no objection to the proposed sub-division.

Regards,

Penelope Aplon
Environmental Manager
Environmental Management Section
Directorate: Infrastructure and Planning
Overstrand Municipality
T: +27 (0) 28 316 3724 **Ext:** 8272 **F:** +27 (0) 28 316 4963
C: +27(0) 72 394 8841 **E:** paplon@overstrand.gov.za

>>> Loretta Gillion 2019/11/20 09:11 AM >>>
More Penelope

Bogenoemde aansoek verwys. Henk is tans besig om die Item op stel in hierdie verband, en word hiermee versoek dat u finale kommentaar in hierdie verband lewer.

Tydens die sirkulasieproses het u aangedui dat 'n "Basic Checklist" ingedien moet word by Provinsie. (Sien interne memo.) Die applikant het kommentaar gelewer en is kommentaar vanaf Lornay Environmental Consulting ontvang. (Sien skrywe aangeheg.) Kan u asb aandui of u kommentaar onveranderd bly, en of u saamstem met die konsultant.

U spoedige terugvoering in hierdie verband sal hoogs waardeer word.

Groete

Loretta Gillion
Administrator, Town & Spatial Planning
Overstrand Municipality
A: 16 Paterson Street, Hermanus, 7200 **P:** P O Box 20
T: 028 313 8900 | **F:** 028 313 2093 | **E:** loretta@overstrand.gov.za

File reference:	3725 HON (3058/2019)
Date:	30 July 2019 MS



INTERNAL MEMORANDUM

From	: Town Planning Department
Town Planner	: H Olivier (Town Planner)

TO:

<u>Area Manager</u>	<u>Building Department</u>	<u>District Health</u>	<u>Electrical Department</u>
<u>Environmental Officer</u>	<u>Fire Department</u>	<u>Infrastructure and Planning (Onrus)</u>	<u>Local Heritage Committee</u>
<u>Operational Services</u>	Traffic Department	<u>Ward Councillor (J Orban)</u>	Waste Management

Applicant	WRAP OBO GLENDA ANNE MUSSON
Property Details	ERF 3725, MAIN ROAD, ONRUSTRIVIER
Application Description	APPLICATION FOR REZONING AND SUBDIVISION

ATTACHMENTS :

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

YOUR DEPARTMENT'S COMMENTS:

The vegetation type on site is described as Overberg sandstone Fynbos, which is classified as critically endangered. The subdivision may trigger Environmental Impact Assessment regulations and the applicant is advised to submit an applicability checklist to the Department of Environmental Affairs & Development Planning.

Signature:		Date:	12/09/2019
------------	--	-------	------------

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

- *Building Control Department to confirm that all structures on the property/ies are in accordance with the approved building plans.*

COMMENTS REQUIRED BY: 6 SEPTEMBER 2019

ANNEXURE H 1/3 (P. D. Theat (H. Olivier))



FILE NO:	ERF 3725
	Onrus Rivier
SCAN NO:	HON 3725
COLLABORATOR NO:	1311268

WRAP
Per email: admin@wrapgroup.co.za

Date:
7 August 2019

Enquiries:
Shaun Swanepoel
Tel 021 980-3913
Fax 086 660 0941

Attention: R Jankie

Dear Sir / Madame

RE: APPLICATION FOR REZONING, SUBDIVISION AND PHASING OF A PLAN OF SUBDIVISION

OUR REF: 01630-19
YOUR REF: ERF 3725, MAIN ROAD, ONRUSTRIVIER

Eskom has no objection to the abovementioned application, provided the following conditions are adhered to:

- a) The following building and tree restriction on **either side of centre line** of overhead power line must be observed:

Voltage	Building restriction either side of centre line
11kV	9.0 m
66 kV	11.0 m
132 kV	15.5 m

- b) No construction work may be executed closer than **6 (SIX) metres** from any Eskom structure or structure-supporting mechanism.

- c) No work or no machinery nearer than the following **distances from the conductors**:

Voltage	Not closer than:
11kV	3.0 m
66kV	3.2 m
132kV	3.8 m

- d) Natural ground level must be maintained within Eskom reserve areas and servitudes.

- e) That a **minimum ground clearance** of the overhead power line must be maintained to the following clearances:

Voltage	Safety clearance above road:
11kV	6.3 m
66kV	6.9 m
132kV	7.5 m

Distribution Division - Western Region (Land Development)
Western Region
Eskom Road, Brackenfell 7560 PO Box 222 Brackenfell 7561 SA
Tel +27 86 003 7966 www.eskom.co.za

Eskom Holdings SOC Limited Reg No 2002/015527/30

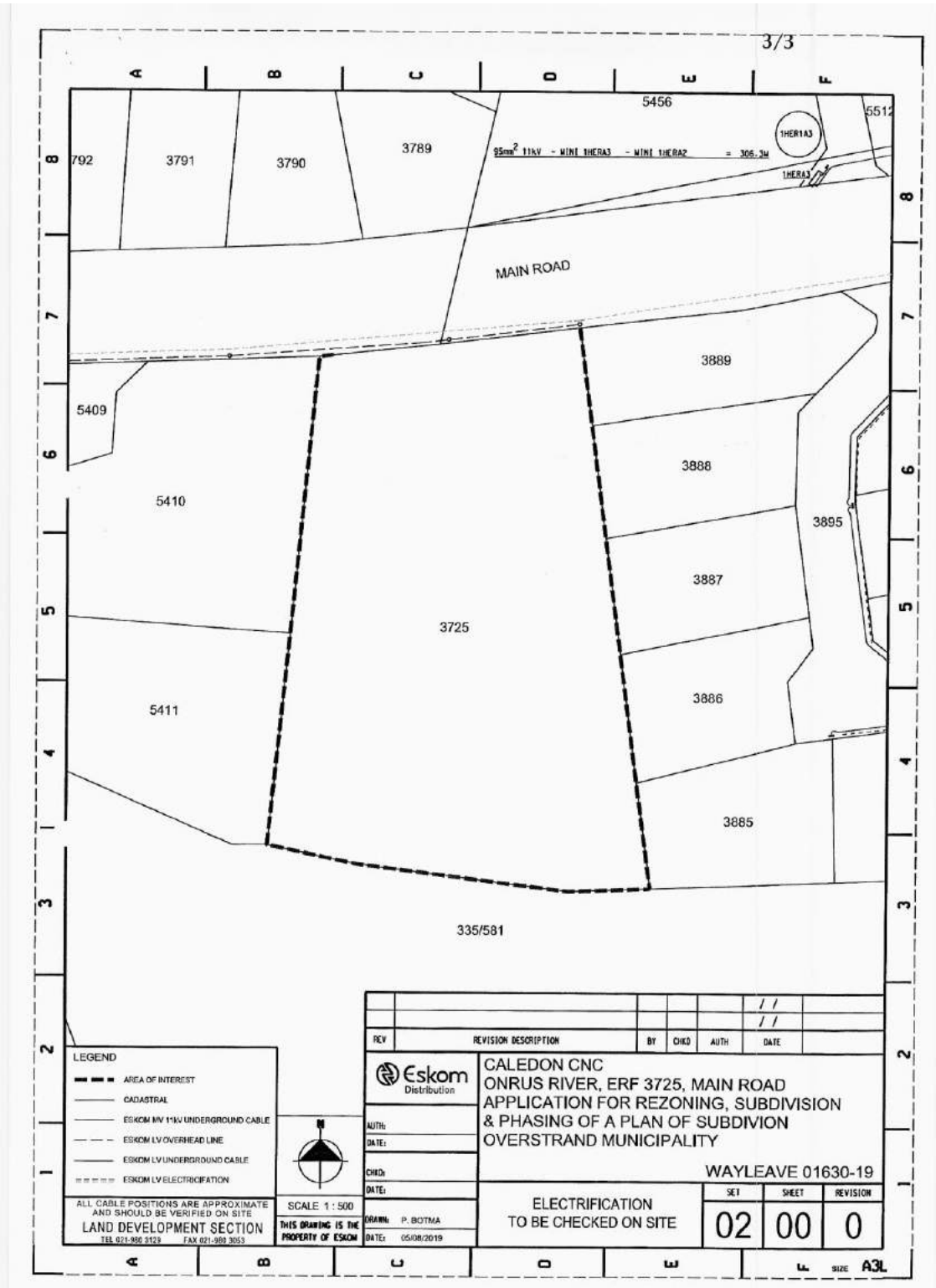


- f) That existing Eskom power lines and infrastructure are acknowledged as established infrastructure on the properties and any rerouting or relocation would be for the cost of the applicant/developer.
- g) That Eskom rights or servitudes, including agreements with any of the landowners, obtained for the operation and maintenance of these existing power lines and infrastructure be acknowledged and honoured throughout its lifecycle which include, but are not limited to:
- i. Having 24 hour access to its infrastructure according to the rights mentioned in (a) above,
 - ii. To perform maintenance (structural as well as servitude – vegetation management) on its infrastructure according to its maintenance programmes and schedules,
 - iii. To upgrade or refurbish its existing power lines and infrastructure as determined by Eskom,
 - iv. To perform any other activity not listed above to ensure the safe operation and maintenance of the Eskom power lines or infrastructure.
- h) Eskom must have at least a 10m obstruction free zone around all pylons (not just a 10m radius from the centre).
- i) Eskom shall not be liable for the death or injury of any person, or for loss of or damage to any property, whether as a result of the encroachment or use of the area where Eskom has its services, by the applicant, his/her agent, contractors, employees, successors in title and assignee.
- j) The applicant indemnifies Eskom against loss, claims or damages, including claims pertaining to interference with Eskom services, apparatus or otherwise.
- k) Eskom shall at all times have unobstructed access to and egress from its services.
- l) Any development which necessitates the relocation of Eskom's services will be to the account of the developer.
- m) **DIRK SWART, CALEDON CNC** must be contacted on **+27 28 214 5710** before working in close proximity to the overhead power lines.

Kindly contact **Shaun Swanepoel** at Tel: 021 980 3913, should you require any further information.

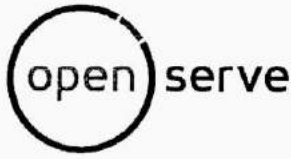
Yours sincerely

Shaun Swanepoel
LAND DEVELOPMENT (BRACKENFELL)
(Transmitted electronically and thus not signed)



IP N. (hoort C. J. Olivier)

ANNEXURE I 1/4



Division of Telkom SA SOC Ltd

10 Jan Smuts Drive
Pinelands
7404

Candice Spammer
Tel: 021 414 5582
Fax: 086 480 0617
Email: spamme1@telkom.co.za

Our Ref.: WWIP_WONR2749_19
Your Ref.: 3725 HON 3058/2019

20 August 2019

Attention: S Muller

Overstrand Municipality
HERMANUS

FILE NO:	3725
	Christina ✓
SCAN NO:	HON 3725
COLLABORATOR NO:	1314433

PLANT AFFECTED:

APPLICATION FOR REZONING, SUBDIVISION AND PHASING OF A PLAN OF SUBDIVISION: ERF 3725, ONRUSRIVIER

With reference to your application received 30 July 2019.

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

I hereby inform you that Open Serve 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.

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

20 AUG 2019

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

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

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

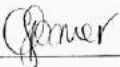
Please notify this office within 21 working days from this letter of acceptance and if any alternative proposal is available or if a recoverable work should commence.

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

Should open serve infrastructure be damaged while work is undertaken, kindly contact our representative immediately.

All Open Serve rights remain reserved.

Yours faithfully



Selwyn Bowers
Operations Manager
Wayleave Management: Western Region

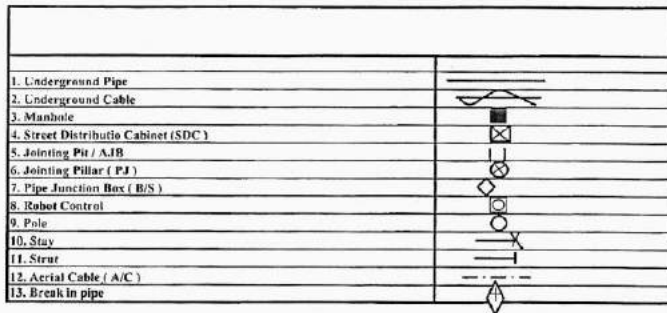
This wayleave, Reference Number **WWIP WONR2749 19** is valid for 12 months from date here of and is subject to the following conditions:

1. No mechanical plant or vibrator type compactors may be used within three metres of any Open Serve plant (I.E. any Telecommunication equipment above or below ground level .)
2. The position of our plant affected by the proposal is indicated as approximate and **Frederik Swart** at telephone number **081 363 7815** must be contacted at least 48 hours prior to commencement of the work, upon which the actual location of Open Serve Plant will be indicated on site.
3. A written request must be submitted to Open Serve for consideration should the applicant require our plant to be relocated. The cost of such 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 Open Serve immediately, should the applicant locate any Open Serve plant indicated on the provided plans.
5. Should the applicant expose any Open Serve plant, the safeguard thereof will be the applicant's full responsibility
6. Failing to comply with the above conditions or any special conditions addendum hereto will be regarded as gross negligence and the applicant will be held responsible for the damage or loss as a result thereof.

Date: 20 August 2019

By: C Spammer

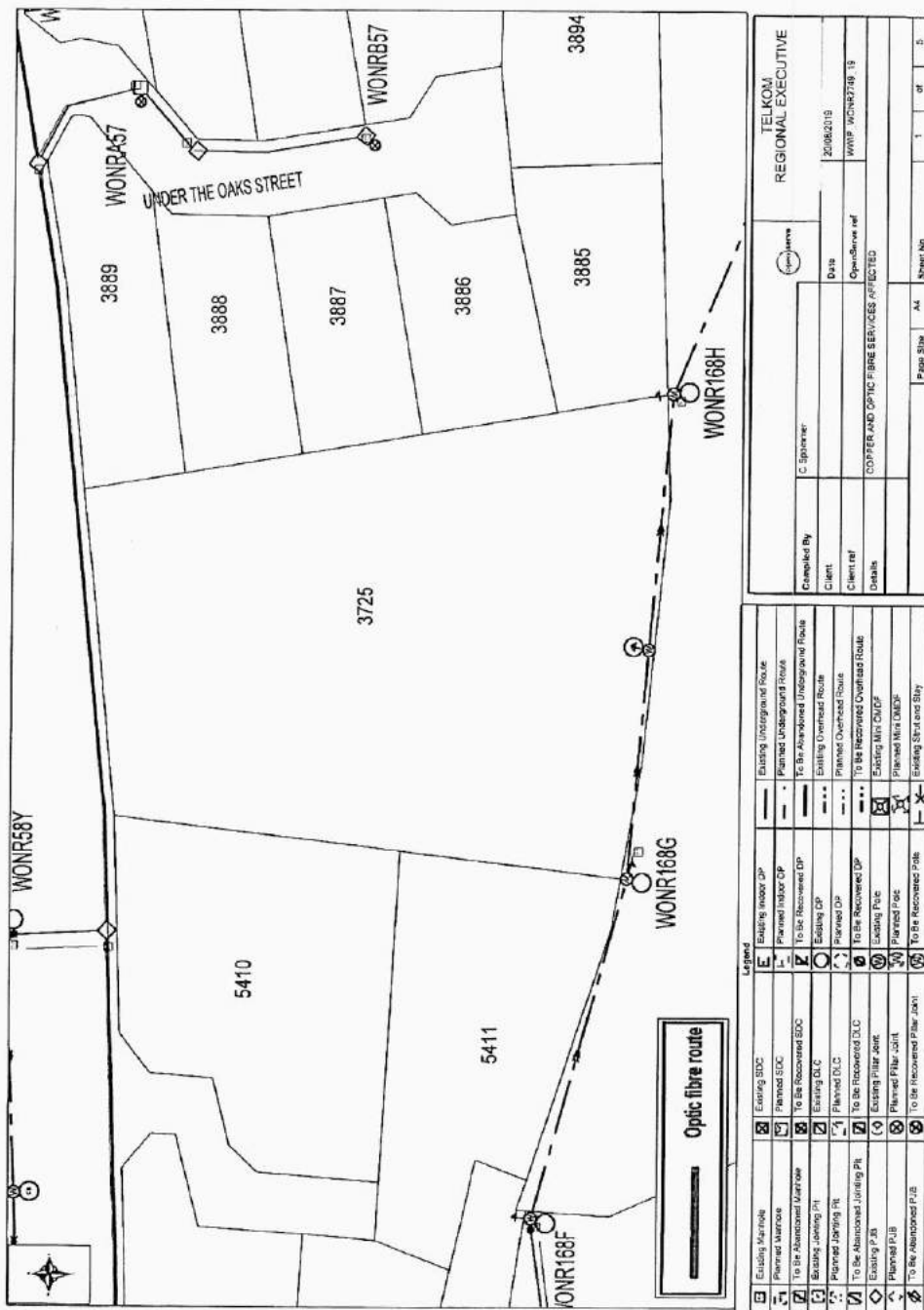
For Regional General Manager
Western Cape (N2W311B)



The pipeline indicated contains OPTIC FIBRE cables.

A Biscombe - telephone **021 951 7630** must be contacted at least 48 hours before commencement of work.





Legend		TELKOM REGIONAL EXECUTIVE	
<input checked="" type="checkbox"/> Existing SDC	<input checked="" type="checkbox"/> Existing Underground Route	Completed By	C. Spunner
<input checked="" type="checkbox"/> Planned SDC	<input checked="" type="checkbox"/> Planned Underground Route	Client	DATA
<input checked="" type="checkbox"/> To Be Recovered SDC	<input checked="" type="checkbox"/> To Be Abandoned Undergraphical Route	Client ref	Open Service ref
<input checked="" type="checkbox"/> Existing DP	<input checked="" type="checkbox"/> Existing Overhead Route	Details	WONR1682748-19
<input checked="" type="checkbox"/> Planned DP	<input checked="" type="checkbox"/> Planned Overhead Route	COPPER AND OPTIC FIBRE SERVICES AFFECTED	
<input checked="" type="checkbox"/> To Be Recovered DP	<input checked="" type="checkbox"/> To Be Recovered Overhead Route	20/06/2019	
<input checked="" type="checkbox"/> Existing Pole	<input checked="" type="checkbox"/> Existing Mini CHGP	WONR1682748-19	
<input checked="" type="checkbox"/> Planned Pole	<input checked="" type="checkbox"/> Planned Mini CHGP	Page Size A4	
<input checked="" type="checkbox"/> To Be Recovered Pole	<input checked="" type="checkbox"/> To Be Recovered Pole	Sheet No 1 of 2	



ANNEXURE J 1/2

TP-A Theart
(H Olivier)

Cor Van Der Walt
LandUse Management
Email: LandUse.Eisenburg@elsenburg.com
tel: +27 21 808 5099 fax: +27 21 808 5092

OUR REFERENCE : 20/9/2/4/2/881
YOUR REFERENCE : 3725 HON
ENQUIRIES : Cor van der Walt

Overstrand Municipality
PO Box 20
HERMANUS
7200

Att: H Olivier

FILE NO:	EL 3725-HON
SCAN NO:	HON 3725
COLLABORATOR NO:	1365612

**APPLICATION FOR REZONING, SUBDIVISION AND PHASING OF A PLAN OF
SUBDIVISION OBO GLENDA ANNE MUSSON: DIVISION CALEDON
ERF NO 3725**

Your application of 31 July 2019 has reference.

The Western Cape Department of Agriculture: Land Use Management has no objection against the proposed application.

Please note:

- That this is only a recommendation to the relevant deciding Authorities in terms of the Subdivision of Agricultural Land Act 70 of 1970.
- Kindly quote the above-mentioned reference number in any future correspondence in respect of the application.

- The Department reserves the right to revise initial comments and request further information based on the information received.

Yours sincerely



M. CJ. van der Walt

LANDUSE MANAGER: LANDUSE MANAGEMENT

2019-11-14

Copy:

Directorate Land Use and Sustainable Resource Management

National Department of Agriculture

Private Bag X 120

PRETORIA

0001



**agriculture,
forestry & fisheries**

Department
Agriculture, forestry & fisheries
REPUBLIC OF SOUTH AFRICA

Private Bag X120, Pretoria (Tshwane), 0001
Delpen Building, C/o Annie Botha & Union Street, Riviera, 0084

From: Directorate Land Use and Soil Management
Tel: 012-319-7634 Fax: 012-329-5838 E-mail: Thokob@daff.gov.za
Enquiries: Help desk Ref: 2019_08_0009

Register of Deeds
Private Bag X 9073
CAPE TOWN
8000

Attention: Loretta Gillion



TP. D. /thead
(I.J. Oliver)

FILE NO:	CF 3725
	Onsland
SCAN NO:	41
COLLABORATOR NO:	1366013

CONFIRMATION OF APPLICABILITY OF THE SUBDIVISION OF AGRICULTURAL LAND ACT, ACT 70 OF 1970: APPLICATION FOR REZONING, SUBDIVISION AND PHASING OF A PLAN OF SUBDIVISION OBO GLENDA ANNE MUSSON ON ERF 3725, DIVISION HERMANUS, WESTERN CAPE PROVINCE

Your request to this office with regard to confirmation of applicability application received in terms of Act 70 of 1970.

The above mentioned property is not subject to the provisions of the Subdivision of Agricultural Land Act, Act 70 of 1970 as it is situated within a township.

Section 1 of the Act states the following:

".....1. **agricultural land** means any land, except-

- (a) land situated in the area of jurisdiction of a municipal council, city council, town council, village council, village management board, village management council, local board, health board or health committee, and land forming part of, in the province of the Cape of Good Hope, a local area established under section 6 (1) (i) of the Divisional Councils Ordinance, 1952 (Ordinance No. IS of 1952 of that province), and,....."

Registrations of transactions on the above property will therefore no longer require a letter from this Department.

Yours faithfully


MS. B. L. BOSOGA
DIRECTOR: NATURAL RESOURCES MANAGEMENT
DELEGATE OF THE MINISTER
DATE: 25/11/2019

CC: Overstrand Municipality P.O. Box 20 HERMANUS 7200 Your letter 3725 HON dated 31 July 2019 refers.

DAFF/MB/2019/ErI 3725