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PORTION 35 (A PORTION OF PORTION 16) OF FARM ROCKLANDS NO. 633, DIVISION CALEDON, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, CONSENT USE, DEPARTURE AND APPLICATION FOR APPROVAL IN TERMS OF ACT 21 OF 1940 : MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF MOUNTAIN FALLS ESTATE (PTY) LTD

Prt 35 of 633 RCAL (3762/2017)

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4 February 2022

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Hermanus Administration

1. EXECUTIVE SUMMARY

An application was received on 28 August 2017 from Messrs Plan Active on behalf Mountain Falls Estate (Pty) Ltd for the applications mentioned below applicable to Portion 35 (a Portion of Portion 16) of Farm Rocklands No. 633 namely:

- ❖ removal of restrictive title conditions with reference to Paragraph E of Title Deed T919/2015 applicable to Portion 35 (a Portion of Portion 16) of Farm Rocklands No. 633, Division Caledon in terms of Section 16(2)(f) of the aforementioned By-Law;
- ❖ consent use in terms of Section 16(2)(o) of the aforementioned By-Law in order to accommodate a water bottling plant;
- ❖ departure in terms of Section 16(2)(b) of the aforementioned By-Law to relax the western lateral building line from 10m to 5m to accommodate the existing bottling plant structure, and
- ❖ approval in terms of Act 21 of 1940 as imposed by Conditions D.2, D.3 & D.4 of Title Deed T919/2015 to permit the existing bottling plant, staff room & shed to be utilized as an automated bottling plant, that the land be used for agriculture industrial purposes and that the existing shed may encroach the ±94,46m building line by ±12m.

The Locality Plan of the property concerned is attached as Annexure A, the Motivation Report from the applicant in support of the application is attached as Annexure B and the Site Development Plan is attached as Annexure C. The title deed is attached as Annexure D.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Portion 35 of the Farm Rocklands No. 633, Division Caledon is situated between Hermanus and Stanford in the rural area of Overstrand Municipal Area.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is summarised as follows:

- ❖ Portion 35 of the Rocklands No. 633, Division Caledon is zoned Agricultural Zone 1 and is 2,2471ha in extent and is mainly used as a bottling plant to bottle water which is obtained from the boreholes on the farm.
- ❖ Surrounding land uses include the following: restaurants, wineries, wedding venues and tourist accommodation.
- ❖ Application is made for a consent use, departure, removal of restrictive Title Deed condition and consent use in terms of Act 21 of 1940 in order to legalise an agricultural industry on the farm.
- ❖ There are three structures on the farm namely:
 - a building situated on the northern portion of the farm that is being used as a water bottling plant and accommodation for the manager;
 - a wooden shed to the east of the bottling plant being used as a staff room and
 - a newly constructed shed located in the centre of the farm portion.
- ❖ The ground floor of the main dwelling on the farm is utilised for the bottling of water and the 1st floor is used as residence for the Manager. It is the intention to use the existing shed as an automated bottling plant in the future.
- ❖ The previous owners operated the bottling plant for 12 years. The current owner first rented the farm from December 2012 and purchased the farm in 2015 as a going concern.
- ❖ Application is made for:
 - removal of restrictive title conditions with reference to Paragraph E of Title Deed T919/2015 applicable to Portion 35 of Farm 633, Rocklands in terms of Section 16(2)(f) of the aforementioned By-Law;
 - consent use in terms of Section 16(2)(o) of the aforementioned By-Law in order to accommodate a water bottling plant;
 - departure in terms of Section 16(2)(b) of the aforementioned By-Law to relax the western lateral building line from 10m to 5m to accommodate the existing bottling plant structure, and
 - approval in terms of Act 21 of 1940 as imposed by Conditions D.2, D.3 & D.4 of Title Deed T919/2015 to permit the existing bottling plant, staff room & shed to be utilized as an automated bottling plant, that the land be used for Agriculture Industrial purposes and that the existing shed may encroach the $\pm 94,46\text{m}$ building line by $\pm 12\text{m}$.
- ❖ The main dwelling is situated on the north-western portion of the farm in close proximity of the boundary and accommodates the water bottling plant. The water from the borehole is filtered and/or carbonated. The water does not go through a chemical process and no additives are added. Previously 600m^3 per annum water was bottled and it is estimated that the use could escalate to 1000m^3 and 2000m^3 per annum.
- ❖ An environmental consultant was appointed by the owner to deal with the necessary registration of the water rights.
- ❖ The footprint of the current bottling plant is approximately 320m^2 . The process of bottling the water is semi-automated and provides 30 jobs. A variety of plastic and glass bottles are used ranging from 300ml to 19 litre containers. The new shed constructed on the farm covers 435m^2 and is used for storage purposes only. It is the intention of the property owner to expand the bottling plant to the new shed. The shed will then entail a fully automated plant making use of the $\pm 310\text{m}^2$ of internal space. The bottling plant in the main dwelling will be retained and productivity will increase to $\pm 2000\text{m}^3$ bottles of water per annum.
- ❖ The wooden shed on the farm will be used as a staff room (facility for staff to make coffee, heat up their lunch, and store their boots and aprons) and gardening shed.

- ❖ The property owner bought the property in 2015 and due to the size constrain of the property (0,857ha/8570m²) the farm unit cannot be utilized for farming activities and therefore the property owner seeks to utilize the farm unit for tourism accommodation.
- ❖ Consent use is applied for to accommodate the abovementioned structures and land uses on the property.
- ❖ In terms of the Zoning Scheme a lateral boundary line of 10m is applicable; the applicant is applying for a relaxation of the western lateral building line in order to accommodate the main dwelling and the existing bottling plant.
- ❖ The Title Deed T919/2015 limits the type of building which may be erected on the farm. This is a condition which is found on Page 5 Paragraph E and it reads as follows: *“The land shall be subject to the following condition which may be amended or relaxed by the Administrator: no building other than one dwelling for use by a single family together which such outbuilding as are ordinarily required to be used therewith may be erected on this Land”*.
To accommodate the abovementioned structures and land uses on the property it is proposed to remove this condition.
- ❖ Application is also made for the approval in terms of Act 21 of 1940 as imposed by Conditions D.2, D.3 & D.4 of Title Deed T919/2015 to permit the existing bottling plant, staff room & shed to be utilized as an automated bottling plant, that the land be used for agriculture industrial purposes and that the existing shed may encroach the ±94,46m building line by ±12m. Approval is sought from the Controlling Authority in terms of the Act 21 of 1940 which the Department of Transport and Public works.
- ❖ Character of the area is rural in nature and the farm is situated on the R43. The farm portions in the vicinity are small and not actively farmed. The main land uses are residential, tourist accommodation and tourist facilities. Farms closer to Stanford are farmed and have diversified land uses such as tourist accommodation and tourist facilities. The proposal is compatible with the land use tendency of the area. The proposal will not have a negative impact on the character of the area.
- ❖ 12.6 parking bays are required, and 15 parking bays are provided on site. Delivery vehicles include a 1-ton truck, a VW Caddy and an 8 Ton Truck. The agricultural industry will not have a significant increase in traffic using the R43.
- ❖ No additional services will be required from the municipality.
- ❖ Zoning of the farm will be retained.
- ❖ The proposal adheres to the spatial planning policies for the area.
- ❖ The application is motivated to be in line with the SPLUMA Planning principles.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local newspaper	Yes	19 June 2019	26 July 2019
Gazette	Yes	21 June 2019	26 July 2019
Notices	Yes	19 June 2019	26 July 2019
Ward councillor	Yes	19 June 2019	26 July 2019
Total comments	SEVEN (7)		

Total letters of support	NONE
Was public participation undertaken in accordance with Section 46 - 50 of the Proposed Draft 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
In case of application for removal, amendment or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies.	N/A

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

Name	Date received	Summary of comments
Building Department	24/06/2019	Regularisation of unauthorized building work, other no objection. To submit plan application.
Local Heritage	25/06/2019	No objection.
Waste Management	02/07/2019	No objection.
Fire Services	12/07/2019	No objection providing that the structure complies to the fire protection regulation SANS 10400 T:2011 and community safety By-Law.
Telkom	17/07/2019	Attached as Annexure G.
Department of Environmental Affairs and Development Planning: <i>Development Management, Region 2</i>	23/07/2019	No objection.
Department of Transport and Public Works	02/08/2019	Attached as Annexure H.
Eskom	12/08/2019	Attached as Annexure I.
Department of Environmental Affairs and Development Planning: <i>Development Management, Region 1</i>	12/08/2019	Development does not constitute any listed activities.
Engineering Services	28/08/2019	Attached as Annexure J.
Breede-Gouritz Catchment Management Agency	12/09/2019	Attached as Annexure K.

Water and Sanitation	07/10/2021	Attached as Annexure L.
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7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Seven (7) objections were received from the adjacent property owners namely: P Buley (owner of Farm 633 Portion 17), E Ivey on behalf of Hermanus Lagoon Property Owners Association, B Ivey (owner of Farm 633 Portion 19), R James, G Lombardi on behalf of Vogelgat, R Lennox (owner of Farm 633 Portion 16) and R Lapping (owner of Farm 633 Portion 57).

The points of objections and responses thereto will be grouped together and discussed together.

Sanitation and wastewater requirements for the amount of people on site seem insufficient. Does a sewerage and waste disposal service exist? If the production is increased 300% sewerage disposal will become a major polluter of the aquifer, how far are the boreholes from the sewerage treatment facility and at what depth are the boreholes?

Response from applicant

There are three showers and three toilets available for staff, as follows:

- two showers and two toilets are situated in the upper building area;
- one shower and one toilet are situated in the wooden shed/staff room, and
- there is a further toilet available in the resident manager's apartment above the bottling area.

There are three underground sewer tanks with a total capacity of 16,000 litres (1,000 litres, 5,000 litres and 10,000 litres respectively) situated on the property, which are emptied as necessary by the Overstrand Municipality at Mountain Fall's expense. Any other issues that might arise, the services of Dynarod Hermanus are utilised.

Refuse is transported by Mountain Falls to either waste and/or recycling centres in Hermanus.

With reference to our earlier comments is it clear that the water bottling plant will increase and will be semi-automated. The number of staff members will not increase and subsequently the strain on services will remain the same.

We have also obtained the following input from a consulting geohydrologist, Mr. Gerhard Steenkamp:

The risk of sewage affecting groundwater depends on a number of factors such as:

- type of sewage containment facility (closed, tanks, lined system, French drain, open ponds etc);
- the characteristics and thickness of the unsaturated zone (soil/bedrock);
- the depth to water table and characteristics of the aquifer, specifically the hydraulic properties, and
- the groundwater flow direction and gradient. If ground abstraction occurs, the gradient is affected, and it will depend if the sewage facility is within the capture zone of the borehole.

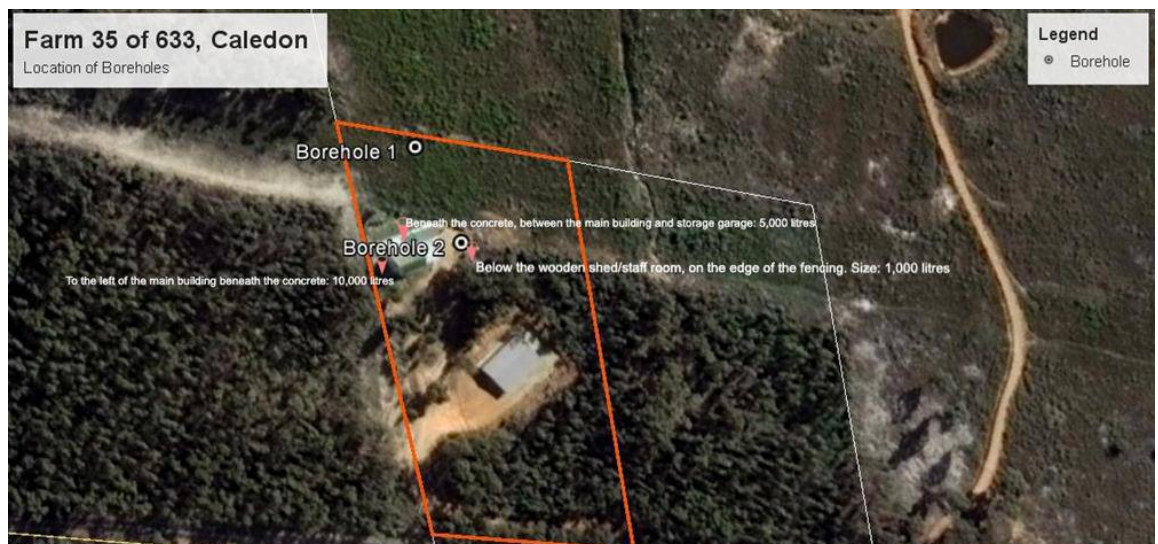
At Mountain Falls, the following can be said on the subject:

- the sewage is contained in subsurface septic tanks built from brick and mortar. Conceptually, there should be very limited seepage/leakage from the septic tanks;
- the unsaturated zone is in excess of 30 meters thick. The hydraulic conductivity was not measured in the unsaturated zone but it is low in the saturated zone and the rate of seepage to the water table is expected to be low;
- the boreholes (BH01 and 02) are situated to the north and in the upstream flow direction from the septic tanks. The risk of the boreholes being affected under natural conditions is thus very low, and
- because the boreholes are used for abstraction, depression cones are generated which alter the flow directions around the boreholes. Although BH02 is relatively close to a septic tank, the radius of influence from the abstraction is very limited (as measured during the pumping tests).

All of the above points to a low risk of impact. Although the risk of the water quality in the boreholes being affected by seepage of untreated sewage from the septic tanks is considered to be low, a water quality monitoring program should be in place to confirm. The water should be analysed for bacteriological content (total coliform bacteria and E.coli) on at least a quarterly, but preferably on a monthly basis.

The distances from borehole 1 to the existing conservancy tanks are $\pm 55\text{m}$, $\pm 75\text{m}$ and $\pm 65\text{m}$ respective.

Borehole 1 has a depth of $\pm 75\text{m}$. The distances from borehole 2 to the existing conservancy tanks are $\pm 10\text{m}$, $\pm 35\text{m}$ and $\pm 45\text{m}$ respective. Borehole 2 has a depth of $\pm 110\text{m}$. Please refer to the aerial photograph below for easy reference.



Response from town planner

The objection and concern are noted. However, it is clear from the applicant's response and the detailed study done on the property that the septic tank is sufficiently and regular serviced and that the water quality of the boreholes are regularly tested to ensure that the water does not contain any contaminants.

There are no labour sources nearby. This will mean that staff will be inclined to remain on the premises. Accommodating overnight staff on the premises should be prohibited as it could lead to a formation of informal structures and could lead to crime, poverty and overcrowding.

Response from applicant

This shed is NOT used as housing and never has been, except for one 4-month period during 2016. The sole reason for this temporary usage was an exceptional circumstance. The resident general manager at the time, a woman on her own, was incapacitated due to an accident and a staff member from Cape Town was brought to the farm to assist. At no point prior to or post this incident, has it been used for accommodation. Nor is it intended to, as it is used solely by factory staff as stipulated above. The assumption that this WILL happen is entirely without merit or precedence. The company has an appointed driver who does the local deliveries and also conveniently transports employees to and from work. Mountain Falls is equidistant from Hermanus and Stanford, at a mere 15km (approximate). 15km cannot possibly be viewed as "far from any labour sources."

Response from town planner

Additional dwelling units on the property are an additional use right and will require approval before additional dwelling units are created on the property. The current application does not contain any indication of additional dwelling units being created. Some of the labour sources close to the area are located in Stanford and Hermanus and the same conditions apply to the subject farm, as on any other farms which are that the employer ensures that the staff is transported to and from work or public transport is utilised by the staff members.

The plant will require approval and be in compliance with various acts. Total disregard is shown for the law to date. How can future expansion be controlled as the development to date has gone ahead, despite efforts from the municipality. Conditions must be set to limit the expansion of the development into the natural vegetation.

Illegal activities continued on the property (building and harvesting of water) after being notified that the activities are illegal. The land use and water use are illegal.

The stated information cannot be relied on as the owner has to date shown a total disregard for the law and regulations. The activity does not appear to be a clean operation.

The application for consent use should be considered as a new application and no regard must be given to the fact that there is an existing plant being operated.

Response from applicant

The owner undertakes that no structures will be constructed or that the site will be further developed without obtaining the required approvals first.

Water extracted on Portion 35 of the Farm No. 633 has been used to bottle water under different ownership for the last 12 years. Our client, Mr. Michael Beatham has

been renting the farm since December 2012 as a running concern as a water bottling plant with all its employees. He established Mountain Falls Estate (Pty) Ltd in 2014 and decided to purchase the farm that was transferred in 2015 as a running concern under the impression that the land use rights have been established. After being notified that the current land use was illegal, Mr. Beatham appointed us, and an environmentalist and water specialist to rectify the matter and an application was lodged on the 17th of August 2017.

It is our opinion that the municipality is considering the application as a new application and that it would be dealt with on its own merit.

Our application is to legalise an existing bottling plant and to accommodate existing structures. No additional structures are proposed. Therefore, no intrusion into natural veld will occur.

As mentioned earlier in our response, when the illegal land use came to his attention Mr. Beatham immediately acted to rectify the illegal use of the farm portion as a bottling plant that he bought as running concern. He has also appointed all the necessary consultants to ensure that the bottling plant is properly managed in such a way as to not have a negative impact on the surrounding environment. The required application to obtain a water usage license has also been lodged to legalise the abstraction of water from the boreholes.

It is clear from this statement that Mr. Beatham is doing his utmost best to rectify this matter to legalise the land use that was purchased as a running concern.

After an approval has been obtained as per our application, the land use restrictions prescribed under the current zoning, Agriculture Zone 1 will be applied.

Response from town planner

Should the application be approved, then a condition will be stipulated which limits the current activities to an approved Site Development Plan, which limits the footprint and size of the structures on the property. Further, prior approval will be required from the municipality should the property owner/developer acquire to develop additional footprints.

The municipality did consider legal recourse against the property owner and a fine was ordered through the Overstrand Municipal Court.

The land use application will be considered as a new application including the merits, relevant legislation, comments and objections, other merits which influence the land use of the property.

Is the proposed use (water plant) an Agricultural Industry? The bottling plant may be an industrial industry.

The zoning of the property is questioned as the property is only 2,247ha and the area of the property is covered by buildings. The size of the buildings and structures must relate and be limited to the zoning of the property.

The bottles are stored in the shed, where will the bottles be stored when the shed is turned into an automated factory?

Response from applicant

The definition of an Agricultural Industry read as follows:

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

It can be argued that water is being harvested from a source on the subject farm that is further processed and bottled. There is no land use definition that specifically refers to a water bottling plant and is it our opinion that this is the most suitable land use, agricultural industry, as defined in the Overstrand Municipality Zoning Scheme to accommodate a bottling plant. If the water had to be sourced from elsewhere and not being harvested from the subject farm the proposed land use, agricultural industry, would not have sufficed.

The Overstrand Municipality Zoning Scheme makes provision for an agricultural industry under an Agriculture Zone 1 zoning. As mentioned above is it our opinion that the water bottling plant can be accommodated as an agricultural industry due to the fact that the water is harvested onsite. The Zoning Scheme makes provision for a total floor space of 5000m² under a zoning of Agriculture Zone 1. The total estimated coverage of all buildings on the subject farm portion is ±1105m² in extent, well below the 5000m² thresholds.

With reference to the above is it our opinion that the proposed application to legalise the existing bottling plant is in order and that an agricultural industry is the most suited use and that the application can be supported.

The new shed as indicated on the site plan is currently used for storage only. In the event of future automation, the following should be noted:

- Mountain Falls has no intention of increasing production by 300% and has never made any such intention public;
- Mountain Falls markets itself as a small, niche, bottled water supplier and turns down numerous, ongoing requests from many regions and provinces, specifically the Garden Route, Eastern Cape, Kwa-Zulu Natal and Gauteng. Mountain Falls' focus is Cape Town and surrounds, and the Overberg region.
- the only exception to this rule are two Cape Town-based clients who have national outlets. As a result they ship to one contracted distributor in Gauteng approximately two to four times a month, and to the same distributor in the Eastern Cape once every few months, and
- the owner has investigated a small, limited capacity automated bottling machine, largely for smoother, as opposed to increased, production, as most of the current bottling equipment was custom made for a previous owner and is old and worn, with zero access to replacement parts. As a result the new machinery is to replace old equipment with a cleaner, healthier updated alternative. There is likely to be a reduction in employee numbers as a result.

Response from town planner

The application at hand is considered to be for a consent use under the zoning of the property for agricultural industry. The statement of the applicant in the response is agreed with. Although there is no specific definition for a bottling plant, due to the nature of harvesting mineral water on the property, the operation of bottling with quality control of the specific product and use of the farm, it is reasonable that the proposed use is accommodated under the definition of agricultural industry.

The footprint of all the structures on the property cannot occupy a total floor space of more than 5000m² under a zoning of Agriculture Zone 1. As stated by the applicant the current development on the property does not utilise more than ±1105m² in extent.

There is no water user licence on the property. The water user licence must be a precondition prior to the consideration of the consent use application.

Response from applicant

Lornay Environmental Consulting has submitted a Water Use Licence Application for the abstraction of 2000m³ from 2 boreholes. The application is in an advanced stage of completion. With reference to our former discussions with the municipality it will only consider the applications once the water use license has been obtained.

The Breede-Gouritz Catchment Management Agencies regulates water usage applications in order to ensure the sustainability of our water sources. Each application is evaluated on its own merits and the impact that it would have on water resources. A water use license will not be issued if it would have a negative impact on the water resources.

Response from town planner

The town planning department is still awaiting approval of the water use licence. The water use licence can be incorporated as a condition should the application be approved, subject to all land uses on the property being ceased and only commencing after the required water use licence have been obtained.

The expansion of an industry is most certainly not compatible with the land use tendency of the area and will have a negative impact. The business should be relocated to an industrial area. The industry will be unsightly and distract from the natural beauty of the area which attracts tourist.

Response from applicant

The building referred to is the new shed. A shed and agricultural land goes hand in hand and is a common structure found on agricultural land. The fact that the shed will be used as a bottling plant in the future will not change its appearance. Subsequently the bottling plant will be perceived as a shed by passers-by and will not detract from the scenic nature of the area.

The Overstrand Municipality Zoning Scheme makes provision for the proposed use on agricultural land. By law, all spring and mineral water must be bottled at source. The bottling plant is of similar size as a barn or shed and is also perceived as such. It should also be noted that the new shed is barely visible from the R43.

Bottling of natural water (as opposed to RO treated water) depends directly on the quality of the water. The groundwater at Mountain Falls is of excellent quality, which cannot be found at any industrial site.

Response from town planner

In general property owners of agricultural zoned properties have started to diversify the land uses on the farms in order to become more economical sustainable. In the surrounding area the following uses have been approved, guest houses, resorts and micro wine brewery. The proposal is contained as a consent use under the zoning of the property and therefore the proposed use must be evaluated as such. The agricultural potential of the small holding is limited and therefore the property owner has sought to diversify the income stream of the property in another manner other than the primary use of the property. Any additional uses approved on a property does have the potential to cause a nuisance or impact on the adjacent property owners, however if the use is managed correctly then the impact of the use can be mitigated.

The restrictions in the title deeds apply to six other properties and are so as to prevent development of the area. The restrictions were originally for Farm 633 Portion 16 to Farm 633 Portion 21 (of which Farm 633 Portion 35 was subdivided) prevents the type of development on the small farms.

Applying to the District Roads Engineer to use the farm as an industry thereby debunks claims of the use is an agricultural activity.

Response from applicant

If the bottling plant was defined as a primary right in terms of the Zoning Scheme under an Agriculture Zone 1 zoning or included into the definition of "agriculture" it would not have been necessary to lodge an application for a consent use. The use of a bottling plant can be accommodated as an agricultural industry as a consent use and therefore it is a requirement that we also apply for an approval from the District Roads Engineer as stipulated in the Title Deed.

The proposed consent use and removal of restrictive title deed conditions in order to legalise the bottling plant that was established on Portion 35 of the Farm No.633 is not a noxious industry and produces no harmful emissions. The process can be summarised as the abstraction of water, water filtration, bottling and labelling. It is our opinion that the land use will not have a negative impact on the surrounding properties and the character of the area.

Response from town planner

The respective title deed conditions which the applicant seeks to remove limits the use of the property to *one dwelling for the use a single family together with such outbuildings as are ordinarily required to be used there with*. Therefore, should the property owner have wanted to develop the property further in line with the primary rights (agricultural use) then an application for removal of title deed restrictions would have been required in any case.

Some of the properties which are also limited by the same restriction have historically approved building plans which indicate that there are two dwellings approved on the

farm, which is in contradiction to the restrictive condition, it is therefore maintained that the restrictive condition has already been transgressed. Further, as stated in the previously the character of the area has already been diversified and the following uses occur in close proximity to the subject property guest houses, resorts and micro wine brewery etc.

The staff room is a second dwelling which is prohibited in terms of the Title Deed.

Response from applicant

The wooden shed is utilised by factory staff as a 'staff room', where staff eat lunch during their break. No food is prepared on the premises, although staff has access to a kettle for coffee and tea, and a microwave for warming lunch brought from home. Further, there are lockers for the aprons and boots, and minimal storage of small hand tools.

Response from town planner

Should the application be approved then the usage of the structures will be limited to that as approved on the SDP.

It is claimed that the water does not go through a chemical process and that the water is PH Neutral, but the same aquifer on Mr Lapping's farm is not PH Neutral. What filtration process is used? What method is used to dispose of the debris which is filtered out of the water?

Response from applicant

This objection is irrelevant to Mountain Falls' application. However, the water does not go through a chemical process and there are no additives. This can be confirmed by the local department that does regular inspections. The water is also tested by independent laboratories.

Mountain Falls water is marketed as natural mineral water. Nothing is added to the water between borehole and bottle, and nothing is removed other than naturally occurring sediment. Seven filters of varying micrometres are utilised to capture naturally occurring sediment so that clear water is bottled. The filters are used as follows:

Filter 1 – exterior tank filter	Big Blue 10" sediment filter
Filter 2 – on incoming line	5um 10" DOE RF-style – replaced fortnightly
Filter 3 – on incoming line	Big Blue Carbon Block 20" 10um – replaced fortnightly
Filter 4 – on incoming line	0.2um 10" Posidyne – replaced fortnightly
Filter 5 – from chiller to carbonator	1um 10" Ultipor – replaced monthly
Filter 6 – rinse unit	5um 10" DOE RF-style – replaced every second day. The water in the rinsing unit is recycled and purified via ozonation, and
Filter 7 – still line: on incoming line	0.2um 10" Posidyne – replaced monthly.

These are replaced as specified above and disposed of by transporting it to a local waste facility.

Response from town planner

The applicant sufficiently described the filtration process.

The new shed was built more than two years ago with false information submitted to the municipality. The main building on the north portion has been modified and added to in the last two years with no planning permission. The wooden shed to the east is used as a residence for at least one of the employees.

Response from applicant

The existing shed was completed and used for storage purposes only. It was never used as a bottling plant. It is the owner's intention to change the land use of the shed to a bottling plant after they have obtained all their approvals.

This main building itself has NOT been ADDED TO OR EXTENDED in any way by the current owner, other than the following repairs commencing 2016, as funds allowed:

- 1) improving safety in the area directly outside the buildings, by repairing and laying concrete and adding a pergola;
- 2) repairing and improving the concrete floor in one of the rooms of the building;
- 3) moving one doorway opening that was not part of a load-bearing wall, and
- 4) improving a small room with hand-washing facilities by removing old cupboards and sinks that were rotting and installing new sinks only. This is used by staff to wash and sanitise hands before work and throughout the day as required.

Response from town planner

The shed was shown on a building plan dated 21 April 2009 and it was indicated on the plan as an existing garden shed. The use of the shed will now be linked to the proposed bottling plant and used as a staff room. The shed will not be used for accommodation purposes. Further if the application is approved then it will be linked to a Site Development Plan which indicates what the uses are and where they may take place.

There are numerous disused pallets and other rubbish scattered over the property which is spread to neighbouring properties by the wind.

Response from applicant

The bottling plant is a clean operation and strict health, and hygiene procedures are followed. This can be confirmed by the relevant local authority that does regular inspections. Mountain Falls acknowledges that there have been occasions where extremely high winds has caused minimal litter to be blown beyond the boundaries before being disposed of by the grounds staff. This has been addressed and being closely monitored.

Response from town planner

This issue is can be eliminated by the proper management of the farm and the operations thereon. However, no proof (such as photographs) is submitted to support the statement of the objectors.

Noise from vehicles and alarms are noticeable, particularly after hours.Response from applicant

The impact of vehicles is similar, if not less frequent, than on other farms and/or business and/or ventures in the area. Given the location, Mountain Falls has only three suppliers that do deliveries to the farm, as follows:

- Supplier 1: once per week, during office hours;
- Supplier 2: two to three times per month during office hours, and
- Supplier 3: once per week, in a small 2-ton vehicle.

Mountain Falls ships stock three times per week, i.e. one vehicle only, per shipment. This increases to five times (one vehicle only, per shipment) per week maximum, during season. Only a few of these shipments occur after hours, due to unforeseen circumstances (e.g traffic delays, closed roads, etc.) hence the impact on after hours 'noise' is negligible.

Response from town planner

This issue is can also be eliminated by the proper management of the farm and the operations thereon. Strict timeframes, in normal working hours, needs to be adhered to in order to limit the impact on the adjacent property owners.

The consent use and removal of title deed restrictions are linked. If one is approved, then the other should also be approved.Response from applicant

The application consists of a consent use, departure, removal of restrictive title deed conditions and approval is also requested in terms of Act 21 of 1940. Once approval has been obtained for the consent use, departure, removal of restrictive title deed conditions and approval in terms of Act 21 of 1940 the Title Deed will be endorsed to remove the restrictions.

Response from town planner

The statement by the objector is true. The consent use and removal of title deed restrictions are linked and will be considered as such.

The increase of the production from 300m³ to 2000m³ annually will be an increase of 300% which will have an impact on the prevailing conditions.

Response from applicant

The accusation to a change of the prevailing conditions is highly unlikely and unfounded. Please refer to Annexure A, detailed response from Groundwater Complete on the objection.

The increase (actually 400%) will amount to 0.014% of natural losses. By far the highest contribution of water to the estuary is from surface water. (Kleinrivier and other streams)

Of the groundwater base flow (which is estimated to be far less than the surface water) to the estuary the contribution from the Mountain Falls bore holes radii of influence will capture less than 3%.

The actual estuary water loss from the estuary due to Mountain Falls abstraction is expected to be less than one thousandth of one percent.

The change in prevailing conditions is highly unlikely. Boreholes yields are limited, hydraulic conductivity (permeability) of the qualifier is very low, resulting in limited radii of influence as a result of the abstraction.

During pump testing of on borehole there were no measurable reaction in the other borehole situated $\pm 50\text{m}$ away.

Response from town planner

As indicated by the specialists the usage of the bore holes has limited impact on the adjacent bore holes. Further, the prevailing conditions which were referred to, was due to a drought period which affected the whole Western Cape. The usage of the boreholes could not have attributed to the conditions.

The usage of the bore holes will negatively affect the Klein River Estuary as the estuary is depended on the inflow of water from mountain streams and seepage of water of the Kleinriviersberg which is the catchment area. The extraction of water for development and agriculture has negatively affected the Estuary in recent years. The borehole must be approved, carefully monitored and controlled.

Response from applicant

Agreed. All water uses need to be carefully managed and monitored. Please refer to Annexure A, detailed response from Groundwater Complete on the objection.

While the strained water resources in the Western Cape is a fact and a concern to all, the scale of the water use applied for should be considered against the scale of the water balance of the estuary. This statement is emotion driven and factually incorrect. Please refer to Annexure A, detailed response from Groundwater Complete on the objection.

Abstraction of water from the boreholes will be measured by properly calibrated and approved water meters in order to not exceed the allowable 2000m^3 per annum as per the pending Water Use Licence Application.

Response town planner

As indicated by the specialists the usage of the bore holes has a very limited impact on the estuary as the water levels of the estuary is mainly supplied by streams which flow into it.

Careful consideration must be given to the placement of the entrance to the farm as the R 43 is undergoing major road works and upgrading and the entrance to Mountain Falls is concealed by trees. The increase in volume being bottled will cause the property owner to buy a larger truck.

Response from applicant

The application was circulated to the District Roads Engineer for their comments. The District Roads Engineer supports the application and the access point to the farm.

Response from town planner

The application was circulated to the Department of Transport and Public Works, the application is supported subject to conditions.

The automated bottling plant will cause several existing incomes to be lost due to the long-term cost to the agricultural and tourism industry in the area.

Response from applicant

This is a generalised and idealised statement and not applicable to the application. The fact is that no groundwater is used for agricultural purposes in the immediate vicinity. Please refer to Annexure A (of the applicant's response), detailed response from Groundwater Complete on the objection.

Response from town planner

The closest tourism activity (a micro winery and vineyard) to the proposed automated plant is approximately 250m away and across the R43 which is the main tourist route and is extensively used by motor vehicles including large delivery vehicles and construction vehicles. The impact on tourism in the surrounding area is very limited. Further, as indicated by the specialist, during pump testing of on borehole there were no measurable reaction in the other borehole situated ± 50 m away.

The number of workers or volume of water harvested is misrepresented and questioned. Due diligence when buying a property as a "going concern" is the onus of the buyer and the lack of due diligence indicates an irresponsible, opportunistic, unscrupulous business practice.

It is the belief that Mr Beatham has been in effect a beneficial owner of the property since 2012. There is no excuse in law for claiming ignorance of land use rights when purchasing a property. After being notified that the current land use was illegal Mr Beatham continued to operate the plant for over two and a half years and attempted to frustrate all efforts by the Municipality to comply with their orders and substantially expanded the business during this time including sinking a second borehole with no water use permit.

Response from applicant

Mountain Falls currently has 24 full time employees based at the Hermanus property, of which:

- two are based in administration only, and
- one is grounds and facilities Manager and lives on the property.

Of the balance, the split of staff members are as follows:

Driving and deliveries

- One employee is the driver, transporting employees to and from work, as well as doing local deliveries between Gansbaai and Hermanus, and further afield as required.

Cleaning

- One employee does the daily cleaning and, where time is available, folds cardboard trays for packaging.

Bottling

Bottling on the sparkling line is done by hand; bottling on the still line is semi-automated with limited bottling capability:

- Nine employees on average are focused in the bottling area. During the course of a single day, the bottling staff breakdown is as follows:
 - sparkling bottling line: currently four staff members both bottling and capping (PET bottles). Bottling sparkling water is by its nature slower than bottling still water. During season this can increase to six, maximum, due to the size of the line;
 - still bottling line: one staff member to bottle; two staff members to cap;
 - rinsing bottles for bottling: two staff members, drawn from the above complement, throughout the course of the day, and
 - supervisors: two supervisors, attending to overseeing production and record keeping, moving bottles into the bottling area, and helping out on the line when staff is absent.

Labelling

Labelling is done by hand, as well as via a small, custom-made labelling machine with limited capability:

- there are six permanent employees in the labelling room, including two supervisors.

Wrapping and packaging and capping of glass bottles

- three staff members are focused on wrapping and packing, including a Production Manager, and
- of these three, one employee operates a glass bottle capping machine when required.

Further comment regarding staffing and bottling

During busier times – usually any time between November through March or as required - staff complement is increased, mostly by seasonal, contracted employees.

This increase in production and production staff, as outlined above under bottling, is offset during quieter months.

Further to this and to ensure our permanent staff members have some sort of income security during winter, we implement short time rather than retrenchment or 100% seasonal employment. The Overstrand is a tourism-focused region with high unemployment and limited employment opportunities.

As in previous years, short time was implemented in winter 2019, when production drops to its lowest.

Response from town planner

The property owner was notified that the use of the property is illegal and therefore a consent use application was submitted. The objector's statement is noted however, Town Planning cannot comment on the behaviour or rationale of a client and can only consider the facts and information pertaining to the land use application. It should be noted that the property owner did appear twice in the Municipal Court and was fined for the illegal building work. The Court was notified that an application was submitted. Attorneys now await the outcome of this application.

It should be noted that the property owner applied for a water use licence in response to the objection, the water use licence was approved by Department of Water and Sanitation, dated 7 October 2021. It should be noted that the WUL allows for the extraction of 3650m³/a which is more than what the applicant is proposing in the motivation which is 2000m³/a.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See aforementioned.

9. MUNICIPAL ASSESSMENT OF COMMENTS

All relevant departments provided positive comments.

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 of a small scale and therefore the planning objectives applicable in terms of SPLUMA and LUPA cannot be adequately discussed.

The objectives relating to:

Spatial Justice

The application does not contribute to past spatial injustices. The application further allows for job opportunities for the local community.

Spatial sustainability

The impact of the proposal on the biophysical environment will also be kept to a minimum. Further, the size of the farm unit is too small to be utilised as an agricultural entity and therefore the land use rights need to be changed in order to allow the existing resources (land, location and scenic quality) of the farm will be utilised more effectively which will contribute towards the sustainability of the small farm unit.

Efficiency

The proposal is to make efficient and optimum use of limited sized agricultural land unit.

Spatial resilience

The application is motivated in line with the spatial and forward planning documentation of the Overstrand Municipality.

Good administration

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws and the public process has been followed.

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 10.2 above.

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

The proposal is in line with Overstrand Municipality's Spatial Development Framework and its Growth Management Strategy due to the zoning of the farm being unchanged and due to the fact that farm is not situated on high potential agricultural land. It should be noted that there are no agricultural activities taking place on the subject property. The farm is situated against the R43 which is categorised as a scenic corridor, however due to the slope of the property and the vegetation on the property the proposed uses and accompanying infrastructure is not noted from the R43.

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

See afore mentioned.

10.6 Impact on Municipal engineering services

The proposed application will not require additional services from the Municipality. The owner of the subject property will have to apply for water use rights from BGCMA.

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

It should be noted that the property owner received a water use licence from Department: Water and Sanitation, which is attached as Annexure L.

No listed activities will be triggered in terms of NEMA.

10.8 Existing and proposed zoning comparisons and considerations

The zoning will remain Agricultural Zone I purposes. Agricultural Zone I include tourist accommodation and additional dwelling as a consent use.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The title deed contains several restrictive conditions which restrict the use of the subject farm; these restrictions are Paragraph E of Title Deed T919/2015 and Conditions D.2, D.3 & D.4 of Title Deed T919/2015 which is in terms of Act 21 of 1940.

Paragraph E of Title Deed T919/2015 limits the use of the property to one dwelling and reads as follow:

“No building other than one dwelling for use by a single family together which such outbuilding as is ordinarily required to be used therewith may be erected on this Land”.

The applicant proposes to remove this condition as the proposed land uses (bottling plant, shed and staff room) are contradictory to the condition.

Application is further made for approval in terms of Act 21 of 1940 as imposed by Conditions D.2, D.3 & D.4 of Title Deed T919/2015 to permit the existing bottling plant, staff room & shed to be utilized as an automated bottling plant, that the land be used for agriculture industrial purposes and that the existing shed may encroach the ±94,46m building line by ±12m.

It should be noted that applications in terms of the Act 21 of 1940 (Advertising on Roads and Ribbon Development Act) is considered by the Department of Transport and Public Works and not a formal application in terms of the Overstrand By-law. However, the request was motivated and circulated with the land use application, due to the complexity of the land use application. Approval is provided by the Department of Transport and Public Works in the comments received on 14 August 2019. Considering these last mentions the evaluation for the removal of the Title Deed conditions will only be considered for Paragraph E of Title Deed T919/2015.

Will financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement?

The retention of the current condition does not hold a value to the municipality as the Land Use Scheme and the spatial policies of the Municipality determine the development parameters of the farm and its surrounding erven. Further, diversification of the land uses has occurred along the Klein River Estuary, the uses include agricultural industry, tourism and habitable spaces (additional dwelling units). Considering this the character of the area has progressed past the single dwelling use.

The legalisation of the proposed land use will add value to the property and allow maintain job creation for 24 employees.

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

The Municipality gains no benefits in keeping the restrictive condition neither does the property owners of the suburb. Further, the Municipality has the mandate to consider land use applications and development in terms of SPLUMA, 2013 and LUPA, 2015 and its By-law.

The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended:

The property owner will be enabled to retain the existing use (bottling plant) which was established and develop on the farm since 2005. In addition to this the output of the plant will also be increased as motivated which will allow the business to be more profitable and sustainable.

The social benefit of the restrictive condition remaining in place in its existing form and the social benefit of the removal, suspension or amendment of the restrictive condition:

The social benefit that will be gained by removing the restrictive condition is employment for the local community.

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

It is proposed to remove one of the conditions which relate to the development of the property and restricts the use of the property to a single dwelling to allow the diversification of the land use and by doing so to retain the land uses which have been established on the property. It is noted that other farms have been allowed to diversify the land uses on the farm as previously stated. Further, the zoning of the property will remain unchanged, and the rights obtained will be subservient to the land use approval and other applicable legislation.

The opinion is held that the proposal is sufficiently evaluated in terms of Section 39 (5) of LUPA, 2014 (Act 3 of 2014).

12. THE DESIRABILITY OF THE PROPOSAL

As per the motivation the previous property owner has operated a bottling plant since 2005 from the subject property. The current owner seeks to legalise the use whilst investing into the business to increase its output and capacity.

The first building plan approved for the property was approved in 1997. The building plan indicated a two-storey structure with the dwelling being situated on the first floor and a garage, store room and workshop being situated on the ground floor on the property. It was indicated on the site plan that the structure will be situated 7m from the western boundary.

The second building plan approved in 2009 indicated additions to the dwelling which included a new larger storage room, two bathrooms and an existing staff room. In addition to this a section to the back of the property was added, however, no formal approval was requested. According to the applicant the building is situated closer to the western boundary than what was previously approved. An application is made to depart from the 10m lateral building line up to 5m from the boundary due to the change of use and the aforementioned placement of the structure. The proposed use in the main dwelling will be all internal and will therefore not have an impact on the neighbouring property.

The consent use being applied for is to regularise the existing bottling plant, which is situated on the ground floor of the main structure (beneath the dwelling), the staff room and the newly built shed. The main operation of the bottling plant currently takes place in the main building. If this application is approved then the majority of the operation will be moved to the newly built shed which is currently used as a storage facility for the packaging materials, this will allow the property owner to further expand the business. It is noted that the newly built shed is situated in the middle of the property and more than 200m away from the nearest residential dwelling or tourist facility. Given the location/distance of the larger shed it can be reasoned that the proposed use will not be detrimental to the adjacent property owners. Further, should noise be an issue then the property owner can have a professional assess the noise levels and implement noise mitigation measures in the shed and main building. It should be noted that there are currently no structures or dwellings constructed on western adjoining property Farm 633 Portion 4.

As discussed previously in this report the subject property is situated next to the R43 between Voëlklip and Stanford and is surrounded by small holdings and small farms. In terms of the SDF the property is not identified as having a high agricultural potential. Further the property has a steep slope, which further limits its agricultural development/potential. It is noted that the surrounding property owners have also started to diversify the land uses on their respective farms through the addition of dwelling units or additional right uses.

The proposed use will not have a negative impact on tourism as the use is situated far away from existing tourism activities and the main activity associated with the use will take place inside of the buildings on the property.

Considering the aforementioned it is supported that the restrictive conditions in the Title Deed relating to usage of the property be removed and the application for the consent use and departure be approved.

13. RECOMMENDATION

1. that the comments received be noted;
2. that the application terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), applicable to Portion 35 (a Portion of Portion 16) of the Farm Rocklands No. 633, Division Caledon for the removal of restrictive title deed conditions E as contained in Title Deed T919/2015, **be approved** in terms of Section 61 of the By-Law;

3. that the application for consent use in terms of Section 16(2)(o) of the By-Law to accommodate a water bottling plant on the property, **be approved** in terms of Section 61 of the By-Law;
4. that the application for departure in terms of Section 16(2)(b) of the By-Law to relax the western lateral building line from 10m to 5m to accommodate the existing bottling plant structure on the property, **be approved** in terms of Section 61 of the By-Law;
5. that the above approvals be subject to the following conditions:
 - (a) that the approval is only for the development and utilisation of the property as indicated on the Site Development Plan (plan no 3, file number 19/126) as submitted with the application;
 - (b) that the conditions in the Services Report (attached as Annexure J), be complied with;
 - (c) that applicable rates and service tariffs, as determined by the annual budget be made applicable to both properties, which tariffs are automatically adjusted in terms of the annual budget;
 - (d) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation, and
 - (e) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
6. that the applicant and persons who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above conditions of approval.

14. REASONS FOR RECOMMENDATION

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.
- ❖ Diversification of land uses in the vicinity and along the R43 has already occurred.
- ❖ The farm has little agricultural potential due to its size and slope.
- ❖ The distance of the structures from which the bottling plant will be operated ensures that the activities will not have a detrimental effect on tourism and residential uses.
- ❖ The water study provided clearly shows that the use of the boreholes does not impact the water rights of the adjoining property owners. The property owner also obtained a water use license from the relevant authority.
- ❖ Overstrand Zoning Scheme Regulations have sufficient control measures when it comes to land use, coverage and building line controls.
- ❖ The proposal is in line with the Municipality's SDF.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed T919/2015
Annexure E:	Objections
Annexure F:	Response from applicant on objections
Annexure G:	Comment: Telkom
Annexure H:	Comment: Department of Transport and Public Works
Annexure I:	Comment: Eskom
Annexure J:	Services Report
Annexure K:	Comment: Breede-Gouritz Catchment Management Agency
Annexure L:	Comment: Water and Sanitation

SIGNATURES**AUTHOR**

Name: **P ROUX**

SACPLAN Reg No: **A/2246/2015**

Signature: _____

Date: _____

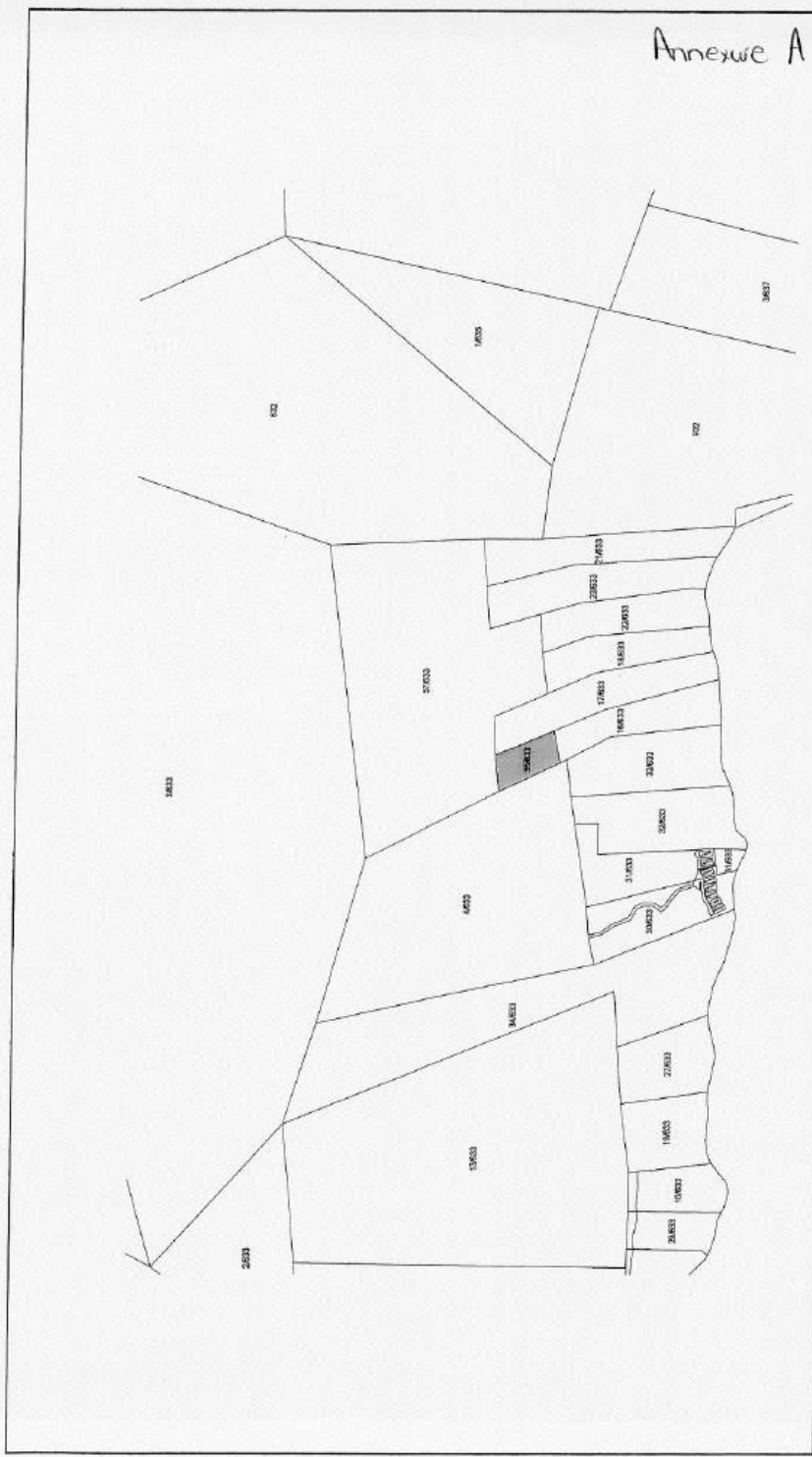
REGISTERED PLANNER

Name : **S VAN DER MERWE**

SACPLAN Reg No: **A/1850/2014**

Signature : _____

Date: _____



Annexe A

PLAn Stads- en Streeksbeplanners Town & Regional Planners	All distances approximate and subject to survey. COPY RIGHT RESERVED	Property Description: PORION 35 OF THE FARM NO. 633	Plan Description: LOCALITY MAP	Scale: NTS Drawing Nr: FARM633PTNS5L.dwg Date: 08/2017

**PROPOSED CONSENT USE, DEPARTURE,
 REMOVAL OF A RESTRICTIVE TITLE DEED
 CONDITION AND APPROVAL IN TERMS OF ACT 21
 OF 1940**

PORTION 35 OF THE FARM NR. 633

DIVISION: OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by Mountain Falls Estate Proprietary Limited, the owner of Portion 35 of the Farm No.633 to apply for a consent use, departure, removal of a restrictive Title Deed condition and consent in terms of Act 21 of 1940 in order to legalise an agricultural industry on the farm.

Portion 35 of the Farm Nr. 633 is held by Title Deed T919/2015 and is 2.2471ha in extent.

There are 3 structures on the farm portion that can be summarised as follow:

- A building situated on the northern portion of the farm that is being used as a water bottling plant and accommodation for the manager.
- A wooden shed to the east of the bottling plant being used as a staff room.
- A newly constructed shed located in the centre of the farm portion.

The farm is mainly used for the bottling of water and the 1st floor of the existing bottling plant is being used as a residence for the manager. It is the owners intention to use the existing shed as an automated bottling plant in the future.

Portion 35 of the Farm No. 633 has been used to bottle water under different ownership for the last 12 years. Our client, Mr. Michael Beatham has been renting the farm since December 2012 as a running concern as a water bottling plant with all its employees. He established Mountain Falls Estate (Pty)Ltd in 2014 and decided to purchase the farm that was transferred in 2015 as a running concern under the impression that the land use rights have been established. After being notified that the current land use was illegal, Mr. Beatham appointed us to rectify the matter.

2. APPLICATION DETAILS

Application is made for / in terms of:

- Section 16(2)(o) of the Overstrand Municipal By-law on Municipal Land Use Planning, for a consent use of Portion 35 of the Farm No.633 in order to accommodate a water bottling plant;
- Section 16(2)(b) of the Overstrand Municipal By-law on Municipal Land Use Planning, for a departure from the lateral building line of Portion 35 of the Farm No.633;
- Section 16(2)(f) of the Overstrand Municipal By-law on Municipal Land Use Planning, for the removal of a restrictive Title Deed condition of Portion 35 of the Farm No.633 in order to accommodate a water bottling plant;
- In terms of Act 21 of 40 we are also applying for an approval from the District Roads Engineer to use the farm as an industry and also to encroach the 94.46m (300 Cape Feet) offset line from the trunk road, the R43.

3. GENERAL APPLICATION INFORMATION

3.1 PROPERTY DESCRIPTION

Portion 35 of the Farm No.633 is situated between Voëlklip and Stanford, north of - and abutting the R43. Please refer to the enclosed locality map.

The farm is 2.2471ha in extent and is being used mainly to bottle water. An existing building situated on the northern portion of the site in close proximity of the western boundary has been used as a bottling plant since 2005. The first floor of the bottling plant is being used as a residence for the manager. A wooden shed is located east of the existing bottling plant that is being used as a staff room. The existing shed situated in the centre of the farm is being used as storage.

3.2 ZONING

The subject farm is zoned Agriculture Zone 1 and has the following primary land use rights and consent uses:

- (a) **Primary uses** are: agriculture, dwelling house, day care centre, guest rooms, home occupation;
- (b) **Consent uses** are: additional dwelling units, agricultural industry, animal care centre, aquaculture, crèche, farm shop/stall, guest house, hotel, institution, intensive animal farming, intensive horticulture, mining, place of assembly, place of entertainment, place of instruction, plant nursery, riding stables, rooftop base station, service trade, tourist accommodation, tourist facilities, transmission tower, utility services, wellness centre, 4 x 4 trail.

3.3 LAND USE

As mentioned above, the farm is being used to bottle water for the last 12 years under different ownerships. The farm was bought in 2015 as a running concern that included the staff. The farm is mainly used to bottle water that is sourced from a borehole on the farm. The borehole is located ±25m east of the existing water bottling plant as indicated on the enclosed site plan.

The predominant uses of farms in the area are residential and agricultural with associated tourist facilities such as restaurants, wineries, wedding venues and tourist accommodation.

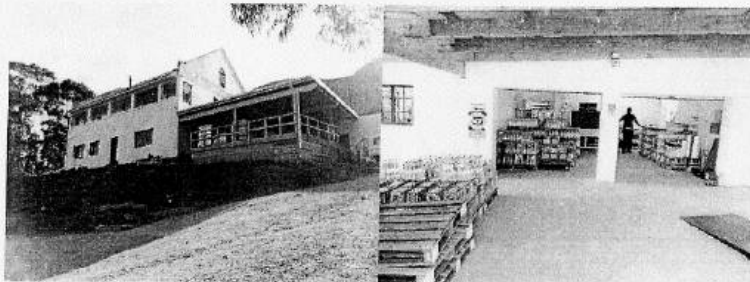
3.4 PROPOSED DEVELOPMENT

- Section 16(2)(o) of the Overstrand Municipal By-law on Municipal Land Use Planning, for a consent use of Portion 35 of the Farm No.633 in order to accommodate a water bottling plant;
- Section 16(2)(b) of the Overstrand Municipal By-law on Municipal Land Use Planning, for a departure from the lateral building line of Portion 35 of the Farm No.633;
- Section 16(2)(f) of the Overstrand Municipal By-law on Municipal Land Use Planning, for the removal of a restrictive Title Deed condition of Portion 35 of the Farm No.633 in order to accommodate a water bottling plant;
- In terms of Act 21 of 40 we are also applying for an approval from the District Roads Engineer to use the farm as an industry and also to encroach the 94.46m (300 Cape Feet) offset line from the trunk road, the R43.

3.4.1 CONSENT USE

As mentioned earlier in this report, Portion 35 of the Farm No.633 was used to bottle water since 2005. For 12 years water was bottled under a number of different companies and was purchased as a running concern. The property was transferred to Mountain Falls Estate Proprietary Limited in 2015.

The ground floor of the existing building situated on the northern portion of the farm in close proximity of the western boundary accommodates the water bottling plant. Please refer to the photograph below of the existing bottling plant.





The water that is being bottled is sourced from a borehole. that the water is filtered and then either bottled as still water or carbonated water (Sparkle Water). The borehole is located $\pm 25\text{m}$ east of the water bottling plant. The water does not go through a chemical process and no additives are added. Previously 600m^3 per annum water was bottled and it estimated that the use could escalate to a 1000m^3 and 2000m^3 per annum.

Michelle Naylor from Lornay Environmental Consulting has been appointed by the owner to deal with the necessary registration of the water usage. They are currently in the process to determine the exact future usage of water after which an application will be lodged for a General Authorisation or a Full Water Use License Application in terms of the National Water Act (Act 36 of 1998), General Authorisation issued in terms of Section 39 of the NWA, Notice 538 of 2016, Government Gazette No. 40243 of 2 September 2016 for the taking and storing of Water.

The footprint of the current bottling plant situated on the ground floor consists of $\pm 320\text{m}^2$ floor space. The bottling of water is semi automated and currently provides 30 jobs of which positions vary from factory staff, admin personnel and managers. Some of the employees have been working at the water bottling plant since 2005 and continued working at the plant after it was purchased by Mountain Falls Estate Proprietary Limited in 2015. Water is bottled in a variety of plastic bottles (PET Bottles) and glass bottles in the following sizes:

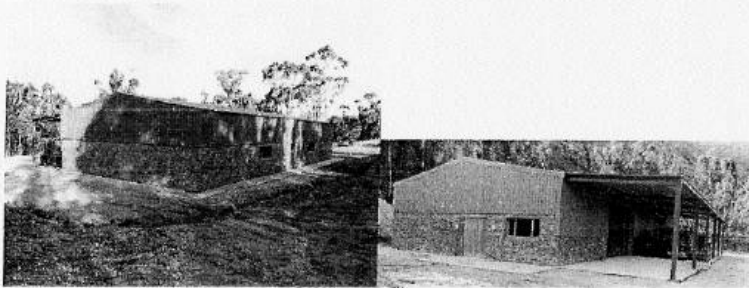
- 300ml
- 330ml
- 500ml
- 750ml

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Motivation report

- 1 liter
- 5 liter
- 19 liter

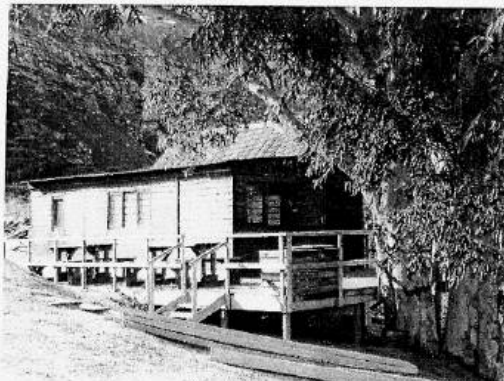
A new shed was also constructed approximately in the centre of the farm portion that covers $\pm 435\text{m}^2$. The shed consist of an inside area of $\pm 310\text{m}^2$ and a covered stoep of $\pm 125\text{m}^2$. Please refer to the photographs of the shed below:



The shed is currently used for storage purposes only. It is the intention of the owner to expand the bottling plant to the new shed. The extension of the bottling plant into the new shed will entail a fully automated bottling plant making use of the $\pm 310\text{m}^2$ internal space.

The existing bottling plant situated on the northern portion of the Farm in close proximity of the western farm boundary will be retained. Water usage of water being bottled will then increase from the 600m^3 per annum to $\pm 2000\text{m}^3$ per annum. The exact quantity of water to be bottled will be finalised before Lornay Environmental Consulting will submit their application for authorisation to take and store water on the farm. We will keep the Overstrand Municipality informed of the progress regarding the water usage licence application.

The existing wooden shed located directly east of the existing bottling plant is being used as a staff room. Please refer to the photograph below:



The wooden shed is not used for accommodation purposes for staff members but a facility where they make coffee, heat up their lunch and store their boots and aprons. The shed is also partially used as a gardening shed where gardening tools such as a weed eater, wheelbarrow etc. are stored.

In order to accommodate the existing bottling plant, the existing shed to be used as an automated bottling plant and the associated wooden shed being used as a staff room it is required that we apply for a consent use for an Agricultural Industry as being provided for under the current zoning that is Agriculture Zone 1.

3.4.2 DEPARTURE

The farm is 2.2471ha in extent and in terms of the Overstrand Municipality Zoning Scheme under a zoning of Agriculture Zone 1, the building line alongside any boundary is 10m. With reference to the approved building plans depicting the existing bottling plant as a dwelling no measurement is given for the distance of the building from the western boundary line. When the approved building plan is scaled it is approximate $\pm 10-12\text{m}$ from the said boundary. However, looking at the aerial photograph the existing bottling plant appears to be closer to the boundary and when measured it is $\pm 5\text{m}$ from the western boundary line.

We are therefore applying for a building line relaxation of the western boundary building line from 10m to 5m to accommodate the existing bottling plant.

3.4.3 REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION

The Title Deed, T919/2015 has a restrictive Title Deed restriction that limits the type of buildings that may be erected on the farm. This condition is found on Page 5, Paragraph E., and reads as follows:

"The land shall be subject to the following condition which may be amended or relaxed by the Administrator: No building other than one dwelling for use by a single family together with such outbuildings as are ordinarily required to be used therewith may be erected on this Land."

In order to legalise the water bottling plant, staff room and to expand the water bottling plant into the existing shed it would be required that the above mentioned Title Deed restriction be removed.

3.4.4 APPLICATION FOR APPROVAL IN TERMS OF ACT 21 OF 1940

Title Deed, T919/2015 has the following conditions imposed by the Controlling Authority in terms of Act 21 of 1940. The conditions are on page 4 Paragraph D.2, D.3, D.4. and reads as follow:

D.2. "Not more than one dwelling house together with such outbuildings as are ordinarily required to be used in connection therewith, shall be erected on the land except with the written approval of the Controlling Authority as defined in Act No. 21 of 1940."

D.3. "The land shall be used for residential and agricultural purposes only, and no store or place of business or industry whatsoever may be opened or conducted on the land without the written approval of the Controlling Authority as defined in Act No.21 of 1940."

D.4. "No building or structure whatsoever, shall be erected within a distance of THREE HUNDRED (300) Cape Feet from the centre line of the road, without the written approval of the Controlling Authority as defined in Act 21 of 1940."

The above mentioned conditions imposed by the Controlling Authority in terms of Act 21 of 1940 restrict the use of the property to residential use, it only permits one dwelling with associated structures and also imposes a building line. The existing bottling plant, being in operation since ± 2005 , and the new shed, to be used as automated water bottling plant, contradicts the above 3 conditions. We are therefore applying for the approval of the Controlling Authority for the following:

- To permit the existing bottling plant, staff room and new shed to be used as an automated bottling plant.
- That the land be used for Agriculture Industrial use.
- That the 300 Cape Feet ($\pm 94.46\text{m}$) building line measured from the centre line of the R43 be encroached by $\pm 12\text{m}$ to accommodate the existing shed. The shed to be used as an automated bottling plant is located $\pm 82.46\text{m}$ from the centre line of the R43.

3.5 CHARACTER OF THE ENVIRONMENT

Portion 35 of the Farm No. 633 is situated within an a rural area between Voëlklip and Stanford abutting the R43. The farm portions in the vicinity are small and are not actively farmed. The main land use is residential, tourist accommodation and tourist facilities. Larger farm portions situated towards the north are mountainous and consist of natural veld. Farms in a closer proximity of Stanford are actively farmed and have also diversified in order to provide a number of tourist related uses that also includes tourist accommodation and tourist facilities.

The land use of Portion 35 of the Farm No.633, Agriculture Industry, as described above is compatible with the land use tendency of the area. The proposal will not have a negative impact on the character of the area.

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

Portion 35 of the Farm No.633 has been used to bottle water under different ownership for the last 12 years as mentioned in this report. Our client, Mr. Michael Beatham has been renting the farm since December 2012 as a running concern as a bottling plant with all its employees.

He established Mountain Falls Estate (Pty)Ltd in 2014 and decided to purchase the farm that was transferred in 2015 as a running concern under the impression that the land use rights have been established. After being notified that the current land use was illegal, Mr. Beatham appointed us to rectify the matter.

The farm as previously mentioned is situated within a rural area located between Voëtklip and Stanford. The water bottling plant provides 30 jobs within an area where permanent job opportunities are scarce. The water bottling plant is a clean operation and does not generate excessive noise. Therefore the existing land use is compatible with current land uses found in the area as mentioned before.

In the light of the above it is clear that the proposed consent use, building line departure, removal of a restrictive Title Deed condition and approval in terms of Act 21 of 1940 can be supported from a desirability point of view due to the fact the proposal is in line with land use tendencies within the area and that it is also compatible with the current land uses.

3.7 IMPACT ON EXTERNAL ENGINEERING SERVICES

3.7.1 PROVISION OF SERVICES

The agricultural industry (water bottling plant) as described above is established within the existing building located on the northern portion of the Farm in close proximity of the western boundary.

It is proposed that the existing shed, currently being used for storage purposes, be used as an automated bottling plant in the future. All services already exist and no additional services will be required.

3.7.2 TRAFFIC IMPACT, PARKING AND ACCESS

This application consist of a consent use, building line departure, removal of a restrictive Title Deed condition and approval in terms of Act 21 of 1940 to legalise the existing bottling plant, staff room and to use the existing store as an automated bottling plant that has a total floor area of $\pm 630\text{m}^2$.

With reference to the Overstrand Municipality Zoning Scheme 2 parking bays per 100m^2 will have to be provided. With reference to the mentioned parking bay requirements it is calculated that 14.6 parking bays be provided. The number of parking bays were calculated as follows:

- $\pm 630\text{m}^2$ GLA @ 2 bays / 100m^2 GLA = 12.6 Parking Bays
- 2 Parking Bays for the Manager who resides on the first floor of the bottling plant. Only the ground floor is being utilised as a bottling plant.

With reference to our site development plan 15 parking bays are provided on-site. Enough space has been provided at the existing water bottling plant and the existing shed for delivery vehicles to load and despatch the bottled water. Mountain Falls Estate (Pty)Ltd currently makes use of a VW Caddie, a 1 Ton Kia Truck and a 8 Ton Truck for delivery purposes. The 1 Ton Kia truck and VW Caddie are used on a daily basis for delivery purposes in die Overberg area and the 8 Ton truck is used 3 times a week for the delivery of water in the City of Cape Town Municipal area.

Employees of the bottling plant are picked up at their homes and brought to work and also taken home after their shifts on a daily basis.

The agricultural industry will not create a significant increase in traffic using the R43 and the impact on traffic flow will be minimal.

3.8 TITLE DEED

There is one restrictive title deed condition in Title Deed No. T919/2015 that will have to be removed to legalise the use of the property as an Agriculture Industry. The restrictive Title Deed condition limits the type of buildings that may be erected on the farm.

This condition is found on Page 5, Paragraph E., and reads as follows:

"The land shall be subject to the following condition which may be amended or relaxed by the Administrator: No building other than one dwelling for use by a single family together with such outbuildings as are ordinarily required to be used therewith may be erected on this Land."

In order to legalise the water bottling plant, staff room and to expand the water bottling plant into the existing shed it would be required that the above mentioned Title Deed restriction be removed.

The Title Deed also have the following conditions imposed by the Controlling Authority in terms of Act 21 of 1940. The conditions are on page 4 Paragraph D.2, D.3, D.4. and reads as follow:

D.2. "Not more than one dwelling house together with such outbuildings as are ordinarily required to be used in connection therewith, shall be erected on the land except with the written approval of the Controlling Authority as defined in Act No. 21 of 1940."

D.3. "The land shall be used for residential and agricultural purposes only, and no store or place of business or industry whatsoever may be opened or conducted on the land without the written approval of the Controlling Authority as defined in Act No.21 of 1940."

D.4. "No building or structure whatsoever, shall be erected within a distance of THREE HUNDRED (300) Cape Feet from the centre line of the road, without the written approval of the Controlling Authority as defined in Act 21 of 1940."

The above conditions have been addressed in paragraph 3.4.4 above.

There is a bond registered against Portion 35 of the Farm No.633. The bondholder's consent has been requested and will be forwarded to the Overstrand Municipality on receipt thereof.

3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.9.1 HERITAGE VALUE

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

In the light of the above mentioned it is evident that the proposed consent use, building line departure, removal of a restrictive Title Deed condition and approval in terms of Act 21 of 1940 in order to legalise the bottling plant, staff room and the use of the shed as a future automated bottling plant will not have a negative impact on the heritage value of the subject properties.

3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

It is our opinion that the proposed consent use, building line departure, removal of a restrictive Title Deed condition and approval in terms of Act 21 of 1940 do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

3.10 FORWARD PLANNING AND LAND USE DOCUMENTS

The *Overstrand Spatial Development Framework (2006)* earmarks the area where Portion 35 of the Farm No. 633 is situated, as an Agricultural Core area. The application consists of a consent use, building line departure, removal of a restrictive Title Deed condition and approval in terms of Act 21 of 1940. The existing Agriculture Zone I zoning will be retained.

The *Overstrand Municipal Growth Management Strategy (OMGMS, 2010)* does not address areas outside the urban edge and is therefore not applicable

From the above it is evident that the proposed consent use, building line departure, removal of a restrictive Title Deed condition and approval in terms of Act 21 of 1940 in order to legalise the bottling plant, staff room and the use of the shed as a future automated bottling plant adheres to the spatial planning policies for the area and consequently falls within the existing planning for the area.

3.11 PLANNING PRINCIPLES

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

Spatial Justice: The agricultural industry creates additional employment opportunities for the local residents of the area.

Spatial sustainability: The agricultural industry is located within existing structures and the expansion thereof will also be accommodated within an existing shed and within an established rural area consisting of many auxiliary land uses to the primary agricultural land uses. The proposed applications will have no impact on the conservation worthy areas and the land use will be in line with the rural character of the area.

Efficiency: The proposed agricultural industry is easily accessible and conveniently located in a rural area. With reference to the last mentioned makes it much more viable to transport the bottled water from the farm. The water bottling plant is located within an existing structure and the proposed expansion of the water bottling plant will be located within the existing shed as described in this document that is currently used for storage purposes.

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

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

4. RECOMMENDATION

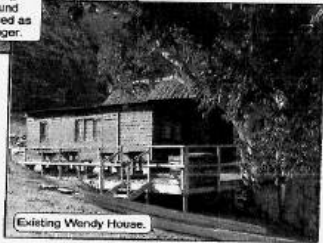
When this application is evaluated it is important to take note of the following:

- No additional services are required and the agricultural industry will be located within the existing structures;
- The zoning of the farm portion will be retained;
- The proposed consent use, building line departure, removal of a restrictive Title Deed condition and approval in terms of Act 21 of 1940 do not have a negative impact on the farm or the surrounding land uses of other farms in the area and will be beneficial to the subject farm;
- The agricultural industry currently provides permanent jobs for 30 people.
- The agricultural industry consists of the bottling of water that goes through a filtering process. No effluent is generated to be treated as would be the case with a winery or brewery.
- The proposal is compatible with the existing built character of the area.
- The application is to accommodate a use that existed since 2005. The spring was however set up in 1998 and it is possible that the bottling of water was operational since then.
- In the past 12 months Mountain Falls Estate (Pty)Ltd has contributed R3.7 million directly into the Hermanus economy through their staff members' salaries and wages along with service providers contracted to Mountain Falls Estate (Pty)Ltd.
- Not factored into the above figure, is that Mountain Falls Estate (Pty)Ltd supports 165 local clients whom they supply with water that contributes additional value into the local market economy and they also support a number of schools and associations in Hermanus with the sponsorship of water.

It is our opinion that the proposal for the agricultural industry can be supported for your favourable evaluation as it would have no negative impact on the surrounding farms.



Existing building being used as a water bottling plant on the ground floor. The first floor is being used as accommodation for the manager.



Existing Wendy House.



Existing New Shed.



Existing access from the R43.

NOTES:

Parking Requirements:
Existing Bottling Plant = ±320m²
New Shed = ±310m²
TOTAL = ±630m²

Parking Required = 2 Bays / 100m² GLA
±630m² GLA = 12.6 Parking Bays
Owner / Manager Residing on the property = 2
Total Parking Bays Required = 14.6m²
Parking Bays provided = 15

All distances approximate and subject to survey.
COPY RIGHT RESERVED

Property Description:
**PORTION 35 OF
THE FARM 633**

Plan Description:
**SITE
PLAN**

Scale: **1:15 000**
Drawing No: farm633p35.dwg
Date: xxxxxxx



Annexure D1/6

801 HENNIE OOSTHUIZEN

Vorster & Steyn
Mitchell House
16 Mitchell Street
HERMANUS

Prepared by me

7200	Fee and/or commission Amount:	Office fee
Purchase price/Value	R 2 695 000,00	
Mortgage capital Amount		
Reason for exception		Exempt t.t.o
	City	section Act

Hendrik Malherbe Oosthuizen
 CONVEYANCER
 HENDRIK MALHERBE OOSTHUIZEN

VERBIND MORTGAGED	
VIA FOR R 3 000 000,00	
B 000000587 / 2015	<i>[Signature]</i> REGISTRAR OF DEEDS
3 2015-01-16	

T 000000919 / 2015

DEED OF TRANSFER

DATA / VERIFY
 03 Feb 2015
 OLIVIER YOLANDI

BE IT HEREBY MADE KNOWN THAT

Johannes Hendrik Blaauw

appeared before me, REGISTRAR OF DEEDS at Cape Town, the said appearer being duly authorised thereto by a Power of Attorney which said Power of Attorney was signed at HERMANUS on 22 SEPTEMBER 2014 granted to him by

BLUE CHAMELEON INVESTMENTS NUMBER 104 CC
Registration Number 2001/069293/23

DATA / CAPTURE
 26 JAN 2015
 LEEUWD

And the appearer declared that his said principal had, on 4 August 2014, truly and legally sold by Private Treaty, and that he, the said Appearer, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

MOUNTAIN FALLS ESTATE PROPRIETARY LIMITED
Registration Number 2014/025932/07

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

**PORTION 35 (A PORTION OF PORTION 16) OF THE FARM ROCKLANDS
 NUMBER 633 in the Overstrand Municipality, Division of Caledon,
 Western Cape Province**

IN EXTENT 2,2471 (TWO COMMA TWO FOUR SEVEN ONE) Hectares

**FIRST TRANSFERRED BY Deed of Transfer No T22483/1997 with Diagram
 SG 148/91 relating thereto and held by Deed of Transfer No T11617/2008**

- A. **SUBJECT** to the conditions referred to in Deed of Partition Transfer No T4779/1944.
- B. **SUBJECT FURTHER** to the Servitude, an Endorsement whereof dated 10th March 1932, was made on Deed of Transfer No T7696/1913, which reads as follows:

"By Deed of Transfer No T 1387 dd. 10.3.1932 a condition has been imposed whereby all water arising on the property thereby transferred shall be allowed to flow free and undisturbed onto the remainder held hereunder as will more fully appear on reference to the said Deed of Transfer."

- C. **SUBJECT FURTHER TO AND ENTITLED** to the benefit of the following special conditions as mentioned in Deed of Partition Transfer No T4779/1944, imposed by Arthur Wilkinson and Louis Elizabeth Steyn, born Wilkinson, married out of community of property to Douw Petrus Jacobus Steyn, for their benefit and for the benefit of their successors in title, and which conditions have been amended with regard to the property hereby transferred, as more fully set out hereafter, which conditions read as follows:
- (a) in respect of the water to which the farm Rocklands, situate in the Division of Caledon was heretofore entitled out of the farm Rocklands Stream which flows over Portion 4 of the farm Rocklands, situate in the Division of Caledon, this day transferred (No 4778) and indicated on the diagram thereof (No 1943/1943).

Page 3

- (i) the said Portion 4 of the farm Rocklands, situate as above, this day transferred (No 4778) shall be entitled to four and half (4 ½) days water in each week, and
- (ii) the property conveyed shall be entitled to two and one half (2 ½) days water in each week

and shall be used as follows:

PORTION 4:

Monday from 6 a.m. to Tuesday 6 p.m.
 Wednesday from 6 a.m. to Friday 6 p.m.
 Saturday from 6 a.m. to Sunday 6 p.m.

REMAINING EXTENT:

Tuesday from 6 a.m. to Wednesday 6 a.m.
 Friday from 6 a.m. to Saturday 6 a.m.
 Sunday from 6 a.m. to Monday 6 a.m.

The Transferee or his successors in title as owner of the property hereby transferred, shall be entitled to 20 hours water per week in regard to those water rights to which the property known as

CERTAIN piece of redeemed quitrent land, being the remainder of the farm Rocklands, situate in the Division of Caledon

MEASURING as such Hundred and Eighteen decimal one eight three nought (118,1830) morgen

is entitled and as held by Louis Elizabeth Steyn, born Wilkinson, married out community of property to Douw Petrus Jacobus Steyn under Deed of Partition Transfer No T4779/1944.

- (b) In respect of the water to which the farm Rocklands, situate in the Division of Caledon was heretofore entitled out of the stream known as the "Waterfall Stream" which flows over the property hereby conveyed –
 - (i) Portion 4 of the farm Rocklands, situate in the Division of Caledon, this day transferred (No 4778), shall be entitled to two and one half (2 ½) days water in each week, and
 - (ii) the property hereby conveyed shall be entitled to four and one half (4 ½) days water in each week,

and shall be used as follows:

PORTION 4:

Tuesday from 6 a.m. to Wednesday 6 a.m.
 Friday from 6 a.m. to Saturday 6 a.m.
 Sunday from 6 a.m. to Monday 6 a.m.

REMAINING EXTENT:

Page 4

Monday from 6 a.m. to Tuesday 6 p.m.
 Wednesday from 6 a.m. to Friday 6 p.m.
 Saturday from 6 a.m. to Sunday 6 p.m.

The Transferee or his successors in title as owner of the property hereby transferred is not entitled to any water rights out of the stream known as "Waterfall Stream" as the property hereby transferred has been sold without any water rights in regard to those water rights to which the property known as

CERTAIN piece of redeemed quitrent land, being the remainder of the farm Rocklands, situate in the Division of Caledon

MEASURING as such Hundred and Eighteen decimal one eight three nought (118,1830) morgen

is entitled and all these water rights are reserved in favour of Louis Elizabeth Steyn, born Wilkinson, married out of community of property to Douw Petrus Jacobus Steyn and her successors in title as owner of the remainder of the property hereabove set out and held by her under Deed of Partition Transfer No T 4779/1944:

"(c) The owner of Portion 4 of the farm Rocklands, situate in the Division of Caledon this day transferred (No 4778) and his successors in title shall construct and maintain a Chamber for the division of the Rocklands Stream water and shall give the owner of the property hereby conveyed the right to build and maintain a furrow over his land with right of access thereto and to the said Chamber.

In like manner the owner and her successors in title of the property hereby conveyed shall construct and maintain a Chamber for the division of the "Waterfall Stream" water and shall give to the owner and his successors in title Portion 4 of the farm Rocklands situate, as above, this day transferred (No 4778) the right to build and maintain a furrow over the property hereby conveyed with the right of access thereto and to the said Chamber."

D. SUBJECT FURTHER to the following conditions contained in the said Deed of Transfer No T 12289/1965, imposed by the Controlling Authority in terms of Act 21 of 1940, namely:

1.
2. Not more than one dwelling house together with such outbuildings as are ordinarily required to be used in connection therewith, shall be erected on the land except with the written approval of the Controlling Authority as defined in Act No 21 of 1940.
3. The land shall be used for residential and agricultural purposes only, and no store or place of business or industry whatsoever may be opened or conducted on the land without the written approval of the Controlling Authority as defined in Act No 21 of 1940.

4. No building or structure whatsoever, shall be erected within a distance of THREE HUNDRED (300) Cape Feet from the centre line of the road, without the written approval of the Controlling Authority as defined in Act 21 of 1940."

- E. **SUBJECT FURTHER** to the following conditions contained in the said Deed of Transfer No T 12289/1965, imposed in terms of Section 196 of Ordinance 15 of 1952 and enforceable by the Divisional Council, Caledon, and in favour of the Administrator:

"The land shall be subject to the following condition which may be amended or relaxed by the Administrator:

No building other than one dwelling for use by a single-family together with such outbuildings as are ordinarily required to be used therewith may be erected on this Land."

- F. *Subject to the following conditions:-*

- G. **SUBJECT FURTHER** by virtue of Notarial Deed of Cancellation and Registration of Servitude No. K181/2005 to the following conditions:

- (a) A perpetual servitude of electric power transmission and telecommunication in favour of Eskom together with ancillary rights, and subject to conditions as will more fully appear from said Notarial Deed.

- H. **SUBJECT FURTHER** by virtue of Notarial Deed of Servitude No. ~~K181~~ K182/2010S to the following conditions:-

- (a) That the route of the electric power transmission servitude created in Notarial Deed of Servitude No. K181/2005 has now been determined and is to be described as an electric power transmission servitude 11 metres wide on each side of the line ab, being the centre line of servitude as indicated on servitude diagram SG No. 1090/2010 annexed to Notarial Deed of Servitude No. ~~K181~~ K182/2010S.

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

BLUE CHAMELEON INVESTMENTS NUMBER 104 CC
Registration Number 2001/069293/23

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

MOUNTAIN FALLS ESTATE PROPRIETARY LIMITED
Registration Number 2014/025932/07

or its Successors in Title or assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R2 695 000,00 (TWO MILLION SIX HUNDRED AND NINETY FIVE THOUSAND RAND).

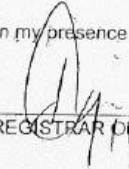
IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at Cape Town on 16 January 2015



q.q.

In my presence



REGISTRAR OF DEEDS

Annexure E 1/40

**Alida Conradie - Municipal Notice No 85/2019 - Portion 35 of Farm 633, Rocklands:
Proposed Removal of Restrictive Conditions**

From: "Elspeth Ivey" <reivey@iafrica.com> (P.A. Theart (S. del Marwe))
To: <aconradie@overstrand.gov.za>
Date: 2019/07/12 07:05 PM
Subject: Municipal Notice No 85/2019 - Portion 35 of Farm 633, Rocklands: Proposed Removal of Restrictive Conditions
Cc: "Elspeth Ivey" <reivey@iafrica.com>, "Robin Lapping" <robinlapping@gmail...>
Attachments: HLPOA - Application for Consent Use Farm 633-35 July 2019_0.pdf



The Municipal Manager
 Overstrand Municipality
 P O Box 20,
 Hermanus
 7200

Attention: A Conradie
aconradie@overstrand.gov.za

Dear Sir/Madam

MUNICIPAL NOTICE NO. 85/2019 : Removal of Restrictive Conditions, Consent Use, Departure and Application for Approval on Portion 35 Farm 633, Rocklands

The Hermanus Lagoon Property Owners' Association (HLPOA) request to be listed as an Interested and Affected Party (I&AP) with regard to the above Application. Although we note that it is stated that it is not likely that the Application will trigger any listed activities (3.9.2.) for the reasons given below, HLPOA request to be kept informed of the process of this application.

Attached please find the comments, concerns and conclusions with regard to the above Proposals. Thank you for the opportunity to submit this Attachment. Please acknowledge receipt of this e-mail.

Regards

E L I Ivey
 Hermanus Lagoon Property Owners' Association, Executive Committee

15 JUL 2019

FILE NO:	PH 35/633 Rocklands
SCAN NO:	
COLLABORATOR NO:	1302271

file:///C:/Users/aknoetze/AppData/Local/Temp/XPgrpwise/5D28DA07HermanusMun... 2019/07/15

①

PROPOSED CONSENT USE: DEPARTURE REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION AND APPROVAL IN TERMS OF ACT 21 OF 1940 PORTION 35 OF THE FARM NO. 633
DIVISION: OVERSTRAND MUNICIPALITY Municipal Notice: 85/2019

The members of the Hermanus Lagoon Property Owners' Association are landowners on the shores of the Kleinrivier Estuary, north and south, and are directly interested primarily in the good health of the Estuary and secondly in the preservation and maintenance of the natural environment which surrounds the Estuary.

Portion 35 of the Farm No. 633 is situated in the Kleinriver Catchment Area, situated between the Kleinriviersberg and the Kleinrivier Estuary. (Section 3.5 and 3.9.2). The water from this area is an important source of the inflow water to the Estuary, thus our interest and concern of any development within the Kleinrivier Catchment Area. Our concerns, comments and questions are listed below:-

Legality: 1.1 It is noted that currently the land use and the water use are illegal. The application for Consent Use should be considered as a New Application and consideration not be given to the fact that a bottling plant already exists. This is recommended to prevent further illegal activities being started in the area, with the expectation that later they will be approved because of their current existence.

1.2. It seems that the Zoning with the Application for Consent Use (3.2) and the Application for the removal of the Restrictive Title Deed condition are linked. If the Consent Use is approved then it follows that the Restrictive Title Deed condition should be removed to enact the Consent Use.

2. It is proposed to increase the production of bottled water from 600 m3 annually to up a possible 2000 m3 annually. This is an increase of 300% which will have an impact on prevailing conditions.

Water: The property Property 35 of Farm No 633 is within the Kleinrivier Catchment Area and the water for the water bottling plant is taken from boreholes. We are informed a second borehole exists, for both of which there is no Water Users' Licence.

Application for the necessary registration of water usage is being processed by Michelle Naylor of Lornay Environmental Consulting (3.4.1 Consent Use)

We submit that an **Approved Water Use Licence** (National Water Act (Act 36 of 1998; Section 39 of the NWA; Notice 538 of 2016, Government Gazette No.40243 of 2 September 2016) is a **prior condition** before further consideration is given to the Application for Consent Use. Without permission to use the water from the boreholes, the application for the production of bottled water is without purpose.

Extraction of Water: The health of the Kleinrivier Estuary is dependent on the inflow of water, not only from the Klein River but also from the mountain streams and seepage of water of the Kleinriviersberg, the Catchment Area. The property under discussion lies between two such mountain streams, the main stream Rocklands Stream is one of the five strongest streams supplying water to the Estuary. During recent years the Estuary has experienced an increasing problem of lack of water, one reason being the extraction of water for development and agriculture. Therefore the extraction of water from the borehole **must be approved, carefully monitored and controlled.**

Pollution of Water: Filtration - The water from the borehole is filtered and does not go through a chemical process and no additives are added. (3.4.1 Consent Use).

What is the method of filtration?

What method is used to dispose of the debris which is filtered out of the water?

Health and Sanitation – it is noted that there are 30 members of staff. *What ablution facilities are available for these staff members? What is the method of disposal of sewage and waste materials?*

Zoning: The property is zoned Agriculture 1 and the Consent Uses include agricultural industry. *We question if water bottling is an Agricultural Industry or is it an Industrial Industry?*

We further question the number of buildings on the size of the property, zoned Agriculture 1.

We submit that the Bottling Plant may be an Industrial Industry and therefore we object to the approval of Consent Use on Agriculture 1.

-2-

We question if Zone Agriculture 1 is currently the correct Zonation for the property, given the size of the property, 2.247 ha, and the area of the property covered by buildings? What in the past was the appropriate zoning is no longer perceived as correct.

The Zoning will remain unchanged if the application for Consent Use -Agricultural industry is approved. All relevant conditions to Agriculture 1 Consent Use must be applied, monitored and controlled.

Buildings: It is noted that the Property is 2.247 in size. Currently there are three structures on the property.

1. A building, 320 m2, on the northern boundary which is used for residence and water bottling plant. Use to remain unchanged.

2. A wooden shed used as a staff room – Ablution facilities are questioned?

3. Newly constructed shed, 310 m2 enclosed, with 125 m2 as an open stoep, which is used as storage space. Proposed Use to change to automated bottling plant. -

Currently it is used for storage, *where will bottles be stored when the shed is no longer available?*

The land usage determines the number of buildings on a property relative to its size. The proposed development must conform to the conditions of the Zoning and Land Usage.

Staff: It is proposed to increase the production up to 300%. (3.4.1) An automated bottling plant is to be introduced.(3.4.1) *What impact will these two factors have directly on the number of staff employed and indirectly on the buildings and the environment?*

Natural Environment: Portion 35 of Farm No.633 lies above the R43 on the foothills of the Kleinriviersberg mountains. Below the R43 are the farm portions in the vicinity, which are small and not actively farmed but are developed. Above the R43 there is undeveloped natural fynbos on the foothills of the mountain range. In this rural area the R43 forms a natural barrier between the developed section and the open section of natural veld. In this natural area, Portion 35 Farm No.633 is an exception being developed (above the R43) in the fynbos and strict conditions must be required, when the Application is considered and if Approved, to curtail further intrusion into the natural veld.

Road: Currently the R43 is undergoing major road works and upgrading, with the use of a by-pass road, affecting the entrance to the property. Increased production of the water bottling works will increase the number of deliveries of bottles, empty and filled, which in turn will increase road usage and the potential for accidents from a "concealed" entrance. The entrance to Mountain Falls is concealed by trees and it is up a steep slope which gives difficult access. Careful consideration and conditions of Approval must be given by the District Roads Engineer.

Conclusion:

- An Approved Water Use Licence (National Water Act (Act 36 of 1998) must be in place before further consideration is given to the development of a water bottling plant on Property Portion 35 of Farm No.633
- Section 16 (2)(o) Overstrand Municipal By- Law on Municipal Land Use Planning for a Consent Use AND
- Section 16 (2)(f) Overstrand Municipal By- Law on Municipal Land Use Planning for a the removal of a restrictive Title Deed condition ARE LINKED. If Consent Use is given the restrictive title must be removed to enable the consent use to be enacted.
- Section 15 (2)(b) Overstrand Municipal By- Law on Municipal Land Use Planning for a departure from the lateral building line may be approved only on Condition there is no further departure on any building line surrounding the property. This decision must not set a precedent for future usage in the area.
- Approval from the District Road Engineer must be given particularly in view of the proposed increase in production with a resultant increase in road usage by the industry. Further the R43 is under construction with temporary and permanent change in road conditions which may impact on the access to the property.

TR A Theart
(S volmerwe)

Alida Conradie - RE: Municipal Notice 85/2019 Removal of Restrictive Conditions on Portion 35 of Farm 633, Rocklands.



From: "Bruce Ivy (private)" <bruce@ivy13.com>
To: <aconradie@overstrand.gov.za>
Date: 2019/07/16 03:42 PM
Subject: RE: Municipal Notice 85/2019 Removal of Restrictive Conditions on Portion 35 of Farm 633, Rocklands.
Cc: <estuaries@capenature.co.za>, "Robin Lapping" <robinlapping@gmail.com>...
Attachments: HLPOA - Application for Consent Use Farm 633-35 July 2019_1.pdf; Final_Klein_Estuary_Mouth_Managment_Plan_April 2018.pdf

The Municipal Manager,
 Overstrand Municipality
 P O Box 20
 Hermanus
 7200
 Attention Ms A Conradie (aconradie@overstrand.gov.za)
 Dear Sir/Madam

FILE NO:	Part 35/633
	Farm Rocklands
SCAN NO:	Farm 633
COLLABORATOR NO:	1302831

Municipal Notice No. 85/2019 - Removal of Restrictive Conditions Portion 35 of Farm 633, Rocklands.

I am a member of the Hermanus Lagoon Property Owners' Association. I live nearby on Lagoon Lodge erf 633/19, which I own, close to the property in question. I support the comments and concerns made in the attached letter from the HLPOA Executive Committee and I also wish to register the following as my individual comment in addition to those of the HLPOA Exco.

Please acknowledge receipt of this email.

I am incredulous that taxpayers money is being wasted even considering this application. The applicant is clearly criminal.

1. The estuary is already strained to its limits due to a desperate shortage of water to breach the river mouth used to breach yearly. Please refer to the exhaustive environmental report attached, produced at great expense and trouble by the Western Cape Government and which screams for every drop of water possible.
2. It is unlikely to be a coincidence that the estuary has suffered most severely in the last 12 years, exactly when this illegal operation began.
3. The applicant is already applying for a 500% increase in burden on this already strained ecosystem.
4. The amount of water being bottled is very difficult to control and it will be in the applicant's interest and nature to understate it.
5. If one bottling plant is allowed to drain the water resources, to be sure others will wish to follow which will then be very difficult to refuse.
6. The dictionary definition of Agriculture is "Agriculture is the science and art of cultivating plants and livestock". I'm sure that it is not necessary to point out that pumping precious water out of the ground and bottling it in single use plastic bottles and diverting it from the catchment area does not fulfil any definition of agriculture anywhere in the world. Its INDUSTRY. This is NOT an INDUSTRIAL AREA.

16 JUL 2019

file:///C:/Users/aknoetze/AppData/Local/Temp/XP@rwise/5D2DF064HermanusMun... 2019/07/16

(2)

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7. The tourism industry in the area relies predominantly on the scenic nature of the area. Sanctioning industry (it is immaterial whether a bottling plant is referred to as Agricultural or Industry, from the outside this looks industrial). It is unsightly and will detract from the scenic nature of the area.
8. The water in the aquifer is required by the agricultural and tourism industry, both of which do not ship the water out of the area but rather return the water to the ground from which it comes, forming a natural part of the cycle in the area.
9. It stands to reason that for every job "created" by the automated bottling plant several existing incomes will be lost due to the long term cost to the agricultural and tourism industries in the area.
10. It is extremely unlikely that a plant bottling 600m³ per annum is sustaining 30 full time employees.
 - a. It would be less than 5000 bottles per day on a 5 day week with no overtime. Barely enough to keep 10 employees busy even if it were not automated at all. This can very easily be verified by asking for proof of UIF payments to SARS and verifying the claims with SARS
 - b. Either the automation or the number of employees or the volume of water is being misrepresented
11. There is no shortage of industrial areas in which such a bottling plant can be located while scenic areas in South Africa are disappearing rapidly. For good reason, almost all industrial areas are conveniently located close to sources of labour which are crying out for work.
12. This area is far from any labour sources. As a result any labour will be inclined to remain on the premises if possible adding further strain to the systems such as sewerage.
13. It stands to reason that if they are filtering the water they can use almost any water source and do not need to deplete a water source crucial to a delicate scenic estuary upon which many species and an entire tourist and agricultural industry are dependant.
14. The only motive for operating the business in this area is that the land is cheaper than industrial properties and they can exploit the free water from the aquifer for financial gain at considerable cost to all in the area. Furthermore, all that will do is undercut the prices of legitimate bottling factories which will lose whatever jobs erf 633/35 gains. Possibly more.
15. Far from being a reason to grant this "Proposed consent use, departure, removal" the fact that this industry has operated ILLEGALLY for 12 years, is itself grounds for denial. To even consider it would be entirely the wrong message for future transgressors. Ignorance of the law has NEVER been a defence let alone cause to waive the law that they are breaking.
16. Due diligence when buying a "going concern" is the onus of the buyer and the lack of due diligence indicates an irresponsible, opportunistic, unscrupulous business practice.
17. Millions of Rands of taxpayers money is being spent on making the R43 safer. They already have an 8 ton truck which needs to enter, or worse still, cross the R43 to head in the direction of Hermanus. They ADMIT to wanting to increase capacity by 300% (heaven only knows what they really will do given their track record) which will require a much larger truck doing more frequent collections and deliveries. This is NOT an INDUSTRIAL AREA. It does not have the infrastructure and there is none planned for ANYTIME in the future!!!

Please put a stop to this madness. This application should have been thrown out and measures taken against the owners long ago.

Regards

Bruce Ivy
+27 83 506 2883



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Mouth Management Plan Klein River Estuary

Final
April 2018

DOCUMENT DESCRIPTION**Document title and version:**

Klein River Estuary Mouth Management Plan

Project Name:

Western Cape Estuary Management Framework and Implementation Strategy

Client:

Western Cape Government, Department of Environmental Affairs & Development Planning

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Compiled by: CSIR**Lead Authors:**

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Pierre de Villiers

Acknowledgements:

Western Cape Government Environmental Affairs & Development Planning

Chief Directorate: Environmental Sustainability

Directorate: Biodiversity and Coastal Management

Email:

Date:

April 2018



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ABBREVIATIONS

CWAC	Co-ordinated Waterbird Counts
DAFF	Department of Agriculture, Forestry and Fisheries
DEA	Department of Environmental Affairs
DEA&DP	Western Cape Government's Department of Environmental Affairs & Development Planning
DWS	Department of Water and Sanitation
EIA	Environmental Impact Assessment
EIS	Estuary Importance Score
EMP	Estuary Management Plan
HAB	harmful algal blooms
I&AP	Interested and Affected Party
I&AP	Interested and Affected Party
KREF	Klein River Estuary (Advisory) Forum
MaintMP	Maintenance Management Plan
MAR	mean annual runoff
MMP	Mouth Management Plan
MSL	mean sea level
NEMA	National Environmental Management Act (Act No. 107 of 1998)
psu	practical salinity units
TOC	temporarily open closed

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1 OBJECTIVE OF THE MOUTH MANAGEMENT PLAN

STATEMENT OF THE PROBLEM

In the past decade it has become clear that mean annual runoff (MAR) into the Klein River Estuary has been reduced by an estimated 23% through freshwater abstraction, water impoundment and alien invasive plant infestation in the catchment area (Clark et al. 2015). Dampening of flood peaks and reduced base flows resulted in insufficient scouring of the estuary causing blocking of the mouth by marine sediments. This resulted in more frequent and longer periods of mouth closure which is often the case for temporarily closed estuaries (Clark et al. 2015).

The Klein River Estuary is still able to breach naturally given sufficient rainfall, although this may not occur in extremely dry years or dry periods. Nevertheless, given the reduction in MAR and the changes to sediment dynamics caused by stabilisation of the sand dune barrier, artificial breaching may be necessary in order to maintain the ecological processes of the estuary and its value as a nursery area for fish.

OBJECTIVE OF THE KLEIN MOUTH MANAGEMENT PLAN

To manage the estuary mouth as an integral part of the Klein River Estuary Management Plan that will maintain the healthy functional ecological processes of the estuary.

For the Klein River Estuary this means that its assessment rating should be consistent with a B Ecological Category defined as "Largely natural with few modifications" under the Department of Water and Sanitation's (DWS) A to F rating system. (Turpie & Clark 2007; Van Niekerk & Turpie 2012).

IS ARTIFICIAL BREACHING TO BE CONSIDERED AT THE KLEIN ESTUARY?	No	Yes
High water levels	x	
Floods (emergency)		x
Water quality (emergency)	x	
Fish Kills (at the discretion of the Department of Agriculture, Forestry and Fisheries (DAFF), given the classification as a nursery of medium importance)		x
IS A MAINTENANCE MANAGEMENT PLAN ¹ REQUIRED?	YES	

¹ As part of an authorisation in terms of the Environmental Impact Assessment (EIA) Regulations



KEY DATA /INFORMATION SOURCES

The information presented below has largely been drawn from the 2010-2015 Klein River Estuary Forum (KREF) breaching plan, which in turn has developed from historical CSIR studies, DWS water level data and a number of Breaching Indabas (2009, 2010). The KREF recommendations were reviewed and largely found to be sound and well founded.

The refinements were made based on the findings of the Klein River Estuary Ecological Water Requirement study (Clark et al. 2015). For example, the study found that the estuary is important for piscivorous birds which benefit from open tidal conditions. It also showed that the breaching plan should strive to facilitate open conditions in both the Klein River and Bot estuaries at the same time to assist with fish recruitment and genetic exchange.

KEY RECOMMENDATIONS IN SUPPORT OF THE KLEIN RIVER ESTUARY MOUTH MANAGEMENT PLAN

- Annual breaching of the Klein River Estuary ensures the provision of ecosystem services (e.g. nursery function) from this important system. It is therefore of critical importance that the freshwater flow to the Klein River Estuary be provided and where possible enhanced (e.g. removal of invasive alien vegetation in the catchment). This aspect needs urgent attention in the Classification of the Water Resources of the Breede/Gouritz Catchment.
- Poor water quality in the catchment and surroundings environs of the Klein River Estuary leads to prolific algal and macrophyte growth under closed mouth conditions and have also been linked to a large fish kill in the Klein River Estuary (Clark et al. 2015). Resource managers are therefore under significant pressure to artificially breach to address this issue. Note however, as per DWS and Department of Environmental Affairs (DEA) policy, poor water quality needs to be fixed at source to ensure future protection of the resource and breaching is not a solution. This principle was accepted at the last Indaba (2010) and confirmed at a public meeting in October 2017, where it was agreed that there will be no breaching to address water quality problems unless requested by DAFF as an emergency condition to ensure fish stock recovery.

KEY LEGISLATION RELEVANT TO THIS MOUTH MANAGEMENT PLAN

According to the National Environmental Management Act (No. 107 of 1998) ("NEMA"), viz. the Environmental Impact Assessment (EIA) Regulations 2014 (Government Notice No. R. 326, R. 327, R. 325 and R. 324 in Government Gazette No. 40772 of 7 April 2017), the following activities may not commence without an environmental authorisation from the competent authority:

The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock from:

- I. the seashore;
- II. the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater; or
- III. the sea.

but excluding where such infilling, depositing, dredging, excavation, removal or moving


- I. occurs behind the development setback line.
- II. is for maintenance purposes undertaken in accordance with a management plan agreed to by the relevant environmental authority; or
- III. falls within the ambit of activity 21 in this Notice, in which case that activity applies; occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or where such development is related to the development of a port or harbour, in which case Activity 26 in Listing Notice 2 of 2014 applies

[Listing Notice 1, Activity Number 18]

This Mouth Management Plan (MMP) would serve to support a formal application for authorisation to implement the interventions recommended in terms of the need for ecosystem maintenance in the form of a *Maintenance Management Plan (MaintMP)*. It is recommended that such authorisations be limited to a five-year period, at the end of which the MMP should be subject to specialist review before being re-submitted for approval by the competent authority prior to the MaintMP lapsing.

2 DESCRIPTION OF THE KLEIN ESTUARY

Table 1: Description of the estuary and its importance

Threat	Discussion
Location	<p>The Klein River Estuary – popularly known as Hermanus Lagoon or Kleinriviersveel – is situated more or less midway between Cape Point and Cape Agulhas on the south-west coast within the cool temperate biogeographic region of South Africa. The geographical boundaries for the study are defined as follows (Clark et al. 2015):</p> <ul style="list-style-type: none"> • Downstream boundary: Estuary mouth 34°24'58"S 19°17'35"E • Upstream boundary: 34°25'53"S, 19°27'30"E • Lateral boundaries: 5 m contour above Mean Sea Level (MSL) as depicted by the Estuary Functional Zone below in light blue. 
Estuary Importance	<p>The Klein River Estuary is a large (1153 ha) estuarine lake system that closes annually from the sea. The estuary was ranked 5th most important in South Africa in terms of its botanical value, fish and bird biodiversity (Turpie & Clark 2007). The estuary is rated as "Highly important" based on its Estuary Importance Score (EIS) of 93. The EIS takes size, the rarity of the estuary type within its biogeographical zone, habitat, biodiversity and functional importance of the estuary into account.</p>
Conservation status	<p>The Klein River Estuary does not have any statutory protection status at present but is included in the subset of estuaries identified as requiring protection in order to conserve South Africa estuarine biodiversity in the National Estuary Biodiversity Plan (Turpie et al. 2012).</p> <p>The Klein River Estuary also forms part of the core set of estuaries targeted in the Provincial Protected Areas Expansion plan/strategies. The Klein River Estuary supports a designated Bird Sanctuary zone. A Bait Sanctuary Zone is in the process of being proclaimed as part of the EMP zonation process.</p>
Important vegetation	<p>The Klein River Estuary has a large open water channel comprising roughly half of the estuarine functional zone. During open mouth conditions the estuary drains, increasing the available habitat of sand/mud banks and rocky outcrops. Salt marsh is abundant on the southern banks but less so on the steep northern bank. <i>Salicornia meyeriana</i> was limited to a small patch south of the estuary mouth. Reeds and sedges, mainly the common reed, <i>Phragmites australis</i>, fringed the middle and upper reaches of the estuary where salinity was suitable for establishment. Common reed was also abundant at the Klein river inlet. A number of epiphytic microalgae and submerged macrophyte species also inhabited the estuary. These species are restricted to fringing areas where the water depth did not exceed 1.5 m. At the Klein, 28 species of plants occur in seven different habitats. Two of these species <i>Cotula filifolia</i> Thunb. and <i>Limonium scabrum</i> (L.f.) Kuntze are endemic to South Africa (National Red Data list - Van Niekerk and Turpie, 2011). De Decker (1989) reported <i>Cotula myriophylloides</i> which is classified by the IUCN red list to be 'Critically Endangered' and likely already extinct. The Klein River Estuary may still provide a refuge for these species.</p>

Threat	Discussion
Important fish nursery	<p>Based on their distributional ranges 26 (51%) of the fish species recorded in the Klein River Estuary are southern African endemics including the Botriver klipvis <i>Clinus spatulatus</i> which has an extremely limited range being confined to the Klein and Bot estuaries. In terms of the fish importance (outlined in the RDM methodology), the Klein River Estuary has a biodiversity and overall importance score of 95% which places it within the top quintile of all estuaries in South Africa (Taljaard et al. 1999, Turpie et al. 2002).</p> <p>The Klein River Estuary accounts for about 12% of the total estuarine fish nursery area from False Bay to Port Alfred. Its importance lies in its size and its situation in a region of high endemism within the warm temperate, cool temperate transition zone.</p> <p>The Klein, together with the Bot, account for 25-30% of the available estuarine fish nursery-area from Cape Point to Port Alfred. It is crucial that at least one of these two estuaries is open to the sea during the spring/early summer recruitment window each year. With the exception of some drought years, the Klein usually opened annually under natural conditions. In the past decade, however, drought, wastewater spills and eutrophication have placed the system and its fish under severe stress from hypoxia and high water temperatures, with mass mortalities occurring. The Bot, which has opened during this time period, would have provided some level of mitigation by allowing recruitment of juvenile fish and larvae and the export of adult fish to recruit into the marine fisheries. The latter function was probably negated by the high illicit gillnet catches in both the Klein and Bot estuaries. Connectivity between the Klein and Bot is highlighted by the fact that <i>Clinus spatulatus</i> only occurs in these two systems and nowhere else. On the other hand, the <i>G. aestuaria</i> population in the Bot is probably the most genetically isolated of this species along the entire South African coastline (Norton 2005). This can be at least partly explained by its life-history characteristics but also by the fact that fish recruitment into Walker Bay and its estuaries is limited compared to other bays in South Africa, mostly due to its relative isolation and currents bypassing the bay, deflecting further out to sea. This may also be a factor in the recruitment of estuary-dependent marine species, as it may limit the estuary recruitment window more than elsewhere along this country's coastline. Connectivity between these two estuaries occurs during regional flood events usually coinciding with cut-off-lows when both systems are open and connected via their fluvial plumes (Von der Heyden et al. 2015, Clark et al. 2015).</p>
Important Bird site	<p>A total of 71 waterbird species have been recorded on Klein Estuary. Across all Co-ordinated Water bird Counts (CWAC) counts during the period 2001-2012, there were a total of 60 species recorded in summer and 53 in winter. The overall abundance of birds seems to have decreased from the 1981 survey (9974 birds) until the most recent comparable summer survey (February 2002 – 2007 birds). The composition recorded during the recent summer CWAC surveys was quite different from that recorded in January 1981. In the earlier survey the community had a higher proportion of gulls and terns (89%), mainly due to very high numbers of the migratory Common Tern. The herbivorous waterfowl component of the community was the second most abundant group in 1984 but numbers have been relatively low in recent counts due to higher salinities. During 2001-2012, the avifauna of the Klein River Estuary was dominated by piscivorous gulls and terns (40%) and herbivorous waterfowl (22%) in summer (Clark et al. 2015), with the former group being dominated by the migratory Common Tern. In winter, the bird community was heavily dominated by herbivorous waterfowl (76%). These were mainly Red-knobbed Coot, which was by far the most common bird on the estuary. The numbers of waders are higher in summer due to an influx of migrants. The numbers of omnivorous waterfowl are also higher in summer, when fresh and brackwater areas are scarcer than in winter in this winter rainfall area. In 1981, both waders and herbivorous waterfowl were concentrated at the head of the estuary, whereas other waterfowl and the gulls and terns were closer to the mouth (Clark et al. 2015).</p>
Estuary Condition w.r.t. breaching	<p>The Klein River Estuary is negatively impacted by flow reduction (abstraction / impoundment for irrigation and alien invasive plant infestation in the catchment and riparian areas), artificial breaching at too low water levels, increased nutrient loading (waste water treatment works, septic tanks and agricultural return flow and effluent), sedimentation and illegal gill-netting of fish. The Klein River Estuary has therefore been relegated to the C category in terms of its current estuarine health, but allocated a B</p>

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Threat	Discussion
	in terms of the Recommended Ecological Category, or future health class, since it is considered worthy of rehabilitation and a priority for conservation (Clark et al. 2015, Van Niekerk & Turpie 2012). A number of initiatives are in progress to address the pressures on the Klein Estuary, including this Mouth Management Plan.
Recommended Ecological Condition	The Present Ecological State of the Klein River Estuary is a "C Ecological Category". The estuary is rated as "Highly important", and forms part of the core set of priority estuaries in need of formal protection to achieve biodiversity targets the National Estuary Biodiversity Plan (NBA 2011, Turpie et al. 2012). National biodiversity targets include, for example, the formal protection of 20% of estuarine ecosystem types. Thus the Recommended Ecological Category for the estuary is its "Best Attainable State" i.e. a B Ecological Category (Clark et al. 2015).

3 MOTIVATION FOR ARTIFICIAL BREACHING

Artificial breaching of the Klein River Estuary dates back to at least the 1860s (Coetzee & Pool 1986, cited in De Decker 1989), when nets were set in the lagoon's bays to catch trapped fish. Following a CSIR study (CSIR 1988), a breaching policy was implemented, according to which the mouth was opened when the water level reached +2.1 m MSL.

However, over a century of breachings at low levels result in inadequate scouring of the estuary, causing sediment build-up in the estuary and mouth closure shortly after a breaching. Increased sedimentation also leads to insufficient flushing of organic material. A decision was therefore taken by the local authority that 1996 would be the final year of artificial breaching. After monitoring the effects of high water levels during mouth breaching in 1996 and 1997 (CSIR reports ENV-SC 97016 and 98031), the CSIR found that no significant damage occurred at the water level of +2.66 m MSL that resulted in natural mouth breaching on 2 July 1997. The motivation to breach in response to pressure from riparian landowners was therefore nullified. The maximum outflow of at least 500 m³/s was 50% higher than that observed in previous years, and was estimated to be the same order of magnitude as that during a 1:50 year flood.

From 1997, the management approach aimed at natural breaching of the estuary during winter. Although this was supported in terms of water level, the position of the mouth remained a contentious issue. As managing authority at the time, the then Cape Nature Conservation hosted a specialist workshop at Jonkershoek in May 1999. Its main objective was to determine a future management strategy for the estuary, with the development of a short-term breaching policy - which over the long term should promote and ensure the maintenance of the associated ecosystems and ecological processes - as a secondary objective.

A set of scenario-based draft policy guidelines were formulated at the workshop, on the preliminary assumption that the present catchment runoff had not been drastically changed from its natural MAR. Scenario 1 allowed for natural breaching. Scenario 2 for artificial breaching at the lowest point in the berm only if sustained high water levels posed an unacceptably high risk to property as well as ecological processes, while Scenario 3 allowed for artificial breaching at the lowest point in the berm in the event of water levels above 1.8 m MSL and a closed mouth during early to mid-summer resulting in inundated saltmarshes, algal blooms, fish deaths and unacceptably high bacteriological counts. The workshop did not address breaching details such as the time of day, tidal cycle and depth of trench, and it was agreed that the guidelines should be revised if additional information came to light.

After monitoring the effects of mouth breachings in 1999 and 2000, the CSIR revised their recommendations (see Appendix 2). These served as the operational guidelines until the workshop in March 2010. Modelling studies conducted on the September 2001 breaching at +2.8 m MSL confirmed that breaching at higher water levels increases the effectiveness of flushing, as the discharge through the mouth increases significantly at higher water levels. Flushing towards the middle or south-east side of the berm was found to be much more effective than towards the north-west side (Beck & Basson 2008).

The Mouth Management Indaba held in 2010 identified three main breaching principles for the Klein Estuary, namely that 1) the estuary should be allowed to open naturally (or unaided) where possible, 2) that if a need for breaching was identified (i.e. flooding of property) then 2.6 m MSL berm height needed to be reached and 3) the breaching option of 1.8 m for water quality problems was not supported. This last breaching principle was especially supported by AbaGold Abalone Farm due to the impact of possible pollution on the Abalone farm. These conditions were accepted by all stakeholders (Klein River Estuary Advisory Forum and other specialists). The specific triggers for artificial breaching and the methodology for implementing the artificial breaching processes was summarised in a Maintenance Management Plan (MaintMP) submitted to the Western Cape Department of Environmental Affairs and Development Planning (DEA&DP) for approval in 2011. The MaintMP was approved for a five-year period. A new application needs to be submitted for the next five-year period.

The findings of the 2011 MaintMP was also affirmed at a public meeting held at Fernkloof Hall on 25 October 2017, under the auspices of the Western Cape Estuary Management Framework and Implementation Strategy project. An additional concern that was raised at this meeting was the importance of the Klein Estuary as a fish nursery and involvement of DAFF in the decision making process that may require *ad hoc* artificial breaching under emergency conditions.

A summary of the motivations for potential artificial breaching is provided below in Table 2.

Table 2: Summary of artificial breaching motivation

Potential Threat	Relevance
Threat to human life (as a result of high water levels)	No threats to human life
Threat to immovable property and infrastructure (as a result of high water levels)	Yes, there are a number of low lying properties around the edges of the Klein River Estuary.
Human health impact (e.g. flooding of sewage pump station, septic tanks, chemical storage yards, etc.)	No significant health issues. Many of the old houses had septic tanks. A concerted effort by the municipality and stakeholders has resulted in most of these being replaced by sealed units.
Potential loss of agricultural resources (as a result of high water levels)	At water levels of 2.6m there is minimal impact on agriculture practices within the estuary functional zone. In most cases properties are used for recreational use as well as grazing stock.
Potential impact on nearshore environment if breached (e.g. aquaculture facilities)	The abalone farmers in Walker Bay have expressed a concern over the discharge of poor quality water during a breaching as it may affect the quality of the water in the abalone farms. This resulted in the option of breaching to address water quality problems at 1.8m being discarded at the last Mouth Management Indaba.
Loss/impaired access (e.g. roads, footpaths, cattle crossings)	Access to properties near Wartelgat becomes limited.
Harmful / Noxious algal blooms	During long closed phases algal blooms naturally develop along the banks in the shallow warm water. Some residents find the decaying matter to be offensive. In the past (late 1990s) this had led to pressure to breach on the east side. After breaching plant matter decays relatively quickly (weeks).

	Potential Threat	Relevance
	Impact(s) on recreational use (e.g. increase depth / surface area when mouth is closed, reduce fishing).	Recreational activities such as yachting, wind surfing and swimming are not impacted on by mouth state as the estuary is deep and has a large surface area. Launch sites are impacted on by high water levels. The local municipality is developing alternative management options for these periods. Wind surfing sites need to be moved from Maanskynbaai to the mouth area during high water levels due to lack of available launch sites.
	Impact of artificial breaching	Recreational fishing: Enhanced by open mouth conditions. Birdwatching: More estuarine associated species such as waders present in the intertidal areas.
	Impact of NOT breaching	Recreational fishing: Catches are lower (number and size of fish) if the mouth has been closed for an extended period. Birdwatching: Waterfowl in the middle and upper reaches increase.
Ecosystem requirements	Impact on avifauna abundance, species richness/ community composition	Important bird habitat Yes, but not as important as the Bot/Kleinmond system for water fowl (Clark et al. 2015). Impact of artificial breaching Water fowl in the upper reaches benefit from closed mouth conditions (Clark et al. 2015). Impact of NOT breaching Mouth closures and related high water levels has negative effect on Waders, gulls and terns as they preferred the sandbanks in lower estuary. The associated higher water levels and reduction in fish abundance also indirectly impact on the Cormorants, wading piscivores, kingfishers and fish-eagles (Clark et al. 2015). Occurrence of avian botulism No bird deaths reported and assessed to date
	Impact on estuarine fish abundance, species richness/ community composition	Important fish nursery Artificial breaching may be necessary in order to maintain the ecological functioning of the estuary and its value as a nursery area for fish; this being achieved by ensuring that the mouth is open to allow recruitment and emigration during the peak recruitment period during spring – early summer (August –November)
		Impact of artificial breaching Positive impacts are recruitment of larval and juvenile fish and return of adolescents and reproductively active fish to the sea to spawn. Negative aspects are a temporary reduction in water volume and littoral habitat and limited mortality of resident benthic species through stranding in algal and macrophyte beds. Aggregations of fish at the mouth just prior to and during breaching are particularly vulnerable to exploitation especially by illegal methods such as gaffing and snagging with trawls. (Draft legislation (in terms of the Marine Living Resources Act) has existed for the past decade that prohibits fishing of any kind in a temporarily open closed (TOC) estuary the two days before, during and one day after a breaching event whether artificial or natural)

Potential Threat		Relevance	
		Impact of NOT breaching	Significant nursery area (>10%) not available to juvenile fish on the Cape south coast and eventual drop in recruitment or available biomass of exploited species to marine fisheries.
		Occurrence of fish kills	<p>Fish kills have been recorded a number of times in this system in the recent decade. Fish kills arising from hypo / hypersalinity and / or estuarine harmful algal blooms (HABs) (e.g. <i>Microcystis</i>, golden algae <i>Prymnesium parvum</i>) may be mitigated by open mouth conditions. Fish may also escape hypoxia, ammonia toxicity etc. arising from poor WWT in the estuary and catchment. Seawater, at 35 practical salinity units (psu), will also treat pathogens such as the water mould Epizootic Ulcerative Syndrome (EUS) now prevalent in many estuaries and catchments.</p> <p>Nevertheless, ill-timed or inadequate breaching at low water levels and with little water movement may compromise already-stressed fishes' immunity to pathogens and exacerbate fatalities.</p>
Impact on estuarine invertebrate abundance, species richness/ community composition		Impact of artificial breaching	Open mouth linked to increased salinity values and opportunity for euryhaline species to increase in biomass and abundance if salinity increases from a low base (<10 psu). An open mouth is also important for the input of larvae into the estuary from the marine environment for recruitment and vice versa.
		Impact of NOT breaching	Closed mouth leads to decrease in species richness (absence of marine-associated species). Associated decrease in salinity would have a negative impact on invertebrates within the lower reaches of the Klein River Estuary which are adapted to life in a tidal system.
		Occurrence of invertebrate kills	No information available on the Klein River Estuary but invertebrate mortalities have occurred in the Breede (sandprawn <i>Callinectes kraussi</i>) ammonia toxicity and hypoxia impact benthic invertebrates and the osmotic stress arising from abrupt changes in salinity may help control pathogens and parasites.
Estuarine (plants) Macrophytes		Impact of artificial breaching	Open mouth conditions create intertidal habitat for salt marsh and reeds and sedges. Fluctuating water levels would decrease submerged macrophyte biomass and extent. Strong tidal flows could limit the establishment of submerged macrophytes in lower reaches.
		Impact of NOT breaching (i.e. die back of saltmarsh)	Die-back of salt marsh and reeds and sedges due to inundation and high water level (>1.6 m MSL). Submerged macrophytes expand but restricted to shallower areas. Anthropogenic nutrient inputs presently encourages macroalgal growth.

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Potential Threat		Relevance
Water quality (Thresholds of concern that would compromise estuarine ecosystem or ecosystem services)	Salinity thresholds of concern (high or low) that would compromise ecosystem or ecosystem services	Not applicable.
	Dissolve Oxygen levels	< 4 mg/l
	Ammonia levels	Not applicable.
	Toxic substance in the context of breaching	Not applicable.
	Pollution sources include sewage pump stations that may fail during summer, and septic tanks that leak. An action plan has been developed to address these sources and is implemented by the municipality and reported on at each estuary forum meeting.	
Eutrophication	Excessive reed growth	N/A
	Macrophyte blooms	N/A
	Harmful algal blooms	Microalgal blooms including potentially toxic blue green species have been recorded at the Klein River Estuary.
Sedimentation	On-going sedimentation	No large scale bathymetric surveys have been carried out in the estuary. The stabilisation of the dune system in the berm area needs to be addressed in order to continue to facilitate the natural opening of the estuary mouth – stabilised dunes will result in the berm height reaching in excess of 3 m MSL for instance.
Type	Yes/No	Motivation
Major flood events associated with severe flood damage	Yes	Only an emergency if estuary water level is high and a severe flood is eminent (i.e. cut-off low/1:20 year flood). However, artificial breaching will not be considered to prevent water inundation of low-lying private or public properties
Poor water quality	Yes	Low oxygen levels throughout the system may be considered an emergency (must be verified through regular monitoring and estuarine specialist consultation) Salinity levels are not a consideration because the system is characteristically saline. Artificial breaching will not be considered to flush polluted water out of the estuary as it will pollute the nearshore and pose a significant threat to the abalone and other marine aquaculture facilities in Walker Bay (abalone farms instituted their own independent water quality monitoring of the Klein River outflow).
Fish kills	Yes	DAFF to determine cause of fish kill and then establish if major fish kill can be remedied by breaching. Written findings to be provided to the breaching committee.

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	Potential Threat		Relevance
	Hazardous spill	Yes	Breaching will only be considered if the hazardous substance holds no risk to the nearshore environment and is registered as a disaster. In the event of an oil spill at sea, the mouth of the Klein River Estuary can temporarily be closed to prevent oil from entering the system. Spillage of organic waste should be addressed using standard biological control measures.

4 RELEVANT AUTHORITIES

Table 3 lists the Key lead authorities involved in artificial breaching at the Klein Estuary.

Table 3: Key lead authority involved in artificial breaching

Management authority	Overstrand Municipality	
Advisory Committee	Klein River Estuary Advisory Forum (KREF)	
Authorisation (breaching / emergency)	DEA&DP	
	Lead authority	Breaching sub-committee
		Minimum consultation in case of Emergency
	Overstrand Municipality (Environment Management and Disaster Management sections)	✓
	District Municipality (Environment Management and Disaster Management sections)	✓
	DEA&DP	✓
	Department of Environment Affairs	✓
	Department of Agriculture, Forestry and Fisheries, Branch: Fisheries	✓
	Department of Water and Sanitation	x
	CapeNature	✓
	SANParks	x
	Research organisation (e.g. CSIR)	✓
	Non-Governmental Organisations	✓
<p>The decision to artificially breach will be made by a Breaching sub-committee comprising the Overstrand Municipality's Environmental Manager, KREF Chairperson and the Cape Nature: Overberg Business Unit Manager following consultation with at least two members of a team of estuarine ecological specialists (e.g. from the CSIR and DAFF: Inshore Fisheries Research and DEA: Estuaries Management). These lead authorities are important role players with respect to emergency situations and administer their relevant empowering provisions (Disaster Management Act 2002, NEMA 1998, and the Integrated Coastal Management Act 2008).</p> <p>Data on water level, berm height, salinity, as well as water quality parameters where feasible, will be collated by the Overstrand Municipality in conjunction with CapeNature and the specialists team.</p> <p>Once the Breaching sub-committee has decided that an artificial breach must occur, the Disaster Risk Management unit of the Overstrand Municipality (in conjunction with Cape Nature), shall be responsible for overseeing the breaching activities.</p>		
	Disaster Management	Authority/Organisation
		Status
Early warning system	South African Weather Services (weather)	No
	DWS warning system (flow/water levels/dam safety)	No
Disaster Management Plan	Municipality	Yes
Approved Maintenance Management Plan	Municipality	Yes, in process of update.

5 BREACHING SPECIFICATIONS

The following breaching specifications need to be met before artificial breaching of the Klein River Estuary can be considered (Table 4):

Table 4: Klein River Estuary Breaching Specifications

Breaching considerations	Details	
	Y/N	Level to MSL
Minimum breaching level (water level should be as high as possible before breaching)	>2.6 m msl	<p>Natural breaching at water levels of 2.9 m to 3.1 m above MSL is preferred with no or minimal interference. Breaches at this level result in the most effective scouring of silt build-up.</p> <p>It is recommended that the Overstrand Municipality's department of Environmental Management cooperate with Cape Nature to patrol the berm when water levels are high and the public may attempt unauthorized breaching to ensure that this does not occur. The risk of this is high when the water level is about 30 cm below the berm height.</p> <p>In the absence of 'emergency' conditions (defined below), artificial breaching must not be contemplated at water levels below 2.6 m MSL. Higher levels are preferred.</p> <p>This requirement (i.e. breaching above 2.6m msl) may result in the Klein Estuary not breaching during extreme drought periods when the system naturally would not have reached breaching levels.</p>
Optimum breaching period (if applicable)		<p>The Klein River Estuary naturally breached annually, with most breachings occurring in late winter or spring (June to September). Therefore, artificial breach is a consideration if annual breaching is prevented from occurring due to flow reduction. The later the breaching in the season, the better, as the incidence of high sea storms reduce from winter to summer, assisting in maintaining open conditions. As flow reduction may delay, or prevent, natural breaching, artificial breaching should preferably be considered between 1 August and 31 October if natural breaching levels are not attained. The concern is that breaching much later in the year will impact negatively on the ecology, e.g. will not coincide with peak fish recruitment periods or flowering of saltmarshes. However, for practical reasons the breaching date may be shifted in consultation with the relevant authorities to accommodate the availability of human resources and earth moving equipment, weather forecast and human safety.</p> <p>Consideration should also be given to the mouth state of the Bot/Kleinmond system as evolutionary/genetic processes require that both systems be open once or twice a decade.</p>
Neap-spring breaching considerations		<p>Preferably 3-4 days before spring tide, but priority should be given to wave conditions and water levels. Local observation are required on the degree to which waves will hinder during the planned breaching. The higher the berm, the more the system is buffered against the effects of high waves from the ocean. A calm period of 1 to 2 days is preferred.</p>

	Higher water levels generate greater outflow so this recommendation can be over ruled to prevent significant seepage and evaporation losses as a result of its large surface area (Clark et al. 2015).
Timing of breaching	Breach 2 hrs before high tide, or just after high tide (to prevent high waves from closing the opening), to maximize the outflow.
Consider safety of public during breaching	<p>Breaching at the Klein River Estuary holds a risk to public safety, e.g. surfers wanting to body surf standing waves, children and dogs falling in the outflow channel. It is therefore recommended that breaching takes place in the late afternoon so that maximum outflow (and associated standing waves) occur during the night.</p> <p>If not possible, care should be taken with the general public to ensure their safety. Cordoning off the works area with the aid of red and white emergency tape will aid in keeping the public out of the area where breaching will take place. Ideally an official or security person must man the area in question.</p> <p>Temporarily close the designated area in circumstances that could pose a danger to the human life or property. This must be accompanied by appropriate signage.</p>
Breaching trench to maximize outflow	Excavate a 2m deep and 4m wide trench before breaching to maximize outflow. Consideration may be given to digging a pre-breaching trench on the inside of the berm during April / May when the water is low to increase the scouring effect. (Note that opinion remains divided on whether this will make a significant difference at the Klein as the berm is relatively low during winter and the trench likely to fill up)
Location of the breaching position.	<p>At the lowest position of the berm, opposite the previous year's channel (these mostly coincide) to assist with the efficient removal of sediment during the breaching</p> <p>However, allow enough space for separate ebb and flood tidal channels to develop. Breaching too far to the sides often result in a single confined channel for both the ebb and the flood tidal flows. If possible, artificial breaching should line up with historical channels to assist with the removal of sediment during the breaching. Significant scouring potential is lost if the system has to cut new channels in the lower reaches during a breaching. This consideration may require the alignment of the breaching channel with an older historical channel configuration.</p> <p>Lastly, care should be taken with the breaching location to ensure that the channels do not become unnecessarily long resulting in increased bottom friction, reduction in tidal flushing and premature closure.</p>
Estimate amount of sediment to be moved during breaching	Not applicable, as amounts vary significantly between breachings. It therefore cannot be determined in advance.
Disposal of sediment removed during excavation	The sand excavated from the trench should be pushed out into the sea where wave action will take it away and not be stored on the banks next to the trench. Otherwise the sand stored on these banks will drop back into the excavated channel reducing the effectiveness of the outflow and the wider and deeper scouring of this trench.

	<p>In the unlikely event of marine sediment remaining on the beach after a breaching, no additional action is required as it will generally wash away after a few high tides.</p>
Mobilizing machinery and equipment on site during breaching	<p>Equipment and machinery to be utilised in a breaching must be in be in a good state. Oil leaks are not to cause additional pollution.</p> <p>Care should be taken to ensure that earth moving equipment do not disturb indigenous vegetation of conservation worthiness on route to the excavation site. Bird nesting areas are to be avoided. Where possible existing access roads / tracks should be used.</p> <p>Once it has been established that a clear outflow channel has formed and breaching is progressing on its own momentum the earth moving equipment may be removed from the beach.</p> <p>Implement an appropriate control mechanism, such as erecting comprehensive signage with information of the launching areas and the associated dangers.</p> <p>Allow DEA&DP officials access to the designated area for the purpose of assessing and/or monitoring compliance with the conditions contained in the MMP, at all reasonable times.</p> <p>Be responsible for all costs necessary to comply with these conditions unless otherwise specified</p> <p>The municipality retains the management responsibility of the designated area, even though the applicant may grant permission to manage the designated area, on their behalf, to any competent contractor /service provider. Ensure that all users adhere to the local authority By-Laws relating to the designated areas at all times.</p> <p>The legal requirements associated with the use of the designated area must be brought to the attention of all persons that are granted access to the designated area by the applicant (licensee) in terms of the conditions of this licence and the applicant shall take measures necessary to bind such persons to these requirements.</p>
Noise & light pollution	Noise on this site should be kept to a minimum and within the relevant noise control by-laws/regulations of the municipality.
Water Quality considerations (Thresholds of Concern)	<p>Salinity: Not a consideration</p> <p>Oxygen: < 4 mg/l</p> <p>Toxins: Not a consideration</p>
Ecological considerations	<p>Birds: Annual breaching per natural conditions</p> <p>Fish: Annual breaching per natural conditions. Not later than 31 October. Two days before the breaching, responsible authority will issue notices and erect signs placing a moratorium on fishing until after the breaching and the risk to fish aggregations has subsided.</p> <p>Invertebrates: Annual breaching per natural conditions</p> <p>Plants: Annual breaching per natural conditions. Maintain the highest possible water levels to control reed growth in upper reaches (Stanford riverine section). Annual opening of mouth increase salinity and control some of the reed growth in the lower and middle reaches.</p>

6 OPERATIONAL PROCEDURES

Two types of breaching are distinguished for the Klein River Estuary, namely (a) Planned artificial breaching undertaken according to the MaintMP and (b) Emergency breaching (e.g. to avoid danger of extreme flooding). Each type is briefly discussed below and illustrated with a flow chart.

6.1 Planned mouth breaching procedures

The Overstrand Municipality is responsible for the operational aspects of the Klein River Estuary MMP. They can delegate this function, but ultimately they have oversight over the functioning of the Breaching Sub-committee. It is therefore recommended that the Breaching Sub-committee be established as a formal structure under the Municipal Coastal Committee. The Overstrand Municipality (or its delegated structure) are required to co-ordinate the Breaching Sub-committee, which includes:

- Convening Breaching Sub-committee meetings (when listed specifications are triggered or in expected to be triggered in the near future due to inclement weather);
- Recording the minutes of the Breaching Sub-committee meetings;
- Distributing relevant information to the Breaching Sub-committee members; and
- Sharing the post-breaching incident report of the Breaching Sub-committee;
- Sharing process followed with Estuary Advisory Forum (if time permits).

The municipality is also responsible for continuous monitoring of the conditions in the catchment when water levels become elevated (>1.5 m MSL). Communication between the different role players, i.e. the local municipality, CapeNature and key authorities (stipulated in Section 4), should take place at a regular basis. This can be done at estuary advisory committee/forum meetings or as email communications summarising critical aspects. The day-to-day monitoring should include the following aspects:

- The actual and expected rainfall in the catchment;
- The water level in the estuary and its rate of increase;
- The height and width of the sand berm at the mouth;
- The actual and predicted wave conditions;
- The availability of equipment to breach the mouth;
- Water quality conditions (if applicable); and
- Biotic responses to elevated water levels (e.g. fish aggregations at mouth, formation of algal blooms, die-back of macrophytes, bird nesting behaviour).

Once the breaching criteria (see Section 5) is met, the decision to artificially breach will be made by the Breaching Sub-committee (See Section 4 for list) comprising, at a minimum, the Overstrand Municipality's Environmental Manager, the KREF Chairperson and the CapeNature: Overberg Business Unit Manager in consultation with at least two ecological specialists (e.g. CSIR, DAFF: Inshore Fisheries Research and DEA: Estuaries Management, Nelson Mandela University). Note, that while the Breaching Sub-committee is tasked with

executing the approved MaintMP, it should be recognized that an estuary mouth is highly dynamic and unforeseen events may require special management actions. In such an event, additional verbal (followed by written) authorisation may be required from the authorising authority (i.e. DEA&DP) which needs to be supported by specialist comment and suggestions.). A flow chart for a planned mouth breaching procedures to be followed by the breaching committee is included in Figure 2.

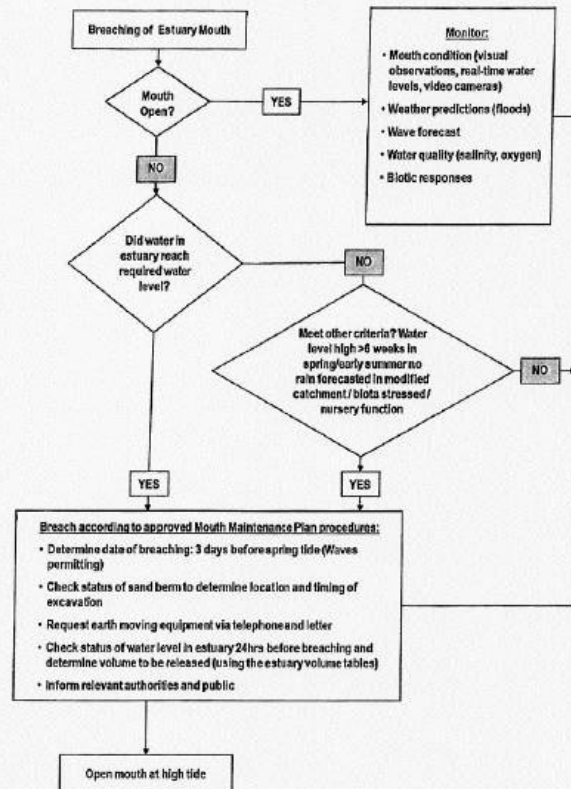


Figure 1: A flow chart illustrating the breaching plan for normal conditions

Once the Breaching Sub-committee has established that the relevant criteria have been met and that artificial breach must occur, the Disaster Management Department of the Overstrand Municipality (in conjunction with Cape Nature), shall be responsible for overseeing the breaching activities.

The Disaster Management Department of the Overstrand Municipality is responsible for the following:

- Ensuring the availability of Earth moving equipment on day of breaching;
- Establishing the exact location and time of the breaching channel;
- Verifying that the sandberm at the mouth is high enough above the water line that there is no risk of "fluidization" of berm sediment (i.e. turns to quicksand) and associated risk to operator and equipment;
- Deployment of flags and signage to warn public of risk to safety; and
- Breaching of the estuary mouth (it should be noted that the excavations may take several hours).

Finally, the Overstrand Municipality is responsible for the compilation of a Breaching Incident Report to be provided to DEA&DP within 14 days of the actual breaching (see Section 8 for more detail on the report).

6.2 Emergency

A flow chart for the undertaking of mouth breaching under emergency conditions is included in Figure 1. Breachings should be undertaken in the swiftest manner possible and in most cases the Disaster Management Department of the local municipality is responsible. While breaching should be conducted according to an Estuary Mouth Management Plan and an approved Mouth Maintenance Plan, some of the general breaching principles may be waived under emergency conditions to ensure an expedient breaching.

Emergency conditions could develop when an estuary mouth is closed/constricted and severe rainfall occurs in the catchment causing a large flood. Alternatively, they could also develop at the (largely unlikely) event of a break of a dam wall. Constant monitoring of the conditions in the catchment is required when emergency conditions develop. Communication between the different role players, i.e. the local municipality, CapeNature and key authorities (DAFF) involved, should take place, if time is available, to monitor the situation. Included in the monitoring are:

- The actual and expected rainfall in the catchment.
- The water level in the estuary and its rate of increase.
- The height and width of the sand berm at the mouth.
- The actual and predicted wave conditions.
- The availability of equipment to breach the mouth on short notice.

While most emergency breachings relate to floods Section 3 lists some additional events that can constitute an emergency at the Klein Estuary.

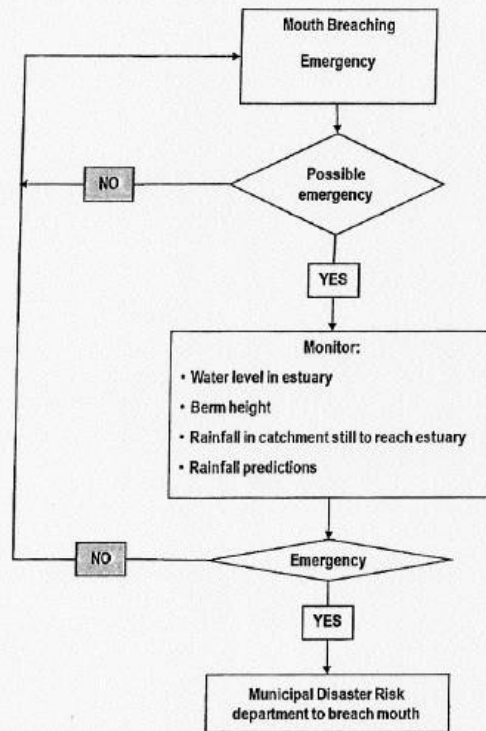


Figure 1: A flow chart illustrating the breaching plan for emergency conditions

7 MONITORING PROGRAMME

The following monitoring programme supports the responsible management of artificial breaching (Table 5):

Table 5: Monitoring programme for Klein Estuary

MONITORING ACTIONS	FREQUENCY	LEGAL REQUIREMENT - YES/NO	AGENCY RESPONSIBLE
Weather forecast (projected rainfall and waves)	Period leading up to breaching	Yes	SA Weather Services
Water levels	Continuous	Yes	DWS G4R004 (1979-2016)
River inflow data	Daily	Yes	DWS gauge
Bathymetric / Topography surveys	Every 3 years	Yes	Municipality
Salinity (quarterly)	Monthly (and day before and after, and 5 to 10 days after a breaching)	Yes	Municipality
In situ water quality measurements (e.g. oxygen)	Monthly	Yes	Municipality
Berm levels	Monthly (and just before breaching if breaching is planned)	Yes	Municipality
Photographs	To be arranged between authorities before, during and after breaching	Yes	Municipality/CapeNature
Observations on estuarine vegetation (e.g. inundation of salt marsh, reeds & sedges, occurrence of algal blooms)	Quarterly (and just before breaching)	Yes	Municipality
Observations on Invertebrate behaviour (e.g. invertebrate kills)	Quarterly (and just before breaching)	Yes	Municipality
Fish surveys Distribution, abundance, movement and behaviour (e.g. recruitment, aggregations, fish kills)	Bi-annually	Yes	DAFF
CWAC	Bi-annually	Yes	CapeNature

8 REPORTING

Following an estuary mouth opening a Breaching Incidence Report needs to be compiled and provided to DEA&DP within 2 weeks of breaching. This report should contain as much as possible information on the breaching motivation and the process followed during the breaching.

In addition to the Breaching Incidence Report, the Managing authority needs to compile an Annual Mouth Breaching Report that summarises information on all mouth manipulation activities, ecological responses and consequences to human well-being and safety. The Annual Breaching Report needs to be presented to all Interested and Affected Parties (I&AP) (relevant authorities and civil society) to communicate progress with the implementation of the MMP. Such feedback sessions provide the opportunity for a critical review of current breaching practises and discussions on possible improvements to future MMPs. The Annual Mouth Breaching Report will also serve as a national reporting document.

8.1 Breaching Report

Table 6 below summarises the minimum content of a Klein River Estuary Breaching Report. The initial Breaching (incidence) report should be compiled within two weeks of breaching, with data gaps (e.g. duration open) addressed after mouth closure.

Table 6: Content of Klein River Estuary breaching report

ACTIONS	LOCAL REQUIREMENT - YES/NO	AGENCY RESPONSIBLE
<u>Met-ocean information</u> <ul style="list-style-type: none"> State of the tide (spring-neap/ high-low tide) Sea conditions (calm/stormy) 	Yes	Overstrand Municipality
<u>Breaching specifications that triggered the event:</u> <ul style="list-style-type: none"> Indicate which of section 5 specification necessitate the breaching (include supporting specialist communications where need be) 	Yes	Overstrand Municipality
<u>Estuary Information</u> <ul style="list-style-type: none"> Water level from DWS (and volume) before breaching Maximum outflow rate during breaching calculated from water levels and surface area of system Outflow duration (from water level graph) Lowest water level achieved after breaching (from water level graph) Did flooding problems arise before or during the breaching? If so, quantify these problems. Could measures be taken to prevent such problems in the future? For example by protection of low lying properties. Distinguish between short-term and long-term measures. Date since last breaching 	Yes	DWS & Overstrand Municipality
<u>Location of channel</u>	Yes	Overstrand Municipality

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ACTIONS	LOCAL REQUIREMENT - YES/NO	AGENCY RESPONSIBLE
<ul style="list-style-type: none"> Align with historical position of channels (photographs and GPS location) Reduce channel length 		
Period for which the mouth stayed open (not required in initial incident report if mouth remain open)	Yes	Overstrand Municipality
Bathymetric surveys	Yes	Overstrand Municipality
Salinity measurement before and after breaching	Yes	Overstrand Municipality
Observations on macrophyte conditions	No	
Fish recruitment survey	Yes, in summer after breaching	DAFF
Avifauna counts (CWAC)	Yes	CapeNature
Other		
Assessment record compiled by:		
Name:		
Organization:		
Date:		
Contact details:		

8.2 Feedback on breaching activities

Table 7 below summarises the minimum information required as evidence of breaching feedback reporting. Ideally the breaching report should be provided to the Estuary Advisory Forum and other interested stakeholders / specialists post breaching. The breaching process should be communicated to the forum on an ongoing basis throughout the process to keep stakeholder abreast of all developments and decisions taken. If this is not possible, such report back sessions should be held at least once a year to ensure that the correct breaching procedures are being followed and that additional interventions are not required.

Table 7: Minimum information required on breaching feedback sessions

ACTIONS	LOCAL REQUIREMENT - YES/NO
Responsible agency /authority	Overstrand Municipality
Place & Workshop venue	
Date	
Meeting/committee/workshop participants (attach attendance register)	
Workshop chaired by	
Key lessons learned that could assist with future breaching	
Material presented at meeting (including copies of presentations)	

9 REFERENCES

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- Clark, B.M., van Niekerk, L. Turpie, J. Taljaard, S., Adams, J., Cowie, M., Biccard, A., Lamberth, S. 2015. Determination of the Ecological Reserve for the Klein Estuary. Report prepared for the Breede-Gouritz Catchment Management Agency. 197 pp.
- Norton, O.B. 2005. The population structure of two estuarine fish species, *Atherina breviceps* (Pisces: Atherinidae) and *Gilchristella aestuaria* (Pisces: Clupeidae), along the southern African coastline. MSc thesis, Rhodes University, South Africa.
- Von der Heyden, S., Toms, J.A., Teske, P.R., Lamberth, S. & W. Holleman. 2015. Contrasting signals of genetic diversity and historical demography between two recently diverged marine and estuarine fish species. *Marine Ecology Progress Series* 526: 157-167.

Alida Conradie - Re: Municipal Notice 85/2019 Removal of Restrictive Conditions on Portion 35 of Farm 633, Rocklands.

PTN 37/633



From: Ross James <r-james@iafrica.com>
To: <aconradie@overstrand.gov.za>
Date: 2019/07/16 05:30 PM
Subject: Re: Municipal Notice 85/2019 Removal of Restrictive Conditions on Portion 35 of Farm 633, Rocklands.
Ce: "Bruce Ivy (private)" <bruce@ivy13.com>, <estuaries@capenature.co.za>, ...

TRATheart (Suid Merwe)

Dear Ms Conradie,
I am a member of the HLPOA Executive Committee representing the interests of Blue Crain Investments (Pty) Ltd, a landowner abutting the Klein River Lagoon.

The members of our company support the submitted comments made by the HLPOA executive committee and in addition fully accept the concerns below of our neighbour, Mr Bruce Ivy. Please acknowledge receipt of this email.

Sincerely
Ross James
unit 46 Blue Crain, Kleinrivier Lagoon.

Postnet Suite 73
Private Bag x 16
Hermanus

Stamp with fields: FILE NO: PTN 35/633 Farm Rocklands, SCAN NO:, COLLABORATOR NO: 1302864

On 7/16/2019 2:40 PM, Bruce Ivy (private) wrote:

The Municipal Manager,
Overstrand Municipality
P O Box 20
Hermanus
7200
Attention Ms A Conradie (aconradie@overstrand.gov.za)
Dear Sir/Madam

Municipal Notice No. 85/2019 - Removal of Restrictive Conditions Portion 35 of Farm 633, Rocklands.

I am a member of the Hermanus Lagoon Property Owners' Association. I live nearby on Lagoon Lodge erf 633/19, which I own, close to the property in question. I support the comments and concerns made in the attached letter from the HLPOA Executive Committee and I also wish to register the following as my individual comment in addition to those of the HLPOA Exco.

Please acknowledge receipt of this email.

I am incredulous that taxpayers money is being wasted even considering this application. The applicant is clearly criminal.

- 1. The estuary is already strained to its limits due to a desperate shortage of water to breach the river mouth used to breach yearly. Please refer to the exhaustive environmental report attached, produced at great expense and

15 JUL 2019

3

- trouble by the Western Cape Government and which screams for every drop of water possible.
2. It is unlikely to be a coincidence that the estuary has suffered most severely in the last 12 years, exactly when this illegal operation began.
 3. The applicant is already applying for a 500% increase in burden on this already strained ecosystem.
 4. The amount of water being bottled is very difficult to control and it will be in the applicant's interest and nature to understate it.
 5. If one bottling plant is allowed to drain the water resources, to be sure others will wish to follow which will then be very difficult to refuse.
 6. The dictionary definition of Agriculture is "Agriculture is the science and art of cultivating plants and livestock". I'm sure that it is not necessary to point out that pumping precious water out of the ground and bottling it in single use plastic bottles and diverting it from the catchment area does not fulfil any definition of agriculture anywhere in the world. Its INDUSTRY. This is NOT an INDUSTRIAL AREA.
 7. The tourism industry in the area relies predominantly on the scenic nature of the area. Sanctioning industry (it is immaterial whether a bottling plant is referred to as Agricultural or Industry, from the outside this looks industrial). It is unsightly and will detract from the scenic nature of the area.
 8. The water in the aquifer is required by the agricultural and tourism industry, both of which do not ship the water out of the area but rather return the water to the ground from which it comes, forming a natural part of the cycle in the area.
 9. It stands to reason that for every job "created" by the automated bottling plant several existing incomes will be lost due to the long term cost to the agricultural and tourism industries in the area.
 10. It is extremely unlikely that a plant bottling 600m³ per annum is sustaining 30 full time employees.
 - a. It would be less than 5000 bottles per day on a 5 day week with no overtime. Barely enough to keep 10 employees busy even if it were not automated at all. This can very easily be verified by asking for proof of UIF payments to SARS and verifying the claims with SARS
 - b. Either the automation or the number of employees or the volume of water is being misrepresented
 11. There is no shortage of industrial areas in which such a bottling plant can be located while scenic areas in South Africa are disappearing rapidly. For good reason, almost all industrial areas are conveniently located close to sources of labour which are crying out for work.
 12. This area is far from any labour sources. As a result any labour will be inclined to remain on the premises if possible adding further strain to the systems such as sewerage.
 13. It stands to reason that if they are filtering the water they can use almost any water source and do not need to deplete a water source crucial to a delicate scenic estuary upon which many species and an entire tourist and agricultural industry are dependant.
 14. The only motive for operating the business in this area is that the land is cheaper than industrial properties and they can exploit the free water from the aquifer for financial gain at considerable cost to all in the area. Furthermore, all that will do is undercut the prices of legitimate bottling factories which will lose whatever jobs erf 633/35 gains. Possibly more.

15. Far from being a reason to grant this "Proposed consent use, departure, removal" the fact that this industry has operated ILLEGALLY for 12 years, is itself grounds for denial. To even consider it would be entirely the wrong message for future transgressors. Ignorance of the law has NEVER been a defence let alone cause to waive the law that they are breaking.
16. Due diligence when buying a "going concern" is the onus of the buyer and the lack of due diligence indicates an irresponsible, opportunistic, unscrupulous business practice.
17. Millions of Rands of taxpayers money is being spent on making the R43 safer. They already have an 8 ton truck which needs to enter, or worse still, cross the R43 to head in the direction of Hermanus. They ADMIT to wanting to increase capacity by 300% (heaven only knows what they really will do given their track record) which will require a much larger truck doing more frequent collections and deliveries. This is NOT an INDUSTRIAL AREA. It does not have the infrastructure and there is none planned for ANYTIME in the future!!!

Please put a stop to this madness. This application should have been thrown out and measures taken against the owners long ago.

Regards

Bruce Ivy
+27 83 506 2883

Alida Conradie - FW: Municipal Notice 85/2019 Removal of Restrictive Conditions on Portion 35 of Farm 633, Rocklands.

From: "VOGELGAT" <vogelgatreserve@telkomsa.net>
To: <aconradie@overstrand.gov.za>
Date: 2019/07/17 02:26 PM
Subject: FW: Municipal Notice 85/2019 Removal of Restrictive Conditions on Portion 35 of Farm 633, Rocklands.

TP-A Theart
(S yld merwe)



Giorgio Lombardi
Dip. Nature Conservation
M.Sc (Master of Science: Botany)

Vogelgat Private Nature Reserve
P O Box 2115
HERMANUS
7200

Tel: 0283141411
Cel: 0828645297
Fax: 0866932708
Email: vogelgatreserve@telkomsa.net
Website: www.vogelgat.co.za

Dear Ms Conradie

I am a member of the HLPOA Executive Committee representing the interests of Vogelgat Private Nature Reserve (Pty) Ltd.

The members of our company support the submitted comments made by the HLPOA executive committee and in addition fully accept the concerns below of our neighbour.

Please acknowledge receipt of this email.

Sincerely
Mr Giorgio Lombardi
Warden
Vogelgat Private Nature Reserve

The Municipal Manager,
Overstrand Municipality
P O Box 20
Hermanus

FILE NO: Ptn 35 633
Rocklands
SCAN NO:
COLLABORATOR NO: 1303355

7200

Attention Ms A Conradie (aconradie@overstrand.gov.za)

Dear Sir/Madam

Municipal Notice No. 85/2019 - Removal of Restrictive Conditions Portion 35 of Farm 633, Rocklands.

I am a member of the Hermanus Lagoon Property Owners' Association. I live nearby on Lagoon Lodge erf 633/19, which I own, close to the property in question. I support the comments and concerns made in the attached letter from the HLPOA Executive Committee and I also wish to register the following as my individual comment in addition to those of the HLPOA Exco.

Please acknowledge receipt of this email.

I am incredulous that taxpayers money is being wasted even considering this application. The applicant is clearly criminal.

1. The estuary is already strained to its limits due to a desperate shortage of water to breach the river mouth used to breach yearly. Please refer to the exhaustive environmental report attached, produced at great expense and trouble by the Western Cape Government and which screams for every drop of water possible.
2. It is unlikely to be a coincidence that the estuary has suffered most severely in the last 12 years, exactly when this illegal operation began.
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FILE NO:	PTN 35/633 Rocklands ✓
SCAN NO:	PTN 35
COLLABORATOR NO:	1306624



TP - A. Theirt
(S. v. d. Merwe) 41/46

R LAPPING
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E.MAIL: robinlapping@gmail.com

THE MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY
PO BOX 20
HERMANUS
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E.MAIL: aconradie@overstrand.co.gov.za

PORTION 35 OF FARM 633 ROCKLANDS: REMOVAL OF RESTRICTIVE CONDITIONS, CONSENT USE, DEPARTURE AND APPLICATION FOR APPROVAL.

I, R Lapping, of Farm 57/633 Rocklands (neighbouring 35/633) request to be listed as an interested and affected party with regard to the above application. I comment on the application as the bottling plant is located on the neighbouring property and is within sound and sight of my residence.

My comments on the motivation report submitted by Plan Active are as follows:

1. BACKGROUND

Is a water plant an agricultural industry?

The main building on the north portion has been modified and added to in the last two years with no planning permission.

The wooden shed to the east is used as a residence for at least one of the employees.

The "newly constructed" shed was built more than two years ago. When plans were submitted after construction had commenced the stated use was for the storage of a boat. This indicates that the owner knew of the illegality of the operation and was attempting to deceive the municipality. The shed was completed despite stop building and stop work orders being issued by the municipality.

It is my belief that Mr Beatham has been in effect a beneficial owner of the

TP
26 JUL 2019

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property since 2012.

There is no excuse in law for claiming ignorance of land use rights when purchasing a property.

After being notified that that the current land use was illegal Mr Beatham continued to operate the plant for over two and a half years and attempted to frustrate all efforts by the municipality to comply with their orders and substantially expanded the business during this time including sinking a second borehole with no water use permit.

2. APPLICATION DETAILS

Removal of restrictive title deed conditions – there were good reasons for the restrictions which apply to originally six adjacent small properties so as to prevent development of the area.

By their admission they are applying to the District Roads Engineer to use the farm as an industry thereby debunking claims that this is an agricultural activity.

3.1. PROPERTY DESCRIPTION

The wooden shed which is claimed to be a staff room is a staff room is a second residence. This is specifically prohibited in the title deed.

3.2. ZONING

This is of no significance as the title deed prohibits these activities.

3.3 LAND USE

There are two boreholes. The second borehole, shown on the plan, was sunk recently. The original borehole which is not shown is some distance from the house close to the north boundary.

3.4. PROPOSED DEVELOPMENT

3.4.1. CONSENT USE

3.4.2.

It is claimed that the water does not go through a chemical process and there are no additives. They claim that the water is PH neutral. The borehole water on my property which is from the same aquifer is not PH neutral.

The increase in production by over 300% will surely effect the local environment.

The "new" shed was built two and a half years ago with false information submitted to the municipality.

The stated increase can not be relied on as the owner has to date shown a total disregard for the law and regulations and will probably continue to do so.

The wooden shed was certainly used for accommodation in the past and is probably still used as such. Moreover it is prohibited in the title deed.

3.4.3 REMOVAL OF RESTRICTIVE TITLE DEED CONDITION

The restriction of what were originally erf 16/633 to 21/633 (of which 35/633 is a subdivision) are in place specifically prevent this type of development on these small properties.

3.5. CHARACTER OF THE ENVIROMENT

The substantial expansion of an industry is most certainly not compatible with the land use tendency of the area and will have a negative impact on the character of the area.

3.6. POTENTIAL OF THE PROPERTY (DESIRABILITY OF THE PROPOSED UTILISATION)

Me Beatham did not appoint Plan Active after being notified that the current land use was illegal but a minimum of two and a half years later after being prosecuted during this period.

The thirty employees are not local residents but have to travel some twenty KM from Hermanus to work. The plant should be located in Hermanus or Stanford industrial areas where labour lives close by.

The bottling plant does not appear to be a clean operation. There are numerous disused pallets and other rubbish scattered over the property. Windblown rubbish spreads to adjacent properties.

3.7 IMPACT ON EXTERNAL ENGINEERING SERVICES 3.7.1 PROVISION OF SERVICES

What sewerage and waste disposal services exist? If the production is increased by 300% sewerage disposal will become a major polluter of the aquifer. What is the distance of the two boreholes from the sewerage treatment facility, if any and what is the depth of the boreholes?

3.7.2 TRAFFIC IMPACT, PARKING AND ACCESS

The noise, particularly after hours, of vehicle reversing alarms is noticeable.

3.8 TITLE DEED

Restrictions are in place for good reason to prevent this type of development in a quiet rural area.

3.11 PLANNING PRINCIPLES

SPATIAL JUSTICE

This is not an agricultural industry.

SPATIAL SUSTAINABILITY

The owner has shown a total disregard for the law to date. It is likely that the property will be developed further with possibly other bottling or processing activities taking place.

4. RECOMMENDATION

The proposal is NOT compatible with the existing built character of the area.

There is NO spring. Borehole water is bottled.

Note: why is the original borehole not shown on the plan? Is it being concealed?

CONCLUSION

There is no place for an industrial business in a quiet rural area.

The title deed restrictions are there for a reason and should be retained.

How many staff would be employed in future?

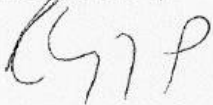
How will the municipality control future expansion on this property if development to date has gone ahead despite efforts by the municipality to stop operations?

45/46

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The business should be relocated to an industrial area. The probable reason is the higher cost of property in industrial areas.

R Lapping
26 July 2019 ,



*TRA Theart
(S. vd Merwe)*

Alida Conradie - Municipal Notice No. 85/2019 - Removal of Restrictive Conditions Portion 35 of Farm 633, Rocklands.



From: "Paul Buley" <pbuley@mweb.co.za>
To: <aconradie@overstrand.gov.za>
Date: 2019/07/26 03:32 PM
Subject: Municipal Notice No. 85/2019 - Removal of Restrictive Conditions Portion 35 of Farm 633, Rocklands.

The Municipal Manager,
Overstrand Municipality
P O Box 20
Hermanus
7200

Attention Ms A Conradie

Dear Sir/Madam

As an occupant of farm 633 portion 17 I have received copies of submissions made by IAPs regarding this application. Notwithstanding the comments already made I have concerns in the following areas

1. Sanitation and washing facilities : with 30 full time employees clearly the facilities need to reflect the load on sanitation. A septic tank would not suffice and a conservation tanks would need to be of huge proportions eg 0.3 cum per person per day = 9 cum/day. Faulty or inadequate facilities would result in untreated effluent being washed into the Kleinrivier lagoon during the rainy season as the property has no stormwater retention capability. Perhaps a small sewage plant should be specified
2. It should be anticipated that the applicant may be tempted to keep staff on the property overnight. This could lead to the formation of a nucleus for informal housing which brings along with it the risk of crime, poverty and overcrowding. I recall that some years ago Lagoon Edge had staff quarters above the R43 which have now been demolished. In 2011 our cottage and four others were broken into by 3 children all under the age of 10. Accommodating staff overnight should be prohibited.
3. It is presumed the plant will need approval according the various acts that govern plant machinery, employee safety and environmental emissions and be audited regularly.

Yours sincerely
Paul Buley

FILE NO: <i>PTN 35/633</i> ✓
<i>Rocklands</i>
SCAN NO: <i>PTN 35</i>
COLLABORATOR NO: <i>1306918</i>

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26 JUL 2019

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Plan Active
Town & Regional Planners
Stads-en Streeksbeplanners



TP. N/Heart Annexure F 1/34
(Signature)

6 Magnolia St / Str
PO Box / Posbus 296
HERMANUS
7200
Tel: (028) 313 1673
Fax / Faks: (028) 312 1351
Email:

planactive@hermanus.co.za
Website: www.planactive.co.za

Our reference: PA17013
Your reference: Ptn35 of 633 GRCA (3762)

18 September 2019

The Municipal Manager
Overstrand Municipality
PO Box 20
HERMANUS
7200

For attention: Mr. P. Le Roux

Sir

FILE NO: PA17013	SIF
Rocklands	✓
SCAN NO:	
PTN 35	
COLLABORATOR NO:	
1324603	

COMMENTS ON OBJECTIONS: PORTION 35 OF THE FARM No.633

Your letter dated 31 July 2019 with copies of the objections and our e-mail correspondence that followed requesting an additional 30 days to provide our comments refer. Subsequently our request for the extension of the commenting period with an additional 30 days was granted and lapses on the 30 September 2019. Our comments on the objections below was formulated with the input received from Groundwater Complete (Annexure A) and Lornay Environmental Consulting (Annexure B). The objections are summarised in *Italic* font below and our comments follow in **bold** print:

- The members of the Hermanus Lagoon Property Owners' Association are landowners on the shores of the Kleinrivier Estuary, north and south, and are directly interested primarily in the good health of the Estuary and secondly in the preservation and maintenance of the natural environment which surrounds the Estuary.*

Portion 35 of the Farm No. 633 is situated in the Kleinrivier Catchment Area, situated between the Kleinriviersberg and the Kleinrivier Estuary. The water from this area is an important source

Page 1

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

John Mc Lachlan: Ndiip (Town Planning) Tech Witswatersrand; MSAPI Nr.10908; SACPLAN Tech.Pin B/8250/2014
Pauline Spronk: B (Soc Se) US, BA Hon (UNISA)
Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACPLAN Pr.Pin A/158/2009

of the inflow water to the Estuary, thus our interest and concern of any development within the Kleinrivier Catchment Area. Our concerns, comments and questions are listed below:-

It is noted that currently the land use and the water use are illegal. The application for Consent Use should be considered as a New Application and consideration not be given to the fact that a bottling plant already exists. This is recommended to prevent further illegal activities being started in the area, with the expectation that later they will be approved because of their current existence.

Water extracted on Portion 35 of the Farm No. 633 has been used to bottle water under different ownership for the last 12 years. Our client, Mr. Michael Beatham has been renting the farm since December 2012 as a running concern as a water bottling plant with all its employees. He established Mountain Falls Estate (Pty)Ltd in 2014 and decided to purchase the farm that was transferred in 2015 as a running concern under the impression that the land use rights have been established. After being notified that the current land use was illegal, Mr. Beatham appointed us, and an environmentalist and water specialist to rectify the matter and an application was lodged on the 17th of August 2017.

It is our opinion that the municipality is considering the application as a new application and that it would be dealt with on its own merit.

- 2. It seems that the Zoning with the Application for Consent Use (3.2) and the Application for the removal of the Restrictive Title Deed condition are linked. If the Consent Use is approved then it follows that the Restrictive Title Deed condition should be removed to enact the Consent Use.*

The application consist of a consent use, departure, removal of restrictive Title Deed conditions and approval is also requested in terms of Act 21 of 1940. Once approval has been obtained for the consent use, departure, removal of restrictive Title Deed conditions and approval in terms of Act 21 of 1940 will the Title Deed be endorsed to remove the restrictions.

8/34

3. *It is proposed to increase the production of bottled water from 600 m³ annually to up a possible 2000 m³ annually. This is an increase of 300% which will have an impact on prevailing conditions.*

The accusation to a change of the prevailing conditions is highly unlikely and unfounded. Please refer to Annexure A, detailed response from Groundwater Complete on the objection.

4. *Water: The property Portion 35 of Farm No 633 is within the Kleinrivier Catchment Area and the water for the water bottling plant is taken from boreholes. We are informed a second borehole exists, for both of which there is no Water Users' Licence.*

Application for the necessary registration of water usage is being processed by Michelle Naylor of Lornay Environmental Consulting (3.4.1 Consent Use)

We submit that an Approved Water Use Licence (National Water Act (Act 36 of 1998; Section 39 of the NWA; Notice 538 of 2016, Government Gazette No.40243 of 2 September 2016) is a prior condition before further consideration is given to the Application for Consent Use. Without permission to use the water from the boreholes, the application for the production of bottled water is without purpose.

Lornay Environmental Consulting has submitted a Water Use Licence Application for the abstraction of 2000m³ from 2 boreholes. The application is in an advanced stage of completion. With reference to our former discussions with the municipality will they only consider the applications once the water use license has been obtained.

5. *Extraction of Water: The health of the Kleinrivier Estuary is dependent on the inflow of water, not only from the Klein River but also from the mountain streams and seepage of water of the Kleinriviersberg, the Catchment Area. The property under discussion lies between two such mountain streams, the main stream Rocklands Stream is one of the five strongest streams supplying water to the Estuary. During recent years the Estuary has experienced an increasing problem of lack of water, one reason being the extraction of water for development and agriculture. Therefore the extraction of water from the borehole must be approved, carefully monitored and controlled.*

Agreed. All water uses need to be carefully managed and monitored. Please refer to Annexure A, detailed response from Groundwater Complete on the objection.

6. *Pollution of Water: Filtration - The water from the borehole is filtered and does not go through a chemical process and no additives are added. What is the method of filtration? What method is used to dispose of the debris which is filtered out of the water?*

Mountain Falls water is marketed as natural mineral water. Nothing is added to the water between borehole and bottle, and nothing is removed other than naturally occurring sediment. Seven filters of varying micrometres are utilised to capture naturally-occurring sediment so that clear water is bottled. The filters are used as follows:

- Filter 1: Exterior tank filter: Big Blue 10" sediment filter;
- Filter 2: on incoming line: 5um 10" DOE RF-style – replaced fortnightly;
- Filter 3: on incoming line: Big Blue Carbon Block 20" 10um – replaced fortnightly;
- Filter 4: on incoming line: 0.2um 10" Posidyne – replaced fortnightly;
- Filter 5: from Chiller to Carbonator: 1um 10" Ultipor – replaced monthly;
- Filter 6: Rinser Unit: 5um 10" DOE RF-style – replaced every second day. The water in the rinsing unit is recycled and purified via ozonation;
- Filter 7: Still line: : on incoming line: 0.2um 10" Posidyne – replaced monthly.

These are replaced as specified above and disposed of by transporting it to a local waste facility.

7. *Health and Sanitation - it is noted that there are 30 members of staff. What ablution facilities are Available for these staff members? What is the method of disposal of sewage and waste materials?*

Please refer to SECTION 26 below regarding staff numbers. There are three showers and three toilets available for staff, as follows:

- Two showers and two toilets are situated in the upper building area;
- One shower and one toilet are situated in the wooden shed/staff room;
- There is a further toilet available in the resident manager's apartment above the bottling area.

There are three underground sewer tanks with a total capacity of 16,000 litres (1,000 litres, 5,000 litres and 10,000 litres respectively) situated on the property, which are emptied as necessary by the Overstrand Municipality at Mountain Fall's expense. For any other issues that might arise, the services of Dynarod Hermanus are utilised.

Refuse is transported by Mountain Falls to either waste and/or recycling centres in Hermanus.

8. *Zoning: The property is zoned Agriculture 1 and the Consent Uses include agricultural industry. We question if water bottling is an Agricultural Industry or is it an Industrial Industry? We further question the number of buildings on the size of the property, zoned Agriculture 1.*

The definition of an Agricultural Industry read as follows:

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

It can be argued that water is being harvested from a source on the subject farm that is further processed and bottled. There is no land use definition that specifically refers to a water bottling plant and is it our opinion that this is the most suitable land use, Agricultural Industry, as defined in the Overstrand Municipality Zoning Scheme to accommodate a bottling plant. If the water had to be sourced from elsewhere and not being harvested from the subject farm the proposed land use, Agricultural Industry, would not have sufficed.

9. *We submit that the Bottling Plant may be an Industrial Industry and therefore we object to the approval of Consent Use on Agriculture 1. We question if Zone Agriculture 1 is currently the correct Zonation for the property, given the size of the property, 2.247 ha, and the area of the property covered by buildings? What in the past was the appropriate zoning is no longer perceived as correct.*

The Overstrand Municipality Zoning Scheme makes provision for an Agricultural Industry under an Agriculture Zone 1 Zoning. As mentioned above is it our opinion that the water bottling plant can be accommodated as an Agricultural Industry due to the fact that the water is harvested onsite. The Zoning Scheme makes provision for a total floor space of 5000m² under a zoning of Agriculture Zone 1. The total estimated coverage of all buildings on the subject farm portion is ±1105m² in extent, well below the 5000m² threshold.

With reference to the above is it our opinion that the proposed application to legalise the existing bottling plant is in order and that an agricultural industry is the most suited use and that the application can be supported.

10. The Zoning will remained unchanged if the application for Consent Use -Agricultural industry is approved. All relevant conditions to Agriculture 1 Consent Use must be applied, monitored and controlled.

After an approval has been obtained as per our application, the land use restrictions prescribed under the current zoning, Agriculture Zone 1 will be applied.

11. Buildings: It is noted that the Property is 2.247 in size. Currently there are three structures on the property.

- A building, 320 m2, on the northern boundary which is used for residence and water bottling plant. Use to remain unchanged.
- A wooden shed used as a staff room - Ablution facilities are questioned?
- Newly constructed shed, 310m² enclosed, with 125m² as an open stoep, which is used as storage space. Proposed Use to change to automated bottling plant. Currently is it used for storage, where will bottles be stored when the shed is no longer available? The land usage determines the number of buildings on a property relative to its size. The proposed development must conform to the conditions of the Zoning and Land Usage.

Please refer to our comment under Section 9 above.

12. Staff: It is proposed to increase the production up to 300%. An automated bottling plant is to be introduced. What impact will these two factors have directly on the number of staff employed and indirectly on the buildings and the environment?

The new shed as indicated on the site plan is currently used for storage only. In the event of future automation, the following should be noted:

- **Mountain Falls has no intention of increasing production by 300% and has never made any such intention public.**
- **Mountain Falls markets itself as a small, niche, bottled water supplier and turns down numerous, ongoing requests from many regions and provinces, specifically the Garden Route, Eastern Cape, Kwa-Zulu Natal and Gauteng. Mountain Falls' focus is Cape Town and surrounds, and the Overberg region.**

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- **The only exception to this rule are two Cape Town-based clients who have national outlets. As a result they ship to one contracted distributor in Gauteng approximately two to four times a month, and to the same distributor in the Eastern Cape once every few months.**
- **The owner has investigated a small, limited capacity automated bottling machine, largely for smoother, as opposed to increased, production, as most of the current bottling equipment was custom made for a previous owner and is old and worn, with zero access to replacement parts. As a result the new machinery is to replace old equipment with a cleaner, healthier updated alternative. There is likely to be a reduction in employee numbers as a result.**

13. Natural Environment: Portion 35 of Farm No.633 lies above the R43 on the foothills of the Kleinriviersberg mountains. Below the R43 are the farm portions in the vicinity, which are small and not actively farmed but are developed. Above the R43 there is undeveloped natural fynbos on the foothills of the mountain range. In this rural area the R43 forms a natural barrier between the developed section and the open section of natural veld. In this natural area, Portion 35 Farm No. 633 is an exception being developed (above the R43) in the fynbos and strict conditions must be required, when the Application is considered and if Approved, to curtail further intrusion into the natural veld.

Our application is to legalise an existing bottling plant and to accommodate existing structures. No additional structures are proposed. Therefore no intrusion into natural veld will occur.

14. Road: Currently the R43 is undergoing major road works and upgrading, with the use of a by-pass road, affecting the entrance to the property. Increased production of the water bottling works will increase the number of deliveries of bottles, empty and filled, which in turn will increase road usage and the potential for accidents from a "concealed" entrance. The entrance to Mountain Falls is concealed by trees and it is up a steep slope which gives difficult access. Careful consideration and conditions of Approval must be given by the District Roads Engineer.

The application was circulated to the District Roads Engineer for their comments. The District Roads Engineer supports the application and the access point to the farm.

15. An Approved Water Use Licence (National Water Act (Act 36 of 1998) must be in place before further consideration is given to the development of a water bottling plant on Property Portion 35 of Farm No. 633;

Please refer to our comments under Section 4 above.

16. Section 16 (2)(0) Overstrand Municipal By- Law on Municipal Land Use Planning for a Consent Use AND;

Section 16 (2)(f) Overstrand Municipal By- Law on Municipal Land Use Planning for a the removal of a restrictive Title Deed condition ARE LINKED. If Consent Use is given the restrictive title must be removed to enable the consent use to be enacted.

Section 15 (2)(b) Overstrand Municipal By- Law on Municipal Land Use Planning for a departure from the lateral building line may be approved only on Condition there is no further departure on any building line surrounding the property. This decision must not set a precedent for future usage in the area.

The Overstrand Municipality's approval will be very specific and would only be for what we have applied for.

17. Approval from the District Road Engineer must be given particularly in view of the proposed increase in production with a resultant increase in road usage by the industry. Further the R43 is under construction with temporary and permanent change in road conditions which may impact on the access to the property.

An approval from the District Roads Engineer have been obtained.

18. I am incredulous that taxpayers money is being wasted even considering this application. The applicant is clearly criminal.

As mentioned earlier in our response, when the illegal land use came to his attention Mr. Beatham immediately acted to rectify the illegal use of the farm portion as a bottling plant that he bought as running concern. He has also appointed all the necessary consultants to ensure that the bottling plant is properly managed in such a way as to not have a negative impact on the surrounding environment. The required application to obtain a water usage license has also been lodged to legalise the abstraction of water from the boreholes.

It is clear from this statement that Mr. Beatham is doing his utmost best to rectify this matter to legalise the land use that was purchased as a running concern.

19. The estuary is already strained to its limits due to a desperate shortage of water to breach the river mouth used to breach yearly. Please refer to the exhaustive environmental report attached, produced at great expense and trouble by the Western Cape Government and which screams for every drop of water possible. It is unlikely to be a coincidence that the estuary has suffered most severely in the last 12 years, exactly when this illegal operation began.

While the strained water resources in the Western Cape is a fact and a concern to all, the scale of the water use applied for should be considered against the scale of the water balance of the estuary. This statement is emotion driven and factually incorrect. Please refer to Annexure A, detailed response from Groundwater Complete on the objection.

20. The applicant is already applying for a 500% increase in burden on this already strained ecosystem.

The increase (actually 400%) will amount to 0.014% of natural losses. By far the highest contribution of water to the estuary is from surface water. (Kleinrivier and other streams) Please refer to Annexure A, detailed response from Groundwater Complete on the objection.

21. The amount of water being bottled is very difficult to control and it will be in the applicant's interest and nature to understate it,

Abstraction of water from the boreholes will be measured by properly calibrated and approved water meters in order to not exceed the allowable 2000m³ / annum as per the pending Water Use Licence Application.

22. If one bottling plant is allowed to drain the water resources, to be sure others will wish to follow which will then be very difficult to refuse.

The Breede Gouritz Catchment Management Agencies regulates water usage applications in order to ensure the sustainability of our water sources. Each application is evaluated on its own merits and the impact that it would have on water resources. A water use license will not be issued if it would have a negative impact on the water resources.

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23. *The dictionary definition of Agriculture is "Agriculture is the science and art of cultivating plants and livestock". I'm sure that it is not necessary to point out that pumping precious water out of the ground and bottling it in single use plastic bottles and diverting it from the catchment area does not fulfil any definition of agriculture anywhere in the world. Its INDUSTRY. This is NOT an INDUSTRIAL AREA.*

Please refer to our comments under Section 8 above.

24. *The tourism industry in the area relies predominantly on the scenic nature of the area. Sanctioning industry (it is immaterial whether a bottling plant is referred to as Agricultural or Industry, from the outside this looks industrial). It is unsightly and will detract from the scenic nature of the area.*

The building referred to is the new shed. A shed and agricultural land goes hand in hand and is a common structure found on agricultural land. The fact that the shed will be used as a bottling plant in the future will not change its appearance. Subsequently the bottling plant will be perceived as a shed by passers-by and will not detract from the scenic nature of the area.

25. *The water in the aquifer is required by the agricultural and tourism industry, both of which do not ship the water out of the area but rather return the water to the ground from which it comes, forming a natural part of the cycle in the area. It stands to reason that for every job "created" by the automated bottling plant several existing incomes will be lost due to the long term cost to the agricultural and tourism industries in the area.*

This is a generalised and idealised statement and not applicable to the application. The fact is, that no groundwater is used for agricultural purposes in the immediate vicinity. Please refer to Annexure A, detailed response from Groundwater Complete on the objection.

26. *It is extremely unlikely that a plant bottling 600m³ per annum is sustaining 30 full time employees.*

It would be less than 5000 bottles per day on a 5 day week with no overtime. Barely enough to keep 10 employees busy even if it were not automated at all. This can very easily be verified by asking for proof of UIF payments to SARS and verifying the claims with SARS.

Either the automation or the number of employees or the volume of water is being misrepresented.

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Mountain Falls currently has 24 full time employees based at the Hermanus property, of which:

- Two are based in administration only.
- One is grounds and facilities manager and lives on the property.

Of the balance, the split of staff members are as follows:

Driving and deliveries:

- One employee is the driver, transporting employees to and from work, as well as doing local deliveries between Gansbaai and Hermanus, and further afield as required.

Cleaning:

- One employee does the daily cleaning and, where time is available, folds cardboard trays for packaging.

Bottling: bottling on the sparkling line is done by hand; bottling on the still line is semi-automated with limited bottling capability:

- Nine employees on average, are focused in the bottling area. During the course of a single day, the bottling staff breakdown is as follows:
- Sparkling bottling line: Currently four staff members both bottling and capping (PET bottles). Bottling sparkling water is by its nature slower than bottling still water. During season this can increase to six, maximum, due to the size of the line.
- Still bottling line: One staff member to bottle; Two staff members to cap.
- Rinsing bottles for bottling: Two staff members, drawn from the above complement, throughout the course of the day.
- Supervisors: Two supervisors, attending to overseeing production and record keeping, moving bottles into the bottling area, and helping out on the line when staff is absent.

Labelling: labelling is done by hand, as well as via a small, custom made labelling machine with limited capability:

- There are six permanent employees in the labelling room, including two supervisors.

Wrapping and Packaging and Capping of Glass bottles:

- Three staff members are focused on wrapping and packing, including a production manager.
- Of these three, one employee operates a glass bottle capping machine when required.

Further comment re staffing and bottling:

- During busier times – usually any time between November through March or as required - staff complement is increased, mostly by seasonal, contracted employees. This increase in production and production staff, as outlined above under Bottling, is offset during quieter months.
- Further to this and to ensure our permanent staff members have some sort of income security during winter, we implement short time rather than retrenchment or 100% seasonal employment. The Overstrand is a tourism-focused region with high unemployment and limited employment opportunities.
- As in previous years, short time was implemented in winter 2019, when production drops to its lowest.

27. *There is no shortage of industrial areas in which such a bottling plant can be located while scenic areas in South Africa are disappearing rapidly. For good reason, almost all industrial areas are conveniently located close to sources of labour which are crying out for work.*

The Overstrand Municipality Scheme Regulations makes provision for the proposed use on agricultural land. By law all spring and mineral water has to be bottled at source. The bottling plant is of similar size as a barn or shed and is also perceived as such. It should also be noted that the new shed a barely visible from the R43.

28. *This area is far from any labour sources. As a result any labour will be inclined to remain on the premises if possible adding further strain to the systems such as sewerage.*

This shed is NOT used as housing and never has been, except for one 4-month period during 2016. The sole reason for this temporary usage was an exceptional circumstance: The resident general manager at the time, a woman on her own, was incapacitated due to an accident and a staff member from Cape Town was brought to the farm to assist. At no point prior to or post this incident, has it been used for accommodation. Nor is it intended to, as it is used solely by factory staff as stipulated above. The assumption that this WILL happen is entirely without merit or precedence. The company has an appointed driver who does the local deliveries and also conveniently transport employees to and from work. Mountain Falls is equidistant from Hermanus and Stanford, at a mere 15km (approximate). 15km cannot possibly be viewed as "far from any labour sources."

29. *It stands to reason that if they are filtering the water they can use almost any water source and do not need to deplete a water source crucial to a delicate scenic estuary upon which many species and an entire tourist and agricultural industry are dependant.*

Please refer to Annexure A, detailed response from Groundwater Complete on the objection. Mountain Falls is not filtering water except for purposes of removing natural sediment. Refer to point 6 above.

30. *The only motive for operating the business in this area is that the land is cheaper than industrial properties and they can exploit the free water from the aquifer for financial gain at considerable cost to all in the area. Furthermore, all that will do is undercut the prices of legitimate bottling factories which will lose whatever jobs erf 633/35 gains. Possibly more.*

Please refer to Annexure A, detailed response from Groundwater Complete on the objection.

31. *Far from being a reason to grant this "Proposed consent use, departure, removal" the fact that this industry has operated ILLEGALLY for 12 years, is itself grounds for denial. To even consider it would be entirely the wrong message for future transgressors. Ignorance of the law has NEVER been a defence let alone cause to waive the law that they are breaking.*

Please refer to our comments under Section 18 above.

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32. *Due diligence when buying a "going concern" is the onus of the buyer and the lack of due diligence indicates an irresponsible, opportunistic, unscrupulous business practice.*

33. *Millions of Rands of taxpayers money is being spent on making the R43 safer. They already have an 8 ton truck which needs to enter, or worse still cross the R43 to head in the direction of Hermanus. They ADMIT to wanting to increase capacity by 300% (heaven only knows what they really will do given their track record) which will require a much larger truck doing more frequent collections and deliveries. This is NOT an INDUSTRIAL AREA. It does not have the infrastructure and there is none planned for ANYTIME in the future!!*

The R43 is a major road that is designed to carry high volume and heavy traffic. The application at hand has also been supported by the Department of Transport.

34. *Is a water plant an agricultural industry?*

Please refer to Section 8 above.

35. *The main building on the north portion has been modified and added to in the last two years with no planning permission. The wooden shed to the east is used as a residence for at least one of the employees.*

This main building itself has NOT been ADDED TO OR EXTENDED in any way by the current owner, other than the following repairs commencing 2016, as funds allowed:

- 1.) **Improving safety in the area directly outside the buildings, by repairing and laying concrete and adding a pergola.**
- 2.) **Repairing and improving the concrete floor in one of the rooms of the building.**
- 3.) **Moving one doorway opening that was not part of a load-bearing wall.**
- 4.) **Improving a small room with hand-washing facilities by removing old cupboards and sinks that were rotting, and installing new sinks only. This is used by staff to wash and sanitise hands before work and throughout the day as required.**

36. *The "newly constructed" shed was built more than two years ago. When plans were submitted after construction had commenced the stated use was for the storage of a boat. This indicates that the owner knew of the illegality of the operation and was attempting to deceive the municipality. The shed was completed despite stop building and stop work orders being issued by the municipality.*

The existing shed was completed and used for storage purposes only. It was never used as a bottling plant. It is the owner's intention to change the land use of the shed to a bottling plant after they have obtained all their approvals.

37. It is my belief that Mr Beatham has been in effect a beneficial owner of the property since 2012. There is no excuse in law for claiming ignorance of land use rights when purchasing a property. After being notified that the current land use was illegal Mr Beatham continued to operate the plant for over two and a half years and attempted to frustrate all efforts by the municipality to comply with their orders and substantially expanded the business during this time including sinking a second borehole with no water use permit.

The objector's belief cannot be grounds for objection. This matter has been in court since the purchase took place, meaning no deceit from Mr Beatham, who has given his full cooperation. Please also refer to Section 18 above.

38. Removal of restrictive title deed conditions - there were good reasons for the restrictions which apply to originally six adjacent small properties so as to prevent development of the area. By their admission they are applying to the District Roads Engineer to use the farm as an industry thereby debunking claims that this is an agricultural activity.

If the bottling plant was defined as a primary right in terms of the Zoning Scheme under a Agriculture Zone 1 zoning or included into the definition of "agriculture" it would not have been necessary to lodge an application for a consent use. The use of a bottling plant can be accommodated as an agricultural industry as a consent use and therefore it is a requirement that we also apply for an approval from the District Roads Engineer as stipulated in the Title Deed.

39. The wooden shed which is claimed to be a staff room is a second residence. This is specifically prohibited in the title deed.

The wooden shed is utilised by factory staff as a 'staff room', where staff eat lunch during their break. No food is prepared on the premises, although staff has access to a kettle for coffee and tea, and a microwave for warming lunch brought from home. Further, there are lockers for the aprons and boots, and minimal storage of small hand tools.

Please also refer to our comments under Section 28 above.

40. *It is claimed that the water does not go through a chemical process and there are no additives. They claim that the water is PH neutral. The borehole water on my property which is from the same aquifer is not Ph neutral. .*

This objection is irrelevant to Mountain Falls' application. However, the water does not go through a chemical process and there are no additives. This can be confirmed by the local department that does regular inspections. The water is also tested by independent laboratories.

41. *The "new" shed was built two and a half years ago with false information submitted to the municipality.*

Please refer to our comments under Section 18 above.

42. *The stated increase cannot be relied on as the owner has to date shown a total disregard for the law and regulations and will probably continue to do so.*

Please refer to our comments under Section 18 above.

43. *The wooden shed was certainly used for accommodation in the past and is probably still used as such. Moreover it is prohibited in the title deed.*

Please refer to our comments under Section 38 above.

44. *The restriction of what were originally erf 16/633 to 21/633 (of which 35/633) is a subdivision) is in place specifically to prevent this type of development on these small properties.*

The proposed consent use and removal of restrictive Title Deed conditions in order to legalise the bottling plant that was established on Portion 35 of the Farm No.633 is not a noxious industry and produces no harmful emissions. The process can be summarised as the abstraction of water, water filtration, bottling and labelling. It is our opinion that the land use will not have a negative impact on the surrounding properties and the character of the area.

45. *The substantial expansion of an industry is most certainly not compatible with the land use tendency of the area and will have a negative impact on the character of the area.*

Please refer to our comments under Sections 1, 8, 18, 24 and 27 above.

46. *Mr. Beatham did not appoint Plan Active after being notified that the current land use was illegal but a minimum of two and a half years later after being prosecuted during this period.*

Plan Active was appointed in January 2017 after Mr. Beatham received a notice from the Overstrand Municipality. We immediately corresponded with the Overstrand Municipality and also started negotiating with the Overstrand Municipality to determine how to remedy the illegal land use.

47. *The thirty employees are not local residents but have to travel some twenty KM from Hermanus to work. The plant should be located in Hermanus or Stanford industrial areas where labour lives close by.*

Please refer to our comments under Sections 27 & 28 above.

48. *The bottling plant does not appear to be a clean operation. There are numerous disused pallets and other rubbish scattered over the property. Windblown rubbish spreads to adjacent properties.*

The bottling plant is a clean operation and strict health and hygiene procedures are followed. This can be confirmed by the relevant local authority that does regular inspections. Mountain Falls acknowledges that there have been occasions where extremely high winds has caused minimal litter to be blown beyond the boundaries before being disposed of by the grounds staff. This has been addressed and being closely monitored.

49. *What sewerage and waste disposal services exist? If the production is increased by 300% sewerage disposal will become a major polluter of the aquifer.*

With reference to our earlier comments is it clear that the water bottling plant will increase and will be semi-automated. The number of staff members will not increase and subsequently the strain on services will remain the same.

We have also obtained the following input from a consulting geohydrologist, Mr. Gerhard Steenkamp:

The risk of sewage affecting groundwater depends on a number of factors such as:

- Type of sewage containment facility (closed, tanks, lined system, French drain, open ponds etc);
- The characteristics and thickness of the unsaturated zone (soil/bedrock);
- The depth to water table and characteristics of the aquifer, specifically the hydraulic properties; and
- The groundwater flow direction and gradient. If ground abstraction occurs, the gradient is affected and it will depend if the sewage facility is within the capture zone of the borehole.

At Mountain Falls, the following can be said on the subject:

- The sewage is contained in subsurface septic tanks built from brick and mortar. Conceptually, there should be very limited seepage/leakage from the septic tanks.
- The unsaturated zone is in excess of 30 meters thick. The hydraulic conductivity was not measured in the unsaturated zone but it is low in the saturated zone and the rate of seepage to the water table is expected to be low.
- The boreholes (BH01 and 02) are situated to the north and in the upstream flow direction from the septic tanks. The risk of the boreholes being affected under natural conditions is thus very low.
- Because the boreholes are used for abstraction, depression cones are generated which alter the flow directions around the boreholes. Although BH02 is relatively close to a septic tank, the radius of influence from the abstraction is very limited (as measured during the pumping tests).

All of the above points to a low risk of impact. Although the risk of the water quality in the boreholes being affected by seepage of untreated sewage from the septic tanks is considered to be low, a water quality monitoring program should be in place to confirm. The water should be analysed for bacteriological content (total coliform bacteria and e.coli) on at least a quarterly, but preferably on a monthly basis.

50. *What is the distance of the two boreholes from the sewerage treatment facility, if any and what is the depth of the boreholes?*

The distances from borehole 1 to the existing conservancy tanks are $\pm 55\text{m}$, $\pm 75\text{m}$ and $\pm 65\text{m}$ respective.

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Borehole 1 has a depth of $\pm 75\text{m}$. The distances from borehole 2 to the existing conservancy tanks are $\pm 10\text{m}$, $\pm 35\text{m}$ and $\pm 45\text{m}$ respective. Borehole 2 has a depth of $\pm 110\text{m}$. please refer to the aerial photograph below for easy reference.



51. The noise, particularly after hours, of vehicle reversing alarms is noticeable.

The impact of vehicles is similar, if not less frequent, than on other farms and/or business and/or ventures in the area. Given the location, Mountain Falls has only three suppliers that do deliveries to the farm, as follows:

Supplier 1: Once per week, during office hours;

Supplier 2: Two to three times per month during office hours;

Supplier 3: Once per week, in a small 2-ton vehicle.

Mountain Falls ships stock three times per week, i.e. one vehicle only, per shipment. This increases to five times (one vehicle only, per shipment) per week maximum, during season. Only a few of these shipments occur after hours, due to unforeseen circumstances (e.g traffic delays, closed roads, etc.) hence the impact on after hours 'noise' is negligible.

52. The owner has shown a total disregard for the law to date. It is likely that the property will be developed further with possibly other bottling or processing activities taking place. The proposal

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is NOT compatible with the existing built character of the area. There is NO spring. Borehole water is bottled. Note: why is the original borehole not shown on the plan? Is it being concealed?

Please refer to our comments under Sections 1, 8, 18, 24 and 27 above.

53. There is no place for an industrial business in a quiet rural area.

Please refer to our comments under Sections 8, 24 and 27 above.

54. The title deed restrictions are there for a reason and should be retained. How many staff would be employed in future?

Please refer to our comments under Section 26 above.

55. How will the municipality control future expansion on this property if development to date has gone ahead despite efforts by the municipality to stop operations?

The owner undertakes that no structures will be constructed or that the site will be further developed without obtaining the required approvals first.

56. Sanitation and washing facilities: with 30 full time employees clearly the facilities need to reflect the load on sanitation. A septic tank would not suffice and a conservation tanks would need to be of huge proportions eg 0.3 cum per person per day = 9 cum/day. Faulty or inadequate facilities would result in untreated effluent being washed into the Kleinrivier lagoon during the rainy season as the property has no stormwater retention capability. Perhaps a small sewage plant should be specified;

There are three underground sewer tanks with a total capacity of 16,000 litres (1,000 litres, 5,000 litres and 10,000 litres respectively) situated on the property, which are emptied as necessary by the Overstrand Municipality at Mountain Fall's expense. For any other issues that might arise, the services of Dynarod Hermanus are utilised.

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57. *It should be anticipated that the applicant may be tempted to keep staff on the property overnight. This could lead to the formation of a nucleus for informal housing which brings along with it the risk of crime, poverty and overcrowding. I recall that some years ago Lagoon Edge had staff quarters above the R43 which have now been demolished. In 2011 our cottage and four others were broken into by 3 children all under the age of 10. Accommodating staff overnight should be prohibited.*

Please refer to our comment under Section 28 above.

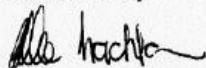
58. *It is presumed the plant will need approval according the various acts that govern plant machinery, employee safety and environmental emissions and be audited regularly.*

The bottling plant will conform to all rules and regulations applicable to this industry.

Please also refer to the comments received from Van Niekerk & Jansen van Rensburg Attorneys that we have attached as Annexure C.

We trust that you would find our reply to the comments to be in order and that the application will be dealt with favourably.

Yours faithfully



John Mc Lachlan

ANNEXURE A

23/34

Groundwater Complete

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Me. Michelle Naylor
Lornay Environmental Consulting
Hermanus
Western Cape

August 08, 2019

RESPONSE TO OBJECTIONS ON THE MOUNTAIN FALLS WULA

1 BACKGROUND AND TERMS OF REFERENCE

Groundwater Complete conducted a groundwater study for Mountain Falls in 2018 in technical support of their water use license application (WULA) of groundwater use for a bottling plant on Portion 35 of Farm 633, Rocklands. The report is titled "*Mountain Falls Mineral Water Bottling Plant: Report on Geohydrological Investigation*" and dated September 2018.

As part of the public participation process the application was made available for public inputs and comments and objections were made to the application, several of which concern the potential impact of the (increased) groundwater abstraction. Since we conducted the technical assessment we were requested to respond to the objections.

The main objections (received from Plan Active Town- and Regional Planners and dated July 31, 2019) that concern the groundwater abstraction and potential negative impact thereof were grouped together and are addressed below. Please note that we have no interest in the project being approved or not and we address the objections on a technical and factual basis only.

No comments are provided on legal compliance or any other aspects that do not concern the impact (on ambient water quality or quantity) of the proposed increased groundwater abstraction directly.

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2 ADDRESSING OF OBJECTIONS

The objections pertaining groundwater and its associated impacts were made by:

- E. Ivy on behalf of The Hermanus Lagoon Property Owners' Association; and
- B. Ivy (private)

The objections concerning groundwater occur on pages 4, 6 and 7 of the objections document.

The objections will be addressed by providing a summary of each objection and a brief response on each objection in table format.

Objections and responses to E. Ivy on behalf of The Hermanus Lagoon Property Owners' Association (page 4 of objections document)

No	Objection (summarised)	Response
Legality 2.	Increased abstraction from 600 to 2 000 m ³ /y will change prevailing conditions.	The change of prevailing conditions is highly unlikely. Boreholes yields are limited, hydraulic conductivity (permeability) of the aquifer is very low, resulting in limited radii of influence as a result of the abstraction. During pump testing of one borehole, there were no measurable reaction in the other borehole situated ±50 m away.
Water	Kleinrivier Estuary depends on inflow from the Klein River as well as mountain streams. The boreholes situated between two streams – Rocklands one of the strongest streams is nearby. Abstraction must be closely controlled and monitored.	Agreed. All water uses need to be carefully managed and monitored. It will be a condition of the water use license. The water use applied for is, however, nearly negligible in relation to the estuary water balance.

Objections and responses to B. Ivy

No	Objection (summarised)	Response
1	The estuary is already strained to its limits.	While the strained water resources in the Western Cape is a fact and concern to all, the scale of the water use applied for should be considered against the scale of the water balance of the estuary.
2	It is an unlikely coincidence that the estuary has suffered most severely since the abstraction for the bottling plant began.	This statement is emotion driven and factually incorrect. Some perspective: The estuary covers a surface area of more than 10 000 000 m ² . At a conservative 1 400 mm of evaporation a year, the natural loss from the estuary surface is more than 1.4 million cubic meters per

		year (m ³ /y). The 600 m ³ /y thus represents 0.004% of annual losses and could not be reasonably blamed for being the cause of the estuary's suffering.
3	Applicant is applying for 500% increase	The increase (actually less than 400%) will amount to 0.014% of natural losses. By far the highest contribution of water to the estuary is from surface water (Klein River and other streams). Of the groundwater base flow (which is estimated to be far less than the surface water) to the estuary the contribution from the Mountain Falls boreholes radii of influence will capture less than 3%. The actual estuary water loss from the estuary due to the Mountain Falls abstraction is expected to be less than one thousandth of one percent.
8	The water in the aquifer is required by the agriculture and tourism sector, not shipping water away but returning water to the ground.	This is a generalised and idealised statement and not applicable to the Mountain Falls application. Fact is, no groundwater is used for agriculture in the immediate vicinity. Groundwater seeps southwards and contributes to base flow to the estuary, which is saline and therefore it is lost as a source for agriculture. The only agriculture affected by the abstraction occurs at Rocklands directly south of Mountain Falls. The source is the Rocklands stream and groundwater from 2 boreholes is used for domestic purposes only.
9	Bottling plant jobs will cause job losses in the agricultural and tourism sectors.	Please see response to Comment 8.
14	Only reason for operating at location is because land is cheaper and they can exploit free water from the aquifer.	Bottling of natural water (as opposed to RO treated water) depends directly on the quality of the water. The groundwater at Mountain Falls is of excellent quality, which cannot be found at any industrial site.

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3 CONCLUSIONS

Although it is crucial that the use and management of any water use is carefully assessed and that there is active public interest and comment in water use applications, the objections to the use application by Mountain Falls are not considered valid, because:

- The relative contribution of the applied-for abstraction volume on the water balance of the Kleinrivier Estuary is negligible and not a basis for refusal; and
- The groundwater below Mountain Falls currently seeps nearly unused into the estuary and is not used for any agricultural or tourism benefits. The only use is for domestic purposes on the property to the south.

Sincerely,

Gerhard Steenekamp

Consulting Geohydrologist (Pr. Sci. Nat. 400385/04)

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ANNEXURE B

28/31



13 August 2019

**RESPONSE TO OBJECTIONS ON PROPOSED CONSENT USE
PORTION 35 OF FARM 633, CALEDON**

Ref. No.:

Lornay Ref. No.: 35/633WU

OBJECTION 1 | E. IVEY OBO THE HERMANUS LAGOON PROPERTY OWNERS ASSOCIATION (HLPOA) | 12/07/2019

1.1. Plan Active (PA)

1.2. PA

2.

Water: A Water Use Licence Application (WULA) is currently underway for the abstraction of 2000 m³ per annum from the two boreholes.

Abstraction of water: Please refer to attached comment from Geohydrologist. It should also be noted that if the WULA gets approved, the licence will contain certain conditions relating to the monitoring of the abstraction rates as well as any other possible mitigation measures which may be required.

Pollution of water: Michael – details of filtration of abstracted water, disposal of materials abstracted?

Health & Sanitation: Michael – disposal of sewage, 30 staff members

Zoning: PA

Buildings: PA

Staff: PA

Natural Environment: The removal of natural vegetation requires Environmental Authorisation in some circumstances. The applicant is aware of this. There is currently no need to remove additional vegetation. Operational management recommendations can be implemented to ensure that the applicant does not allow for sprawl of activities into the remaining natural vegetation.

29/34

Road: PA

OBJECTION 2 | B. IVY | 16/07/2019

1, 2, 3. Please refer to comment from Geohydrologist.

4. *The amount of water being bottled is difficult to control.* If the WULA is approved, the applicant will be required to fit flow rate devices which accurately measures and log the abstraction rates and quantities. The applicant, in terms of the conditions of the WULA, will not be permitted to abstract more than what is to be licenced.

5. **Future bottling plants:** Any new bottling or resale of water will require some form of authorisation in terms of the National Water Act. A Geohydrological assessment including a Hydro-census, would be required to determine the amount of water which could be sustainably abstracted from the source with no impact on surrounding reserves. These assessments were conducted as part of the current Water Use Licence Application.

6. PA

7. PA

8. PA

9. PA

10. PA (Once the WULA is approved they will need to log their usage accurately)

11. PA

12. PA

13. A Geohydrological Assessment was undertaken for the property and it found that the borehole can sustainably yield the proposed abstractions. This provides a site specific advantage for the activity.

14. PA

15. PA

16. PA

17. PA

OBJECTION 3 | R. JAMES | 16/07/2019

Support comments made by HLPOA and B. Ivy

OBJECTION 4 | G. LOMBARDI / VOGELGAT | 17/07/2019

Support comments made by HLPOA and B. Ivy

OBJECTION 5 | R. LAPPING | 26/07/2019

1. Background – PA

2. Application details – PA

3.1. Application details

3.2. Zoning – PA

3.3. **Land use** – the Water Use Licence Application (WULA) which is currently underway, is applying for abstraction from 2 boreholes for a total of 2000 m³ / annum

3.4. **Proposed development**

3.4.1. Consent use

3.4.2.

-Treatment of water – Michael

-Increase in abstraction – a Geohydrological assessment and Hydro-census was undertaken as part of the WULA.

-New shed - PA

Michelle Naylor | Env. Consultant | M.Sc., Pr. Sci. Nat., FAPSA
 cell: 083 245 6556 | tel: 028 316 1769 | fax: 086 585 2461 | michelle@lornay.co.za | www.lornay.co.za
 PO Box 1990, Hermanus, 7200
 Lornay Environmental Consulting Pty Ltd | Reg 2015/445417/07

30/31

- 3.4.3. Removal of restrictive title deed conditions - PA
 - 3.5. Character of the environment – PA
 - 3.6. Potential of the property – PA
 - 3.7. Impact on external engineering services
 - 3.7.1. Provision of services
 - What sewerage and waste disposal exist on site – PA / Michael
 - increase in sewage disposal with increase in production - Michael
 - What is the distance of the 2 boreholes from the sewage treatment facility and what is the depth of the boreholes – Michael – what is the sewage situation relative to the location of the boreholes?
 - 3.7.2. Traffic impact, parking and access – PA
 - 3.8. Title deed – PA
 - 3.11. Planning principles – PA
 - 4. Recommendations
 - not compatible
 - no spring – borehole water is bottled
- Note: why is the original borehole not shown on plan

OBJECTION 6 | P. BULEY | 26/07/2019

- 1. Sanitation and washing facilities - PA
- 2. Staff on property - PA
- 3. Other approvals (plant machinery, safety and environmental emissions) - Noted

31/34

ANNEXURE C

32/34



VAN NIEKERK & JANSEN VAN RENSBURG
ATTORNEYS

30 JULY 2019

Our Ref: Mountainfallsstate

Your Ref:

Attention: Department of Public Prosecution

Per Email

Dear Sirs

**RE: REPRESENTATIONS TO DPP // MICHAEL BEATHAM REPRESENTATIVE OF MOUNTAIN FALLS ESTATE
// OVERSTRAND MUNICIPALITY // CASE NUMBER: OSH32-2019**

Kindly Take note that our offices are on record for the defendant under above case number.

Further kindly find hereto attached the following documents:

1. Representations made to the Control Prosecutor Hermanus (Christa Siebrits) which is self-explanatory;
Annexure A
2. Photographs of Schulphoek, opposite Beach Club Hermanus. **Annexure B**



JL van Niekerk Attorneys Incorporated trading as Van Niekerk & Jansen van Rensburg Attorneys

JL van Niekerk (Managing Director): C 072 445 0447 E jlvan@jvr.co.za | **FW Jansen van Rensburg** (Director): C 076 576 0293 E wihan@jvr.co.za

PO Box 1128, Hermanus 7200 | F 086 224 8676

Reg. No. 2012/311425/21

33/34

The accused is being criminally prosecuted due to allegedly not adhering to the Municipal Laws, bylaws, regulations and laws in general relating to property in the Overstrand region. This is discussed in more detail in the accused's representation.

It's clear that our Municipality is following selective prosecution. Numerous emails / correspondence has been addressed to the municipality by concerned residents and owners of Beach Club Complex and the rest of Hermanus to convey the following:

a) In relation to the destruction of milkwood trees and erection of shacks behind Abagold and opposite the Beach Club in Church Street, Hermanus:

- The illegal land invasions and shack building was reported by numerous residents of Hermanus to SAPS, who reported that they can do nothing, as a crime hasn't been committed; they also reported they will take instruction from the Municipality, so they could not help us, which was to avail;
- Law Enforcement very clearly informed residents of Hermanus that they had been given a directive from the Mayor that they were to not interfere with the land invasions
- I has become abundantly clear that a decision was taken at Municipal level to ignore land invasions and shack building during the popular and economically lucrative whale season, in order to obviate having those illegal squatters "on the streets"; this season has seen unprecedented and frantic activity in land invasions and shack building, which residents witnessed first-hand;
- Owners of a Beach Club apartments are overlooking what is now a mini shack city and have to close their windows at night to block out the stink of raw sewerage;
- Owners are selling their apartments in Beach Club selling way below market value, just to get out of Hermanus. Timeshares at Beach Club have seen a drop in bookings, and Beach Club management have indicated that property owners wishing to sell, have been told by estate agents working the estate, that the only way they will be able to sell their properties is by lowering their asking price to "rock bottom".;
- There has been little or no official communication from the Mayor's office, other than random anecdotes of rhetoric and false promises, or at best, lengthy delays.
- Without over-stating the problem, the possibility of this dilemma causing irreparable damage to the Beach Club is very real. Apart from massive financial loss to many owners, some of whom are pensioners with their lifesavings invested in the Beach Club, the Municipal coffers will see a significant decline in tax and other revenue derived from owners and guests of Beach Club;
- Action from the Mayor's office is somewhat muted at best, and deafeningly silent at worst.



JI van Niekerk Attorneys Incorporated trading as Van Niekerk & Jansen van Rensburg Attorneys

JI van Niekerk (Managing Director) C 072 445 3447 E van2@jvn.co.za | FW Jansen van Rensburg (Director) C 076 576 0233 E wjvan@jvn.co.za
PO Box 1128, Hermanus 7200 | F 086 224 8678

Reg no. 20187/11672/21

24/34

The above caused frustration and anger levels of many peace-loving citizens and property owners to escalate to a point where something needs to be done urgently, as its clear from this matter that the municipality is targeting smaller scale problems which has no effect on the Overstrand community rather than to focus on the bigger, more inconvenient problems as addressed above. One of these smaller problems is the matter at hand regarding the accused who is in process to rectify the alleged breached of the title deed specifications. The municipality would much rather focus on small, easy matters than to pursue the big tasks at hand which is destroying the economic flow of Hermanus.

Our main concern with this matter is all accused get a chance to rectify their breach after because of the matter brought before court being small matters after which the cases are withdrawn, except in our client's matter case. All parties are equal before the law and should be treated that accordingly and should the Municipality start focussing on the more abundant big problems which they face currently and use al resources towards this rather than to waist municipal resources on matters which is not affecting the community.

Kind regards



WIHAN JANSEN VAN RENSBURG

Director / Direkteur

(LLB, Bachelor of Law & Business

Management, Bachelor of Entrepreneurship &

Business Management)



JI van Niekerk Attorneys Incorporated trading as Van Niekerk & Jansen van Rensburg Attorneys

JI van Niekerk (Managing Director) C 072 445 3447 E jvan@jvn.co.za | **FW Jansen van Rensburg** (Director) C 076 576 0233 E wihan@jvn.co.za

PO Box 1128, Hermanus 7200 | F 086 224 8678

Registration No. 2016/511272/21

Annexure G 1/4



TRATheart
(H Olivier)

FILE NO:	Ptn 35/633
SCAN NO:	
COLLABORATOR NO:	1302960

Division of Telkom SA SOC Ltd

10 Jan Smuts Drive
Pinelands
7404

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

Our Ref.: WWIP_WHMN2248_19
Your Ref.: Ptn 35 of 633 RCAL 3762

17 July 2019

Attention: S Muller

Overstrand Municipality
HERMANUS

PLANT AFFECTED:

PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS, CONSENT USE, DEPARTURE AND APPLICATION FOR APPROVAL IN TERMS OF ACT 21 OF 1940: PORTION 35 OF FARM 633 ROCKLANDS

With reference to your application received 19 June 2019.

As important OPTIC FIBRE cables and other infrastructure are affected, please contact our representative **Frederik Swart** at **028 514 1199 / 081 363 7815 / Frederik5@openserve.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.

17 JUL 2019

61 Oak Avenue, (opposite) Techno Park, Centurion 0157,
Private Bag 5661, Pretoria, Gauteng, 0001

214

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 Dwyer

Operations Manager

Wayssave Management: Western Region

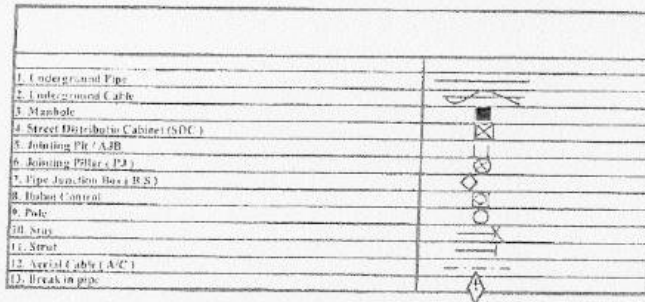
This wayleave, Reference Number **WWIP WJMN2248 19** is valid for 12 months from date here of and is subject to the following conditions:

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 charges 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: 17 July 2019

By: C. Spammer

For Regional General Manager
Wetruw Cape (N2W3T1B)

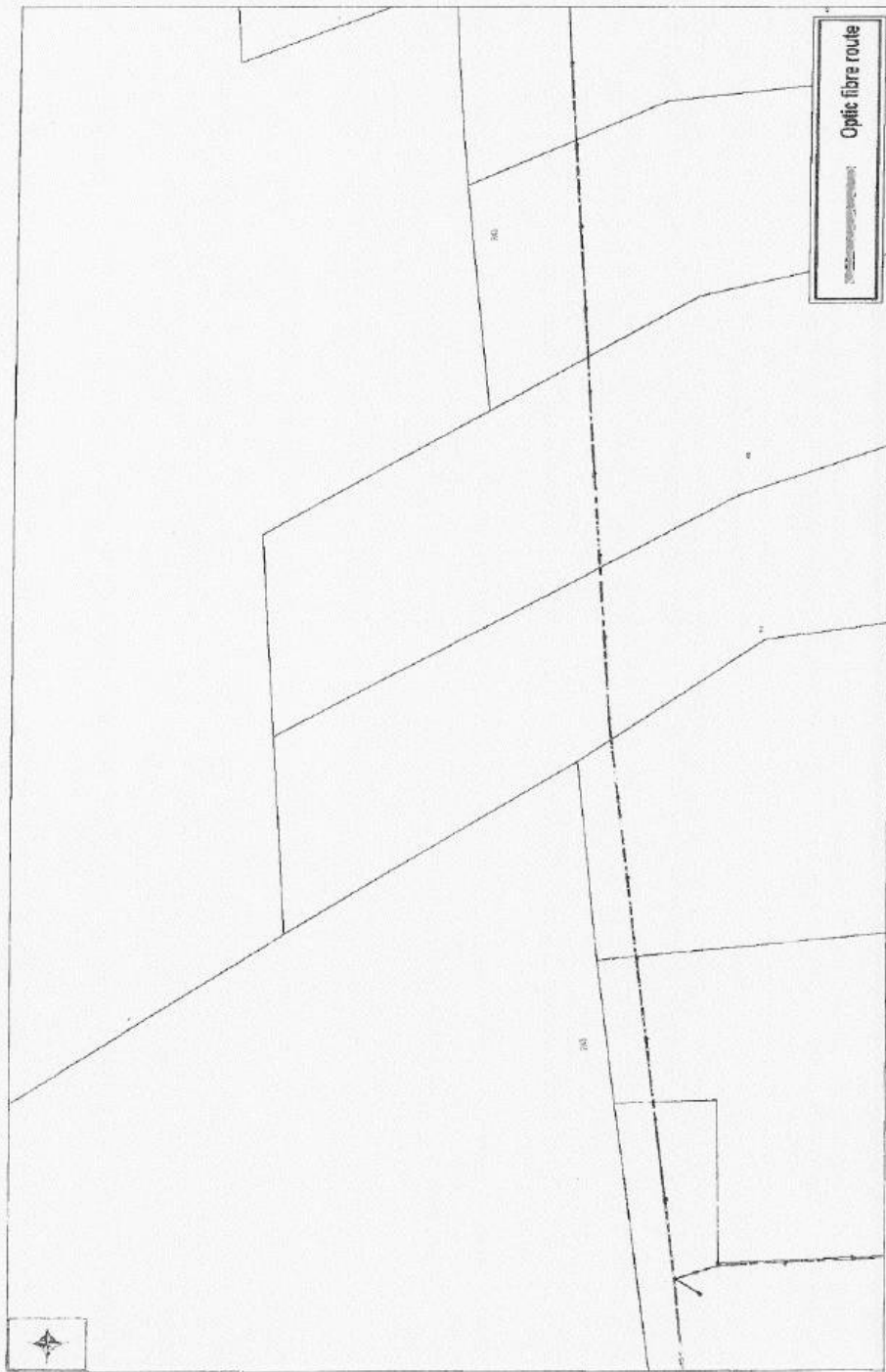


The pipeline indicated contains **OPTIC FIBRE** cables.

F Swart - telephone **028 514 1199** must be contacted at least 48 hours before commencement of work.



4/4



Optic fibre route

Project Name		Project No.	
Client Name		Client No.	
Contract No.		Contract Date	
Contract Value		Contract Status	
Contract Start Date		Contract End Date	
Contract Completion Date		Contract Completion Status	

Item No.	Description	Quantity	Unit	Rate	Total
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Annexure H1/2



ROAD NETWORK MANAGEMENT
 Email: Grace.Swanepoel@westerncape.gov.za
 tel: +27 21 483 4669
 Rm 335, 9 Dorp Street, Cape Town, 8001
 PO Box 2603, Cape Town, 8000

REFERENCE: TPW/CFS/RP/LU/REZ/SUB-21/186 (Job 27045)
ENQUIRIES: Ms GD Swanepoel
DATE: 2 August 2019

The Municipal Manager
 Overstrand Municipality
 PO Box 20
HERMANUS
 7200

FILE NO:	
SCAN NO:	
COLLABORATOR NO:	1310719

Attention: Mr Petrus Roux

Dear Sir

PORTION 35 OF FARM ROCKLANDS 633, HERMANUS: TRUNK ROAD 28: REMOVAL OF RESTRICTIVE TITLE DEED RESTRICTIONS, CONSENT USE, DEPARTURE AND BUILDING LINE RELAXATION

1. Your letter dated 19 June 2019 refers.
2. The subject property is located 9km east from Hermanus and takes access off Trunk Road 28 at approximately km12.9.
3. This application is for the following:
 - 3.1 Removal of restrictive title deed conditions;
 - 3.2 Consent Use in order to accommodate a water bottling plant;
 - 3.3 Departure from the western lateral building line; and
 - 3.4 Approval of a structure in the 95 m building restriction line.
4. This Branch offers no objection to the application in terms of the Land Use Planning Act, No. 3 of 2014.

2/2

5. In terms of Act 21 of 1940, this Branch approves a structure in the 95 m building restriction line.

Yours faithfully



SW CARSTENS
For CHIEF DIRECTOR: ROAD NETWORK MANAGEMENT



Annexure I 1/3
TP N/Heart
(S. Ud N/one)

A. CONRADIE
OVERSTRAND MUNICIPALITY

Date: 12 - 08 - 2019

Enquires:
WayleavesWesternOU@eskom.co.za

SIR/MADAM

PROPOSED CONSTRUCTION: REMOVAL OF RESTRICTIVE TITLE CONDITIONS, PORTION 35 OF FARM 633, ROCKLANDS, HERMANUS.

OUR REF: 01137-19

Eskom Distribution has no objection to the proposed work as indicated in your application, the following conditions should be adhered to:

- i. No building, any structures or trees may be erected within **11 (ELEVEN) metres** from the centre of **Eskom 66 kV power line** or within 6 (SIX) metres from any structure supporting mechanism.
- ii. No building may be erected within **9 (NINE) metres** from either side of the centre line from any **Eskom 11 / 22kV power line** crossing the property involved or within 6 (SIX) metres from any structure supporting mechanism.
- iii. The location of the cable from the Eskom transformer to the distribution box must be pointed out to the contractor by the owner and is the owner's responsibility.
- iv. A copy of this letter / documentation must be handed to the contractor who must have it available on site.
- v. 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.

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.
- v. 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 assignees.

Western Region
Eskom Road, Brackenfell, 7560
PO Box 222, Brackenfell, 7561

Eskom Holdings SOC Limited Reg No 2002/015527/06

FILE NO:	PN 35 / 633
	Rocklands ✓
SCAN NO:	PN 35
COLLABORATOR NO:	1312060

12 AUG 2019

- vi. The applicant indemnifies Eskom against loss, claims or damages, including claims pertaining to interference with Eskom services, apparatus or otherwise.
- vii. Eskom shall at all times have unobstructed access to and egress from its services.
- viii. Any development which necessitates the relocation of Eskom's services will be to the account of the developer.

PLEASE CONTACT AND MAKE APPOINTMENT: CALEDON CNC - KAY-ANN OLKERS- 028-212 3010, BEFORE WORKING IN CLOSE PROXIMITY TO ANY ESKOM OVERHEAD POWER LINES.

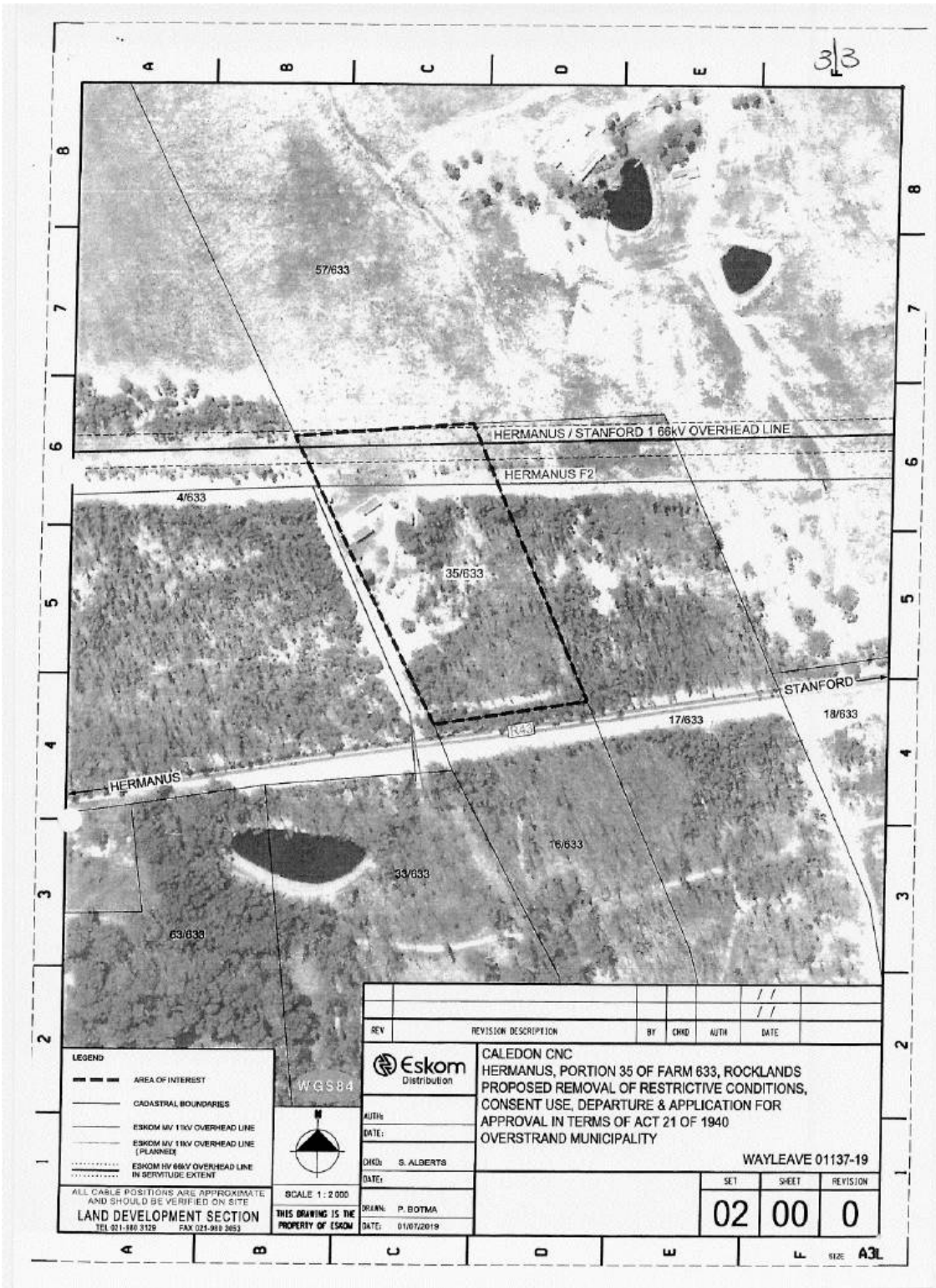
The above is a requirement under the **Occupational Health and Safety Act (Act No. 85 of 1993)** to ensure safety.

Please apply to your local Eskom office (Sales and Customers) for a new electricity connection or an increase in your supply.

Should it be necessary to move any of the Eskom services a written request must be given to the local Eskom office. It must be noted that it will take 3 month or longer to move any power line and that the cost of moving a power line will be for the applicant's account.

Yours sincerely

LAND DEVELOPMENT



LEGEND

- AREA OF INTEREST
- CADASTRAL BOUNDARIES
- Eskom MV 11kV OVERHEAD LINE
- Eskom MV 11kV OVERHEAD LINE (PLANNED)
- Eskom HV 66kV OVERHEAD LINE IN SERVITUDE EXTENT

ALL CABLE POSITIONS ARE APPROXIMATE AND SHOULD BE VERIFIED ON SITE

LAND DEVELOPMENT SECTION
TEL 021-880 3129 FAX 021-880 3653

WGS84

SCALE 1 : 2 000

THIS DRAWING IS THE PROPERTY OF (ESKOM)

REV	REVISION DESCRIPTION	BY	CHKD	AUTH	DATE

Eskom Distribution

CALEDON CNC
HERMANUS, PORTION 35 OF FARM 633, ROCKLANDS
PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS,
CONSENT USE, DEPARTURE & APPLICATION FOR
APPROVAL IN TERMS OF ACT 21 OF 1940
OVERSTRAND MUNICIPALITY

WAYLEAVE 01137-19

SET	SHEET	REVISION
02	00	0

DRINK: P. BOTMA
DATE: 01/07/2019

3/3

SIZE A3L

Annexure J1/3

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE CONDITIONS,
CONSENT USE, DEPARTURE & APPLICATION FOR APPROVAL IN
TERMS OF ACT 21 OF 1940: PTN 35 OF FARM 633, ROCKLANDS (3762)**

Electricity	:	Eskom area
Stormwater	:	No services available
Water	:	No services available
Sewer	:	No services available
Roads and traffic	:	No services available

Conditions:

1. that the developer arrange with ESKOM for the provision of electricity and that he complies with all conditions as may be set by ESKOM;
2. that no water from Overstrand Municipality is available and the developer will be responsible to obtain the necessary approval, licence and permits from the applicable authorities (Water and Sanitation, Health, Bocma etc.) for the use of any other water resources and the extraction thereof;
3. that the developer is responsible to provide potable water to the development that complies with SANS0241 standards and that relevant proof be submitted to the Manager: Water Infrastructure & Quality (Tel: 028 313 5046), Overstrand Municipality;
4. that waste water disposal be done in a safe and healthy manner and that plans thereof be submitted to the Municipality and DWA for approval;
5. that the developer complies to all the conditions set by Department Of Water Affairs & Bocma;
6. that, as there is currently no municipal sewer network in the vicinity, Portion 81 of Farm 587 must be provided with adequate sewer conservancy tanks, which must comply with the standards of the Department: Operational Services (Hermanus), and to which the sewer services on the development must connect to;
7. that the Municipality does not have the capacity to service the proposed development with regards to removal of sewerage from the property. The owner is therefore responsible for removal of sewerage from the property, and thereof at a licensed municipal sewerage treatment facility;

8. that alternatively, sewer treatment facilities that are approved by the Department of Water Affairs may be provided for disposal of sewer from the developments. Written proof of such approval is to be submitted to the Municipality;
9. that the developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to minimum requirements of SANS 140400 – P: 2010: Drainage;
10. that any commercial food preparation facilities (e.g. restaurant / guest house etc.) must be provided with a grase trap, which must comply with the standards and specification of the Department: Operational Services;
11. that disposal of effluent from the site must comply with all relevant legislation, as well as with the municipal Water Supply & Sanitation Services By-Law (2009), and in light of the proposed agricultural industry activities on site, with specific reference to Section 58: Objectionable discharge, Section 72: Application for disposal of Industrial effluent, Section 73: Unauthorised discharge of industrial effluent, Section 76: Conditions for disposal of Industrial effluent and Annexure A: Acceptance of industrial effluent for discharge into the sewerage disposal system;
12. that acceptance of industrial effluent for discharge into the sewerage disposal system: Special Limitations specifically exclude acceptance of, amongst other, any yeast waste as well as molasses (spent or unspent) for disposal into the sewerage disposal system;
13. that, in light of the agricultural industry activities on site, the owner is to ensure that all contaminated stormwater run-off from any relevant open areas and wash bays are contained and treated in accordance with the relevant Environmental legislation, *SANS 10400: National Building Regulations* (more specifically but not restricted to Section R- Stormwater, as well as *Section PP11 – Run-off from Washing Areas*), and the *Municipal By-law: Water Supply & Sanitation Services (2009)*, more specifically but not restricted to *Section 48: Owner to prevent pollution of water and Section 58: Objectionable discharge*. All costs in this regard will be for the owners account;
14. that, as no municipal refuse removal services are rendered in the area, the owner is responsible for removal of all refuse generated on the property, and disposal thereof at a registered municipal waste transfer station or-waste disposal facility;
15. that on-site parking facilities are provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services;

16. that access can be obtain from Provincial Road R43 via the existing access to Portion 35 of Farm 633, that any additional and / or extended vehicle entrances will be for the owner's account.
17. The Provincial Roads Engineer must however provide comment regarding the proposed encroachment of the 300 Cape feet building line next to the R43 provincial road.

p.p. D. Hendriks
DENNIS HENDRIKS

28/09/2019
DATE

SENIOR MANAGER: ENGINEERING SERVICES



BREEDE-GOURITZ
CATCHMENT MANAGEMENT AGENCY

51 Baring Street Worcester 6850, Private Bag X3055 Worcester 6850

Enquiries: F. Smith

Tel: 023 346 8000

Fax: 023 347 2012

E-mail: fsmith@bgcma.co.za

Our Reference no: 4/10/1/G40L/Farm 633/35, Rocklands

Date: 22 August 2019

Overstrand Municipality
P. O. Box 20
Hermanus
7200

For Attention: P. Roux

Sir/Madam,

FILE NO: Ptn 35 / 633 ✓
Rocklands / 16/1/11
SCAN NO:
PTN 35
COLLABORATOR NO:
1322116

PORTION 35 OF FARM 633, ROCKLANDS: PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS, CONSENT USE, DEPARTURE AND APPLICATION FOR APPROVAL IN TERMS OF ACT 21 OF 1940: PLAN ACTIVE (obo MOUNTAIN FALLS ESTATE PTY LTD)

With reference to your report by Plan Active, and the report by Groundwater Complete dated **September 2018**, attached to the letter with Overstrand municipal reference number **Ptn 35 of 633, RCAL (3762)** dated **19/06/2019** and received by BGCMA on **26/06/2019**, herewith the following:

The BGCMA has no objection against the proposed removal of restrictive conditions but the following conditions apply:

1. Currently, there is no water use registered for this property.
2. With the registration of this water use, the water use sector for the bottling of drinking water should be registered as an industrial water use and the tariff to be paid adjusted accordingly.
3. The General Authorisation for Quaternary Catchment **G40L**, for the Taking of groundwater, allows for **275m³/ha/annum**. With the size of this property (**2.247ha**) taken in consideration, it would mean that the applicant could be allowed to only take a total volume of groundwater of **618m³/annum**. However, the communication by BGCMA dated 12/02/2018 (copy hereto attached) explained that water from boreholes on private property, intended to be sold commercially, should be formally licenced. The water use licence application should be submitted via the eWULA system of the Department of (Human Settlements) Water and Sanitation's home webpage.

TP N. Heat (S. Ud. Mand)
cc / I. Blignaut Ameyre J. 1/4



- 2/4

4. Since drinking water is supplied by the applicant, it should be ensured that it adheres to SANS 241: 211 standards.
5. Should wastewater be generated (including sewage and wastewater used in the plant and bottling process), it should be dealt with accordingly. From the report, it was not clear how wastewater is being dealt with. For the pumping of wastewater from a conservancy tank(s), the BGCMA should be supplied with a copy of the agreement between the applicant and the Theewaterskloof municipality.
6. The planned development should not have any detrimental impact on water resources, both surface- and groundwater resources.
7. All relevant sections and regulations of the National Water Act, 1998 (Act 36 of 1998) regarding water use should be adhered to.
8. Polluted storm water should be contained and managed in such a way that it does not pose an additional threat to surface- and groundwater resources.

Please be advised that no activities may commence without the appropriate approvals/authorizations (where needed) from the responsible authority.

The onus remains with the registered property owner to confirm adherence to any relevant legislation that such activities might trigger and/or need authorization for.

Also be advised that the comment provided is in the interest of responsible water resource management. The BGCMA will gladly comment on any additional information provided for review. The BGCMA reserves the right to revise initial comments and request further information based on any additional information that might be received.

Please do not hesitate to contact this office if you have any further queries.

Please ensure to quote the above reference in doing so.

Yours faithfully,

JF

JAN VAN STADEN
CHIEF EXECUTIVE OFFICER (ACTING)

BREDE-GOURITZ

Catchment Management Agency
Opvanggebied Bestuursagentskap
I-Arhente yoLawulo lomMandla nokungqongileyo

51 Baring Street Worcester 6850, Private Bag X3055 Worcester 6850

Enquiries: Patrick van Coller
 Date: 12 February 2018

Tel: 023-346 8018

Fax: 023-347 2012

E-mail pcoller@bgcma.co.za

Reference No: 4/5/1/G40L/Ptn 35 Rocklands 633, Caledon

Mountain Falls Estate (Pty) Ltd
 8 Queens Road
 Tamboerskloof
CAPE TOWN
 8001

Attention: Mr. Michael Beatham

Dear Sir

RE: CONFIRMATION OF A GENERAL AUTHORISATION IN TERMS OF SECTION 39 OF THE NATIONAL WATER ACT 1998, (ACT 36 OF 1998) FOR A WATER USE (BOTTLING FACILITY) TO CONTINUE ON PORTION 35 OF THE FARM ROCKLANDS 633, CALEDON MAGISTERIAL DISTRICT.

With reference to the documents received by the Breede-Gouritz Catchment Management Agency (BGCMA) on 4 December 2017, the following:

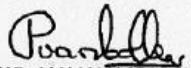
This office cannot authorize the Water Use in terms of Section 39 of the National Water Act, 1998 (Act 36 of 1998) because of the Media Statement, dated 7 January 2018. The Media Statement is attached for your convenience.

This Water Use is subject to a Water Use Licence Application, should the applicant wish to continue with the bottling facility. This activity may not proceed without authorization and for non-compliance to the National Water Act, constitute an offence which will be dealt with in terms of Sections 53, 54 and 151(2) of the Act.

The Overstrand Municipality needs to indicate whether they support this activity in writing as the Water Services Provider.

This office trust that the above-mentioned is acceptable and if you do have any further queries, please do not hesitate to make contact with this office.

Yours faithfully


 MR. JAN VAN STADEN

1a CHIEF EXECUTIVE OFFICER (Acting)



water & sanitation
Department
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

MEDIA STATEMENT

Water from private boreholes is not meant for sale

07 January 2018

The Department of Water and Sanitation (DWS) has become aware of the tendency that has developed to sell water from private boreholes. Any such sale would need a requisite licence to be applied for.

It is therefore imperative to bring to the attention of all South Africans that private boreholes are meant to operate for the benefit of the occupants of the piece of land/property on which the borehole has been drilled.

The recent practice of secondary trade of water particularly as observed currently in the Western Cape is therefore illegal. Private boreholes are for private use, for **REASONABLE** domestic use, and therefore not to be commercialised.

Section 22 of the Water Services Act prohibits the transaction on water without authorisation/nomination as a water services intermediary by the relevant Water Services Authority.

In the main the National Water Act remains the principal piece of legislation guiding any use of water in the country.

END

Issued by the Department of Water & Sanitation

For more information contact: DWS Media Liaison Director Sputnik Ratau on 082 874 2942

For media releases, speeches and news visit the Water & Sanitation portal at: www.dwa.gov.za

Annexure C1/7



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

Private Bag X3055, WORCESTER, 6849, Street Address, CNR of East Lake View and Mountain Mill Roads,
Worcester, 6850 Tel: 023 346 8000, Fax: 023 347 2012

LICENCE IN TERMS OF CHAPTER 4 OF THE NATIONAL WATER ACT, 1998 (ACT NO. 36 OF 1998) (THE ACT)

I, **Ms Boniswa Hene** in my capacity as Provincial Head Western Cape in the Department of Water and Sanitation and acting under the powers delegated to me by the Minister of Human Settlements, Water and Sanitation, hereby authorises the following water use in respect of this licence.

Electronic Signature Key : 5497275270794023666
Provincial Head
Date: Oct 7 2021 10:36PM



LICENCE NO: 021G40L/A/10520
FILE NO: 27/2/2/G1140/7/1
REF. NO: WU10285
VERSION: 1

1. **Licensee:** MOUNTAIN FALLS ESTATE (PTY) LTD
Postal Address: 8 Queens Road, Tamboerskloof, Cape Town
8001
2. **Water Uses**
 - 2.1 Section 21 (a) of the Act: Taking water from a water resource.
3. **Properties in respect of which this licence is issued**
 - 3.1 Portion 35 of the Farm Rocklands No 633, Caledon
4. **Registered owners of the Properties**

Table 1: Registered owners of the Properties

Property Name	Registered Owner	Registration Number
Portion 35 of the Farm Rocklands No 633, Caledon	Mountain Falls Estate (Pty) Ltd	T000000919/2015

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File No: 27/2/2/G11407/1
Licence No: 02/G40L/A/10520

5. Licence and Review Period

This licence is valid for a period of ten (10) years from the date of issuance and it may be reviewed at intervals of not more than five (5) years.

6. Definitions

Any terms, words and expressions as defined in the National Water Act, 1998 (Act 36 of 1998) shall bear the same meaning when used in this licence.

"The Provincial Head" means the Head of Operations: Breede Gouritz - Worcester.

"Extent of the watercourse" means the outer edge of the 1:100 year floodline or the delineated riparian habitat, whichever is the greatest.

"Regulated area of a wetland" is the use of water for section 21 c and i water uses within 500m radius from the boundary of any wetland.

A wetland means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

The characteristics of a watercourse/s mean the flow regime, water quality, habitat (including the physical structure of the watercourse/s and associated vegetation) and biota found within the extent of the watercourse/s. The Resource Quality characteristics as defined in the National Water Act, 1998 (Act 36 of 1998).

7. Description of activity

This licence authorises **Mountain Falls Estate (Pty) Ltd** for the water use in terms of section 21 (a) of the National Water Act, 1998 (Act 36 of 1998). The water use activities include: the total abstraction of 3650m³/a from two on site boreholes i.e. MFBH01 and MFBH02. The activity is located in quaternary catchment G40L which falls within Breede-Gouritz Water Management Area.

APPENDIX I

General Conditions for the Licence

1. This licence is subject to all applicable provisions of the National Water Act, 1998 (Act 36 of 1998).
2. The applicant must provide the free use of the land for staff along with providing support and set up costs to ensure successful subsistence farming opportunities where all the proceeds will go directly to the staff.
3. The applicant must allocate an additional 5% shareholding into a staff trust. Proof of shares transfer and establishment of the trust must be provided to the Responsible Authority within 6 months of the date of issuance of the water use license.
4. The responsibility for complying with the provisions of the licence is vested in the Licensee and not any other person or body.
5. The Licensee must immediately inform the Provincial Head of any change of name, address, premises and/or legal status.
6. If the property in respect of which this licence is issued is subdivided or consolidated, the Licensee must provide full details of all changes in respect of the properties to the Provincial Head within 60 days of the said change taking place.
7. If a Water User Association is established in the area to manage the resource, membership of the Licensee to the Association is compulsory. Rules, regulations and water management stipulation of such association must be adhered to.
8. The Licensee shall be responsible for any water use charges and/or levies imposed by a Responsible Authority.
9. While effect must be given to the Reserve as determined in terms of the Act, where a lower confidence determination of the Reserve has been used in issuance of this licence, the licence conditions may be amended should a higher confidence reserve be conducted.
10. The licence shall not be construed as exempting the Licensee from compliance with the provisions of any other applicable Act, Ordinance, Regulation or By-law.
11. The licence and amendment of this licence are also subject to all the applicable procedural requirements and other provisions of the Act, as amended from time to time.
12. The Licensee shall conduct an annual internal audit on compliance with the conditions of this licence. A report on the audit shall be submitted to the Provincial Head within one month of the finalization of the audit.
13. The Licensee shall appoint an independent external auditor to conduct an annual audit on compliance with the conditions of this licence. Both these audits may be subjected to external audit.
14. Any incident that causes or may cause water pollution must be reported to the Provincial Head or a designated representative within 24 hours.

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Licence No: 02/G401/A/10520

15. The Department accepts no liability for any damage, loss or inconvenience, of whatever nature, suffered as a result of / amongst other things.
- 15.1 Shortage of water;
 - 15.2 Inundation of flood;
 - 15.3 Any *force majeure* event;
 - 15.4 Siltation of the river or dam basin; and
 - 15.5 Required Reserve releases.



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APPENDIX II

Section 21(a) of the Act: Taking water from a water resource

- This licence authorises Mountain Falls Estate (Pty) Ltd to abstract a maximum total volume of 3650 m³/a water from two boreholes detailed in Table 2.

Table 2: Water use activities

Activity	Purpose / Description	Properties	Volume (m ³ /a)	Co-ordinates
MFBH01 Taking water from a water resource groundwater abstraction	Bottling	Portion 35 of the Farm Rocklands No 633, Caledon	1 825	Lat : -34.40323 Lon : 19.36610
MFBH02 Taking water from a water resource groundwater abstraction	Bottling	Portion 35 of the Farm Rocklands No 633, Caledon	1 825	Lat : -34.40288 Lon : 19.36569

- Geohydrologist to determine a threshold maximum drawdown not to exceed in prevention of any possible salt intrusion as the boreholes are located approximately 675m to the sea environment.
- A database with baseline water levels needs to be included in the monitoring document as a reference point for the assessment of drawdown impact.
- The applicant need be part of the local groundwater forum such as one always held at Stanford municipality or Overstrand local municipality. The purpose of being part of the groundwater monitoring forum is to collaboratively report the performance of monitoring and manage impact in wide perspective.
- Although the applicant may use a Field Technician to measure or record monitoring data as he/she may be trained (Inducted) by Geohydrologist, the applicant must appoint Geohydrologist for the purpose of reporting/assessment, advising on routine maintenance and future planning.
- New drilled boreholes need to obtain approval from the relevant authorities (BGCMA/DWS) prior pumping or usage of water and also need to capture information including but not limited to: Geologic logs, Depth of the drilled borehole, Water strike positions.
- Borehole screen and its perforation information should be submitted as part of licence amendment application (where applicable) for to relevant authorities and as part of submission of monitoring report which needs to be submitted bi-annually (for both wet and dry seasons).

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8. The amount of water applied for will need to be revised during licence review or after another pumping test (where applicable) which might be decreased depending on pumping test and observation from the monitoring data.
9. Abstraction boreholes should be equipped with flow meters to record volumes and the outlet tap to provide allowance to take water sample immediately at the borehole (Not at the storage tanks).
10. Borehole sanitary seal for borehole, MFBH01, needs to be redesigned as to improve or prevent any possible ingress of surface run-off with possible pollution in the sub-surface. Current concrete is cracked and not acceptable.
11. No over-size pump is allowed. When replacing the old pump with a new pump applicant needs to notify the authority in writing 14 days before installation with full specification of the pump.
12. The allocation of borehole abstraction based on pumping test data and Table 10 from the Geohydrological report stated herein on section 1.1 are: Borehole MFBH01 is 5.00 m³/d or 1825m³/a. Borehole MFBH02 is 5.00 m³/d or 1825m³/a. 3.15. All pumping boreholes should not exceed 3650 m³/a.
13. The quantity of water authorised to be taken in terms of this licence may not be exceeded.
14. This licence does not imply any guarantee that the said quantities and qualities of water will be available at present or at any time in the future.
15. The above mentioned volume may be reduced when the licence is reviewed.
16. The Licensee shall continually investigate new and emerging technologies and put into practice water efficient devices in an endeavour to conserve water at all times.
17. The Licensee shall install appropriate water measuring devices to measure the amount of water abstracted within six months of the licence being issued. The Licensee shall ensure that all measuring devices are properly maintained and in good working order and must be easily accessible. This shall include a programme of checking, calibration, and/ or renewal of measuring devices. All water taken from the resource shall be measured, recorded and reported as follows:
 - 17.1 The daily quantity of water taken must be metered or gauged and the total recorded at the last day of each month;
 - 17.2 The Licensee shall keep record of all water taken and a copy of the records shall be forwarded to the Provincial Head on or before 25 January and 25 July of each year.
18. No water taken may be used for purposes other than intended in this licence, without written approval by the Minister or his/her delegated nominee.
19. Notices prohibiting unauthorised persons from entering the certain areas, as well as internationally acceptable signs indicating the risks involved in case of an unauthorised entry must be displayed along the boundary fence of these areas.
20. The Licensee shall establish a programme of formal Information Management System, which maintains a database on water supply, distribution and delivery infrastructure.

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21. The Licensee shall establish and implement a continual process of raising awareness amongst itself, its workers and stakeholders with respect to Water Conservation and Water Demand Management initiatives.
22. The Licensee must submit a full pump tests report of all the boreholes they are abstracting within one year of licence being issued.
23. Groundwater model must be calibrated to quantify the pollution plume migration rate and direction annually. The model must determine the cone of depression radius, and the private groundwater users potentially impacted.
24. The Licensee must ensure that the drinking water quality supplied meets National Standard for drinking quality: SANS 0241.

END OF LICENCE

