



**MEETING OF THE  
MUNICIPAL PLANNING TRIBUNAL  
(MPT)**

**A G E N D A**

<b>DATE:</b>	<b>2 DECEMBER 2016</b>
<b>VENUE:</b>	<b>TOWN PLANNING COMMITTEE ROOM HERMANUS</b>
<b>TIME:</b>	<b>12:00</b>

# OVERSTRAND MUNICIPALITY

Office of the Municipal Manager  
Civic Centre  
HERMANUS  
7200

9 November 2016

**TO : THE CHAIRPERSON AND MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL**

**CONVENING NOTICE : SESSION OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)**

**NOTICE IS HEREBY GIVEN** that a meeting of the **Municipal Planning Tribunal (MPT)** will go into session on **Friday, 2 December 2016 at 12:00, Town Planning Committee, 16 Paterson Street, Hermanus**, to consider the attached agenda.

You are kindly requested to submit any amendments/additions to Ms S Swart ([sswart@overstrand.gov.za](mailto:sswart@overstrand.gov.za)) on or before **16 November 2016**.

**COENIE GROENEWALD  
CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL**

**Distribution:**

1. Mr C Groenewald (Chairperson)
2. Mr S Müller (Vice-Chairperson)
3. Mr S Madikane (Member)
4. Mr R Williams (Member)
5. Mr R Kuchar (Member)
6. Ms H Janser (Member)
7. Secretariat

# MUNICIPAL PLANNING TRIBUNAL (MPT)

2 DECEMBER 2016

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  - 4.1 ERF 6001, 77 TENTH AVENUE, KLEINMOND, OVERSTRAND MUNICIPAL AREA : REMOVAL OF RESTRICTIVE CONDITIONS : MESSRS PLAN ACTIVE ON BEHALF OF HW VAN EEDEN**

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Report Attached
  
  - 4.3 ERF 1178, MAIN ROAD, EASTCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA : PROPOSED CONSENT USE : MESSRS WRAP CONSULTANCY ON BEHALF OF THE UNIT 121 THE LEISURE BAY TRUST**

Report Attached

## Overstrand Municipality

### LAND USE PLANNING REPORT – MUNICIPAL PLANNING TRIBUNAL (MPT)

**ERF 6001, 77 TENTH AVENUE, KLEINMOND, OVERSTRAND MUNICIPAL AREA : REMOVAL OF RESTRICTIVE CONDITIONS : MESSRS PLAN ACTIVE ON BEHALF OF HW VAN EEDEN**

Reference number	6001 KKM (3311)	Application submission date	27 May 2016	Date report finalised	11 October 2016
<b>PART A: AUTHOR DETAILS</b>					
First name(s)	Helena Johanna				
Surname	Van der Stoep				
Job title	Senior Town and Regional Planner				
SACPLAN registration number	A/1708/2013				
Directorate/Department	Infrastructure and Planning				
Contact details	028-3138900 <a href="mailto:hvdstoep@overstrand.gov.za">hvdstoep@overstrand.gov.za</a>				
<b>PART B: APPLICANT DETAILS</b>					
First name(s)	John				
Surname	McLachlan				
Company name	Plan Active Town & Regional Planners				
SACPLAN registration number	Tch.Pin B/8250/2014	Is the applicant authorised to submit this application	<input checked="" type="checkbox"/> Y	<input type="checkbox"/> N	
Registered owner(s)	HW van Eeden				
<b>PART C: PROPERTY DETAILS</b>					
Property description (in accordance with Title Deed)	Erf 6001, Kleinmond				
Physical address	77 Tenth Avenue	Town/City	Kleinmond		
Current zoning	Residential Zone I : Single Residential	Extent (m <sup>2</sup> /ha)	962m <sup>2</sup>	Are there existing buildings on the property?	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
Applicable zoning scheme	Overstrand Municipality Zoning Scheme Regulations, 2014				
Current land use	Residential	Title Deed number & date	T21872/1991		
Any restrictive title conditions applicable	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	If Yes, list condition number(s)	Page 3, Clause No. C2		
Any third party conditions applicable?	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	If Yes, specify			
Any unauthorised land use/building work	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	If Yes, explain			

**PART D: PRE-APPLICATION CONSULTATION (ATTACH MINUTES)**

Has pre-application consultation been undertaken?

Y

N

If yes, provide a brief summary of the outcomes below.

**PART E: LIST OF APPLICATIONS (TICK APPLICABLE)**

Rezoning	√	Permanent departure	√	Temporary departure	√	Subdivision	√
Extension of the validity period of an approval	√	Approval of an overlay zone	√	Consolidation	√	Removal, suspension or amendment of restrictive conditions	√
Permissions in terms of the zoning scheme	√	Amendment, deletion or imposition of conditions in respect of existing approval	√	Amendment or cancellation of an approved subdivision plan	√	Permission in terms of a condition of approval	√
Determination of zoning	√	Closure of public place	√	Consent use	√	Occasional use	√
Disestablish a home owner's association	√	Rectify failure by home owner's association to meet its obligations	√	Permission for the reconstruction of an existing building that constitutes a non-conforming use	√		

**PART F: EXECUTIVE SUMMARY**

An application has been received on 27 May 2016 from Messrs. Plan Active Town & Regional Planners on behalf of Mr. H van Eeden for the removal of restriction as per Title Deed T21872/91, Condition C(2), which prohibit the practice of a business on the property concerned.

**PART G: BACKGROUND**

During 2009 the applicant lodged an application for a departure of the Kleinmond Zoning Scheme and the removal of a restrictive condition in terms of the Removal of Restriction Act, for a small scale motor repair business on a Residential 1 erf. The Mayoral Committee did not approve the departure and did not recommend the removal of the restrictive condition to the Provincial Administration; Western Cape, in May 2010. An appeal was lodged by Messrs Fourie Attorneys on behalf of Mr Van Eeden and served before the Appeal Committee on February 2011. During March 2011, the Appeal Committee dismissed the appeal and confirmed the decision of the Mayor Committee during May 2010. The applicant then lodged an appeal in terms of Section 44 of the Land Use Ordinance of 1885 (LUPO) with the Provincial Department of the Western Cape, which was subsequently dismissed during September 2014.

During March 2015 Mr. Van Eeden was informed that the business operating from his erf is in contradiction with the decision of the Provincial Department of the Western Cape and should cease to operate. A letter from Messrs Plan Active was received in response that the Overstrand Zoning Scheme does make provision for a home occupation and the small scale motor repair business can be accommodated. The applicant's consultant was informed of the history of this case and that the decision of the Provincial Department Western Cape remains in force.

In June 2016, Messrs Plan Active lodged an application for the removal of a restrictive condition to enable Mr. van Eeden to operate the small scale motor repair business as a home occupation, the latter being a primary right on a Residential 1 erf.

**PART H: SUMMARY OF APPLICANTS MOTIVATION**

The applicant has in the past applied for a departure and removal of restrictive Title Deed Conditions in terms of the previous Zoning Scheme, which was not approved. The current Overstrand Zoning Scheme makes provision for home occupation of which trade is included. Therefore the application is only for the removal of the restrictive condition in order to make use of the primary right.

Erf 6001 is mainly used for residential purposes, and a single dwelling and a double garage is located on the southern half of the property leaving the northern portion vacant. A portion of the double garage is used for the home occupation.

Mr. H van Eeden service and carry out maintenance work on motor vehicles. The service provides change of oil, oil filters, brake pads and all maintenance work related to motor vehicles. The owner also has the knowledge to work on smaller engines such as lawn mowers, but is not his main concern. No manufacturing of parts, panel beaters or spray painting takes place on the property. Motor vehicle parts are removed and replaced and power tools are seldom used and therefore his business creates no more noise than a normal residential erf.

The portion utilized for the business is 42,05m<sup>2</sup> in extent and is equipped with a work bench, tools and shelving general spare parts. The garage is well maintained and no engine parts and or oil spillage is evident. Generally Mr. Van Eeden service three (3) cars per day and provides work for two (2) employees. His work does not entail the tuning of vehicles for racing purposes or the fitment of aftermarket performance.

The waste is disposed in a proper manner and is not disposed of in the municipal system. A recycling company collects the waste, which includes oil filters and workshop waste. The definition of home occupation means the practicing of an occupation, profession, art or trade from a dwelling unit, provided that the dwelling concerned shall remain for living accommodation of a single family, and the property complies with the requirements of the Zoning Scheme for home occupation, etc. With reference to the servicing of motor vehicles it is not excluded and can be defined as a trade. In order to operate the business the restrictive condition prohibiting business from the property needs to be removed.

**The development parameters for home occupation are as follows:**

- (a) The dominant use of the dwelling house or dwelling unit shall be for the living accommodation of a single family;
- (b) The total area used for a home occupation shall not exceed 25% of the total floor area of the buildings on the property;
- (c) No more than three (3) persons in total shall be engaged in home occupation activities on the property, including the occupants or the occupant and any assistants;
- (d) No portion of such dwelling, and no home occupation shall be used for the purposes of noxious trade, risk activity or sale of alcoholic beverages;
- (e) No advertising sign shall be displayed without the written consent of Council other than a single un-illuminated sign or notices affixed to the building or boundary wall or fence, and such sign must be in line with the Overstrand By-Law relating to outdoor advertising and signage;
- (f) The storage of products, goods or supplies connected to the home occupation shall be inside a building or screened from neighbours and public streets;
- (g) The hours of operation are restricted from 07h30 to 17h30, Monday to Friday, and 07h30 to 13h00 on Saturdays;
- (h) Onsite parking must be provided to the satisfaction of Council, provided that at least two (2) onsite parking bays are provided;
- (i) No more than one (1) vehicle, not exceeding 3 500 kg gross weight, shall be utilised for the home occupation; and
- (j) The Council may impose additional conditions in order to minimise any potential public nuisance.

**The business of Mr Van Eeden complies with the development parameters of a home occupation:**

- ❖ The primary right remains single residential.
- ❖ Only 23,7% is utilized.
- ❖ Only three (3) people, including Mr. van Eeden, are involved with the business.
- ❖ The use is not classified as a noxious trade.
- ❖ There are no advertising signs.
- ❖ The storage of goods is screened from the neighbours from the street.
- ❖ The business operates between 07h30 and 17h30 on weekdays, no work is done over weekends.
- ❖ Ample parking is provided on site.
- ❖ No vehicle that exceeds 3,5 tons gross weight is utilised.
- ❖ The service provided is not a nuisance.

The character of the area will remain the same and 77 letters of support for Mr van Eeden's business were obtained. All Engineering Services are in place and the business has no impact on the existing services. The access to the residential property is utilized and no additional access points are utilized or required and thus have no impact on traffic flow. The business will have no impact on the character of the area and or land values of the surrounding erven.

The planning principles do not apply to this application.

#### PART I: SUMMARY OF PUBLIC PARTICIPATION

Methods of advertising				Date published	Closing date for comments			
Press	Y	N	N/A	9 & 16 June 2016	22 July 2016			
Gazette	Y	N	N/A	10 June 2016	22 July 2016			
Notices	Y	N	N/A	9 June 2016	22 July 2016			
Ward councillor	Y	N	N/A	9 June 2016	22 July 2016			
Site notice	Y	N	N/A					
Community organisation(s)	Y	N	N/A					
Public meeting	Y	N	N/A					
Third parties	Y	N	N/A					
Other	Y	N	If yes, specify	N/A				
Total valid comments	ONE (1)				Total comments and petitions refused	N/A		
Valid petition(s)	Y	N	If yes, number of signatures	N/A				
Community organisation(s) response	Y	N	N/A	Ward councillor response	Y	N	N/A	
Total letters of support	77							
Was public participation undertaken in accordance with section 45- 49 of the Proposed Draft By-law on Municipal Land Use Planning							Y	N

#### PART J: SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One (1) letter of objection has been received from the adjacent neighbour Mr Rousseau. The objector was an objector against the original application in 2009.

The servicing of vehicles is not restricted to weekdays only, but extends to Saturdays and Sundays. The servicing of the vehicles is a nuisance and a disturbance. The activity does not belong in a residential area and there are areas earmarked for motor repair services in the industrial area. The applicant gets tax advantage due to the fact that he is located on a residential erf. The noise generated by the business is constant and not similar in cases where there is a construction of a dwelling. The applicant's inability to find an erf suited for the business is not relevant, since various other similar businesses are located on erven zoned for this purpose. The business is not in line with the residential area and is to the detriment of land values of the properties in the area.

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

Name	Date received	Summary of comments	Recommendation		
			Positive	Negative	Comment
<b>Traffic Department</b>	15 August 2016	Go ahead. Access and parking all in order.	<b>Positive</b>	Negative	Comment
<b>Fire Department</b>	12 August 2016	Premises must comply with requirements of National Fire Protection Regulations SANS 10400T:2011 for occupancy classification D3 – Low Risk Industrial.	<b>Positive</b>	Negative	Comment
<b>Engineering Services</b>	1 July 2016	See Annexure F.	<b>Positive</b>	Negative	Comment
<b>Building Control</b>	10 June 2016	Not indicated according to previous plans. New plans need to be submitted in accordance with SANS 1040 to comply with proposed usage.	Positive	<b>Negative</b>	Comment
<b>Area Manager</b>	10 June 2016	Do not support application. Usage not compatible with residential character.	Positive	<b>Negative</b>	Comment

**PART L: SUMMARY OF APPLICANT'S REPLY TO COMMENTS**

The servicing of motor vehicles is generally associated with noise; however it is wrong to generalize. Only one (1) objection was received in this regard. Copies of seventy seven (77) written responses were received and none of the respondents had anything negative to say about Mr. Van Eeden's business. A further questionnaire was forwarded to land owners in the immediate vicinity and not one respondent had anything negative to say, but commented favourable, confirming the social benefit of his activity. The questionnaire also contradicts the noise pollution as was indicated in the objector's letter. In the circumstances the restrictive title condition concerned has no real financial value or personal benefit to the holders of the rights in terms thereof.

The concept desirability in the land use planning context may be defined as the degree of acceptability of the proposed land use on the properties in the area. Therefore to establish desirability or not, the degree of compatibility of the proposed land use with the existing planning in respect of the area concerned. In the given set of facts it is necessary to latch on to theorise about what the impact of the activity concerned will have on existing rights of others in the vicinity. The business has been conducted for many years. The restrictive conditions were imposed for the benefit of all and only the objector was negative.

It is expected that property owners are generally entitled to expect that their neighbours will use their land in such a manner so as to not unreasonably intrude on their ordinary amenities. It is submitted that based on the favourable responses received from other immediate neighbours and property owners in the surrounding area, that Mr. Van Eeden's activities does not constitute any unreasonable use of his property.

Furthermore, it is suggested that the restrictive condition not be removed, but suspended. The suspension shall automatically terminate against the transfer of ownership of the property in favour of someone else. It is further suggested that Council may by thirty (30) days' written notice to Mr Van Eeden terminate the suspension if- (a) the property owners in the township concerned submit written complaints to the Municipality if the activities materially and adversely affect their ordinary convenience and comfort; (b) upon investigation Council is satisfied that the complaints are valid, and (c) Mr. Van Eeden upon receipt of written notification from the Municipality demanding rectification, fails to forthwith remove the reason for complaint.

It is thus requested that the objection received against the applicant be dismissed and the suspension of the relative title restriction be conditionally removed.

<b>PART M: MUNICIPAL ASSESSMENT OF COMMENTS</b>		
<p>The Area Manager of Kleinmond is not in favour of the application.</p> <p>The objector has been an objector since 2009 with the original application for a departure and it is clear that the reasons given by the objector have not been resolved or addressed by the applicant since 2009. The objector is correct that the area is residential of nature and the activity should be in an area earmarked for such activities.</p>		
<b>PART N: MUNICIPAL PLANNING EVALUATION ( REFER TO RELEVANT CONSIDERATIONS GUIDELINE)</b>		
Was the application processed correctly (if no, elaborate below):	Y	N
<p>Is the proposal consistent with the principles referred to in chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)</p> <p>Partially</p>		
<b><u>(In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)</u></b>		
<p>The application is partially in line with the planning objectives applicable to this application.</p> <p>The objectives relating to:</p> <p><b><u>Spatial Justice:</u></b> Not Applicable</p> <p><b><u>Spatial sustainability:</u></b> The application is inconsistent with Section 7(b)(iii), which relates to the promotion of environmental principles in terms of the negative impacts on people's environmental rights and justice as to unfairly discriminate against any person.</p> <p>The application is inconsistent with Section 7(b)(vi), which relates to the promotion of land development in locations that are sustainable and limit urban sprawl. The application on the present erf is not sustainable development as it will not benefit the area for present and future generations. The sustainability of the activity is in question due to the lack of extension and or financial gain for any future purchaser of the property.</p> <p><b><u>Efficiency:</u></b> The application is consistent with Section 7(c)(ii)(iii) in as far as to the decision making procedure in terms of the time frames and public participation is concerned to minimize negative impacts on parties concerned.</p> <p><b><u>Good administration:</u></b> The application did comply with all relevant procedures and was transparent.</p> <p><b><u>Spatial Resilience:</u></b> Not applicable</p>		
<b><u>(In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)</u></b>		
Same as SPLUMA.		
<b><u>(In)consistency with the IDP/Various levels of SDF's/Applicable policies</u></b>		
<p>The application does not comply with the SDF, section 7.5.3 which indicate that inappropriate land uses be restricted to the Industrial area. The application is an inappropriate land use that is a primary right in terms of the Industrial zoning category, and a consent use on business erven in terms of the Overstrand Zoning Scheme.</p>		

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

N/A

**Impact on Municipal engineering services**

There is no impact on municipal services.

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

N/A

**Existing and proposed zoning comparisons and considerations**

The Kleinmond Scheme required a departure application as the proposed use is inconsistent with activities related to residential uses. The Overstrand Zoning Scheme does make provision for a trade, but a motor repair garage a clearly defined and allocated to Industrial and Business zoning categories and thus is seen as inconsistent with the Overstrand Zoning Scheme.

**Town Planner Evaluation**

The application for a motor repair garage is located in a residential neighbourhood. The present activity falls within the ambit of the definition of a motor repair garage, which is allocated to the Industrial Zoning category as a primary use and or a consent use in terms of the Business Zoning category. The applicant indicates that only three (3) cars are serviced per day, inclusive of smaller engines such as lawn mowers. The practice of servicing engines, requires the start-up of the engines to ensure that the servicing thereof are indeed successful. This in itself does create noise pollution, which is consistent and is not conducive to the ambiance of a residential neighbourhood.

The Overstrand Zoning Scheme does provide for a trade as a home occupation on Residential 1 zoned erven, however it must be interpreted to the other home occupation uses which relates to low impact, office type occupations and hobbies all of which are restricted in terms of the parameters attached to it. Should the occupation be of a disturbance to neighbours and or the residents in the area, the activity must relocate to an appropriate zoned erf. The evaluation of home occupation is very much linked to the acceptability thereof of the residents of the area. The applicant did indicate that all the development parameters of a home occupation are met. However, the objector did indicate that the operating hours are not complied with. The risk factor of oil is prevalent due to the nature of the activity. The development parameters restrict any home occupation to 25% of the building, however, the present activity cannot be accommodated within the 25% of the building and make use of the outdoor area and thus exceeds the allotted 25% for a home occupation. The restriction of 25% is to limit activities that can be to the detriment of the area and is a clear indication that the type of occupation must be in a built structure and should this not be possible, the activity cannot comply with this requirement. In terms of the Overstrand Zoning Scheme, Section 3.2, the uses allocated in the different categories must be in line with the definition of the Zoning Scheme and a motor repair garage is allocated to an industrial zoning as primary right, which clearly indicates that this type of trade is not to be accommodated in any other category as a primary right.

The Spatial Development Framework (SDF) indicates this area as residential; the subsequent Growth Management Strategy does not consider the area as local business opportunity. The SDF guidelines for Kleinmond do address illegal activities of industrial nature to be restricted to areas allocated for such activities.

In as far as the SPLUMA and LUPA principles are concerned, one of the key issues are sustainability. Applications must take into consideration the environmental principles that everyone has a right to a healthy environment. The latter is interpreted in the wider sense that it encompasses not only the physical environment, but extent to wellbeing. The application is also not sustainable and only benefits the applicant. The community can access the same service within

Kleinmond.

The physical nature of the activity is very visible and the erf looks similar to an erf in the industrial area and is not aesthetically pleasing. This in itself is to the detriment of the neighbourhood.

The activity as applied for cannot be defined as a home occupation and no application was lodged for a motor repair garage on a residential erf. This aspect was evident in the application in 2009, which was not approved and the two (2) subsequent appeal hearings reiterated this fact. The applicant had ample time to relocate to a more suitable premise since 2009, but decided to ignore the decisions by the Municipality and the Western Cape Province.

The desirability was extensively debated by the legal representative of the applicant and one of the major points is that the activity must be compatible with the land uses in the area. The motor repair garage is not compatible with the area. The argument was taken further in as far as that property owners are generally entitled to expect that their neighbours, whatever their character, will use their land in such a manner so as to not unreasonably intrude on their ordinary amenities and existing property rights. In order to do so one must establish the basis of the reaction of the reasonable man – one who according to ordinary standards of comfort and convenience and without any particular sensitivity for instance to the particular noise or interference with rights, would find it, if not quite tolerable, a serious impediment to the ordinary and reasonable enjoyment of his property or rights therein. Due to the fact that none of the other adjacent neighbours objected, there is thus no basis that Mr. Van Eeden's activities constitute an unreasonable use of the property. The legal representative did not take into consideration that any activity which constitute a nuisance not directly related to the first and foremost residential use of the property, is unreasonable. Especially if total disregard is shown to abide by the law, which indicated that the activity is illegal and should be stopped. The social benefits to the wider community may be due to the fact that the applicant has since 2009 not been subject to the rates and taxes applicable on industrial and business erven and can therefore give this benefit through to the customers. Therefore the benefit is not for the whole community and or other similar businesses and gives Mr. Van Eeden an unfair advantage to operate an illegal business from his residential erf.

The application for the removal of the restrictive condition or the suspension as of the condition as suggested by the legal representative of the applicant is not recommended. The condition is to ensure that the area remains residential and to the benefit to each owner who purchased property in the area. Although there was only one (1) objector, the aforementioned purchased the property as a residential erf surrounded by other residential erven and activities associated with residential living and not adjacent to a motor repair garage. Although the applicant resides on the erf, it is clear that the erf has been transformed into a motor repair garage, which is not in line with the character of the area. A suspension has reference to ownership and will not curtail the possibility to rent out the space to another operator whilst retaining ownership.

The financial or other value of the rights

The financial value in this case is indirectly related to the residential value of the erven of which a motor repair garage may infringe on the financial value of the erven in the neighbourhood.

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

The applicant will be the sole beneficiary of the removal of the restrictive condition.

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

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

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

The rights enjoyed by the beneficiaries of the neighbourhood, restricting activities not in line with a residential living will be removed.

**PART P: CONCLUSION**

The application for the removal of the restrictive condition as applied for and or the suspension of the restrictive condition as suggested by the legal representatives of the applicant not be recommended for approval.

**PART Q: RECOMMENDATION**

1. that the application for the removal of title deed restriction in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 as per Title Deed T21872/1991, Condition C(2), which prohibits the practice of a business on the property concerned, **not be approved**.
2. that the applicant/objector be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above conditions of approval.

**PART R: REASONS FOR RECOMMENDATION**

- ❖ The service repair garage does not comply with the definition of a home occupation.
- ❖ The applicant did not sufficiently motivate or provide evidence that the activity will in the interest of the area as stipulated in Section 35(4) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015.
- ❖ The applicant did not motivate sufficiently that the activity is desirable in terms of Section 49(d) of LUPA.
- ❖ The application is for the benefit of the applicant and not for the wider community in terms of environmental principles.
- ❖ The application did not address any of the Planning Principles as stipulated in terms of SPLUMA and LUPA.
- ❖ The nature of the business is not compatible with the residential character of the area.
- ❖ The principle of a clean and healthy environment as that is entrenched in the Constitution.
- ❖ The proposed activity may have a detrimental cumulative impact on the residential character should similar trade be defined a home occupation.
- ❖ The removal of the restrictive condition is not in the benefit of property owners in the area, since it will have an impact and their right to a predominantly residential area will be under threat.

**PART S: ANNEXURES**

Annexure A:	Locality plan
Annexure B:	Proposed Site development plan
Annexure C:	Motivation
Annexure D:	Objection received
Annexure E:	Applicant's reply to objection received
Annexure F:	Services report

**PART T: SIGNATURES**

Author name:

**H VAN DER STOEP**

Author signature:



Date:

24/10/2016

Registered planner name :

**S VAN DER MERWE**

Registered planner signature :



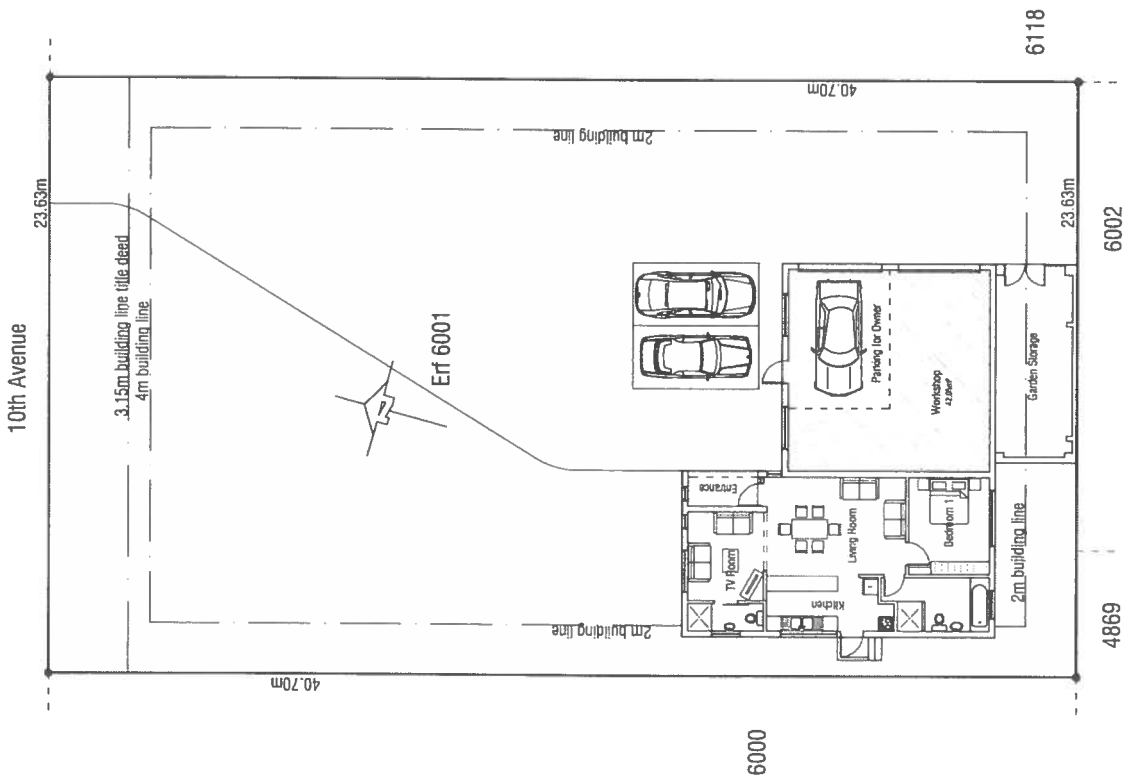
SACPLAN registration number:

**A/1850/2014**

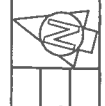
Date:

24.10.2016





NOTES:  
 Number of Parking Bays Required = 2  
 Number of Parking Bays Provided = 2  
 Additional parking = 2 (Double Garage)  
 The measurements of the 2 parking bays are 5m x 2.5m each.



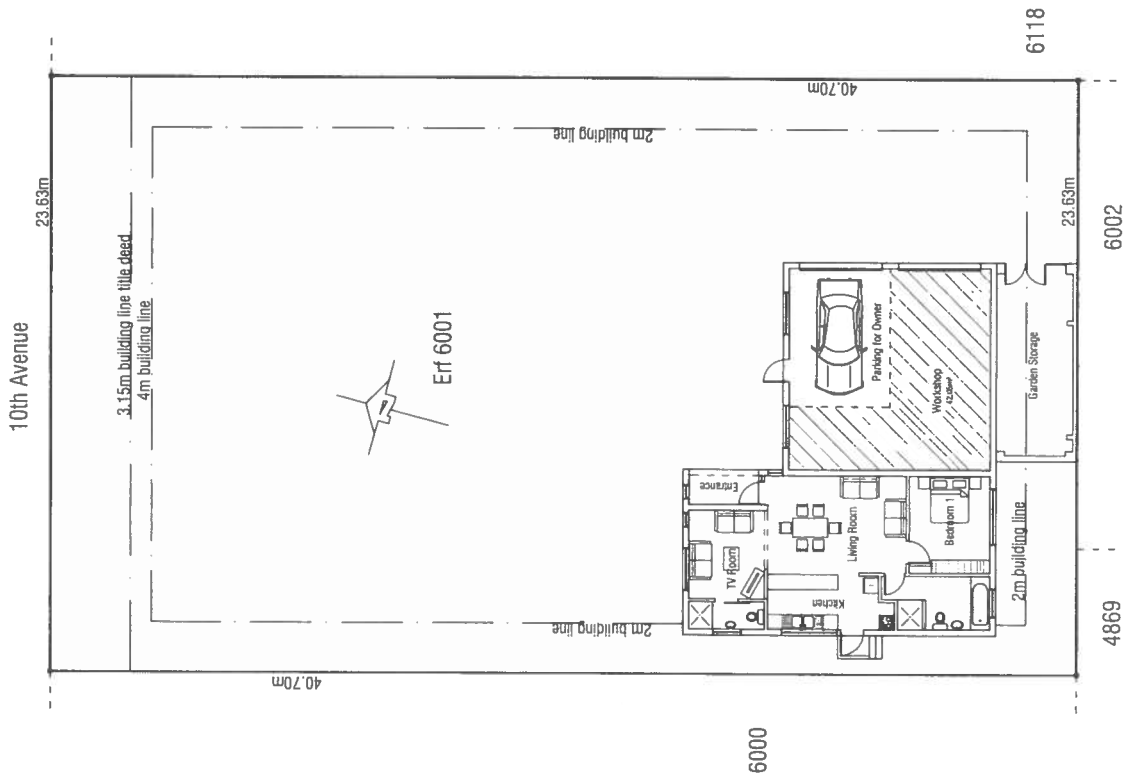
Scale: 1:200  
 Drawing Nr: Kleinm6001P.dwg  
 Date: 05/2016

Plan Description:  
**PARKING LAYOUT**

Property Description:  
**ERF 6001  
 KLEINMOND**

All distances approximate and subject to survey.  
 COPY RIGHT RESERVED

**PL'n Active**  
 Stads- en Streeksbeplanners  
 Town & Regional Planners

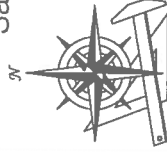


Site Plan  
Scale 1:200

Areas:  
 Dwelling 177.55m<sup>2</sup>  
 Workshop 42.05m<sup>2</sup> (23.7% of dwelling)  
 Erf Coverage 962m<sup>2</sup>  
 18.5%  
 Class of occupancy of building H4  
 Occupancy Dwelling House  
 Population 2  
 Orientation North  
 Climatic Zone 4 - Temperate Coastal

Scaled dimensions invalid. All measurements have to be checked on site before work can commence. Copyright reserved.

Sandra Schutte



BLArch.(I.P.)  
 Pr Arch. MArch.CIA  
 Tel & Fax  
 028 271 4238  
 121 Main Road  
 PO Box 92  
 Kleinmond  
 7195  
 bruinvolkse@telkomsa.net

Client van Eeden 241  
 Owner Signature  
 SACAP Reg No: Pr Arch 21077

Project  
 Usage of Existing Dwelling  
 Erf No. 6001  
 10th Avenue  
 Kleinmond

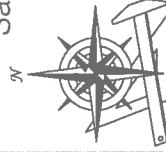
Drawing  
 Site Plan  
 Scale 1:200  
 Drawn LS Checked SS  
 Project No Revision Date 2016/05/09  
 D.399.K 0 Sheet No 1 of 2

Scaled dimensions invalid. All measurements have to be checked on site before work can commence. Copyright reserved.

Sandra Schutte

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SACAP Reg No: Pr Arch 21077

Client **van Eeden** 241

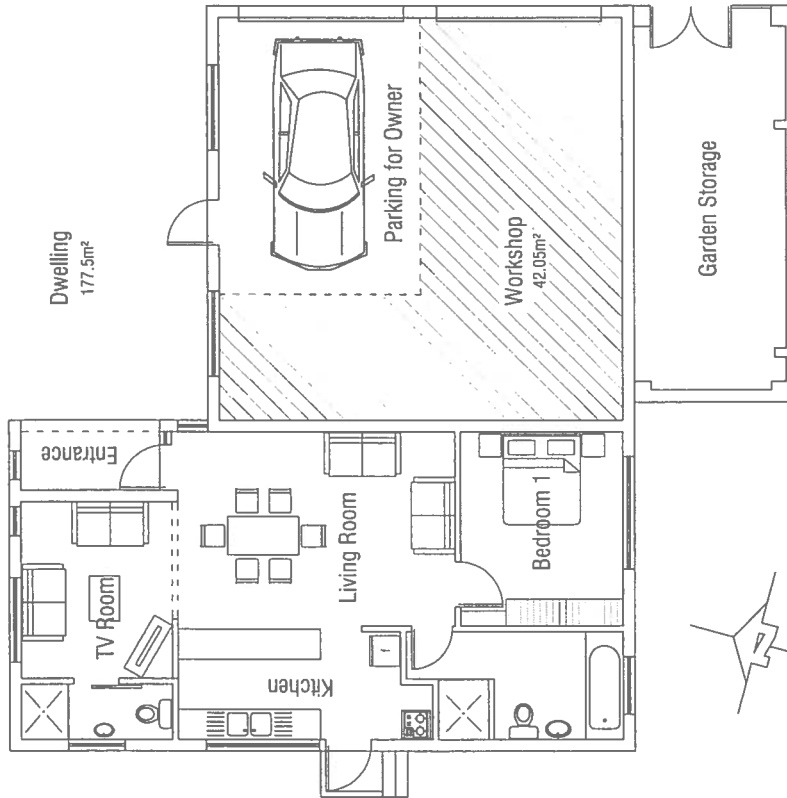
Owner Signature

Project  
**Usage of Existing Dwelling**  
Erf No. 6001  
10th Avenue  
Kleinmond

Drawing  
**Ground Storey Plan**

Scale 1:100

Drawn	LS	Checked	SS
Project No	Revision	Date	2016/05/09
D. 399.K	0	Sheet No	2 of 2



Ground Storey Plan  
Scale 1:100

**PROPOSED REMOVAL OF A RESTRICTIVE  
TITLE DEED CONDITION**

**ERF 6001 KLEINMOND**

**DIVISION: CALEDON  
OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

The owner of Erf 6001 Kleinmond, Mr. Heinrich van Eeden, has instructed the company Plan Active to apply for the removal of a restrictive Title Deed condition in order to utilise a portion of his property for home occupation. The Title Deed prohibits that the subject erf be used for any business purposes and will have to be removed in order to utilise a portion of the property for home occupation purposes as prescribed under a zoning of Residential Zone I as a primary right.

Mr. Heinrich van Eeden has been servicing motor vehicles for a number of years and has also submitted an application for a departure and the removal of restrictive Title Deed conditions in terms of the previous Zoning Scheme Regulations that was turned down. In terms of the current Overstrand Municipality Zoning Scheme the definition of "home occupation" now also includes a trade. It would therefore only be required to apply for the removal of a restrictive Title Deed condition in order to make use of this primary right.

Erf 6001 Kleinmond is 962m<sup>2</sup> in extent and is held by Title Deed number T21872/91.

Currently there is an existing dwelling with a double garage, of which a portion of the double garage is being used to service motor vehicles.

## **2. APPLICATION DETAILS**

Application is made in terms of:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the removal of a restrictive Title Deed condition applicable to Erf 6001 Kleinmond;

## **3. GENERAL APPLICATION INFORMATION**

### **3.1 PROPERTY DESCRIPTION**

Erf 6001 Kleinmond is situated in 10<sup>TH</sup> Avenue, Kleinmond. Please refer to the enclosed locality map. Erf 6001 Kleinmond is 962m<sup>2</sup> in extent and is situated in a single residential area.

### **3.2 ZONING**

The subject property is zoned Residential Zone I: Single Residential, and will be used as such. Surrounding properties are zoned for single residential purposes and home based business uses that are accommodated as a home occupation use as a primary right.

Erf 6001 Kleinmond is mainly used for residential purposes. A single storey dwelling and double garage is located on the southern half of the property leaving the northern portion vacant. A portion of the double garage is being used for home occupation purposes

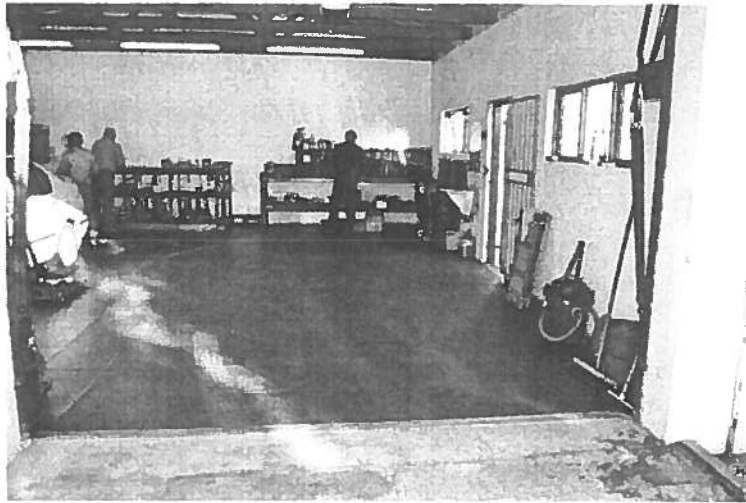
### **3.4 PROPOSAL**

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the removal of a restrictive Title Deed condition applicable to Erf 6001 Kleinmond;

As stated earlier in this motivation, Mr. Heinrich van Eeden service and carry out maintenance work on motor vehicles. The service that he provides is the change of oil, oil filters, brake pads and all maintenance work related to motor vehicles. Mr. van Eeden also has the knowledge to work on smaller engines such as lawn mowers but it is not his main concern.

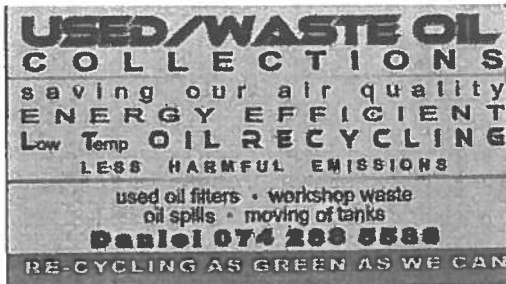
No manufacturing of parts, panel beating or spray painting takes place as part of his business. New parts are ordered for vehicles to replace worn parts. Motor vehicle parts are usually removed and reattached to a motor vehicle or a motor vehicle engine by bolts, nuts or screws and hand tools are used to disassemble and assemble parts. Power tools are seldom used and therefore his business creates no more noise than a regular residential used property.

He makes use of a portion of his double garage to service motor vehicles that is 42.05m<sup>2</sup> in extent. Please refer to the enclosed site development plan. The garage is equipped with a work bench, shadow board with tools and shelving for general spare parts. The garage is extremely well maintained with no engine parts or car parts that are lying around and also no oil spills. The premises as a whole is well maintained. Please refer to the photographs below:



Generally Mr. van Eeden only services up to 3 cars per day and also provides work to 2 permanent employees. It does happen occasionally that a car does stay overnight if car parts are not readily available in town and they have to be sourced from elsewhere. The work done by Mr. van Eeden is the servicing of motor vehicles and occasionally smaller engines such as lawnmower engines. His work does not entail the tuning of vehicles for racing purposes or the fitment of aftermarket performance parts that could be extremely noisy.

When servicing motor vehicles and smaller engines, as mentioned above, parts and workshop waste are disposed of in a proper manor. No oils, oil filters or workshop waste is disposed of in the municipal refuse system. Mr. van Eeden makes use of a recycling company that collects oil, oil filters and workshop waste. Please refer to the business card below reflecting the detail of the company.



In terms of the definition of home occupation that is a primary right under a zoning of Residential Zone I a trade can also be accommodated. Please refer to the definition of home occupation below:

**"home occupation"** means the practicing of an occupation, profession, art or trade, or the conducting of an enterprise, which includes an estate agency, from a dwelling unit by one or more of the occupants of a dwelling unit; provided that the dominant use of the dwelling concerned shall remain for the living accommodation of a single family, and the property complies with the requirements contained in this zoning scheme for a home occupation; but does not include adult entertainment;

With reference to the definition above the servicing of motor vehicles is not excluded and can be defined as a trade. In order for Mr. Heinrich van Eeden to utilise a portion of his double garage to accommodate a home occupation that is a primary right it is required that a Title Deed Restriction be removed.

The land use restrictions pertaining to home occupation are as follow:

#### Home occupation

5.1.8 The following provisions shall apply where a portion of the property is used for the purposes of home occupation:

- (a) The dominant use of the dwelling house or dwelling unit shall be for the living accommodation of a single family;
- (b) The total area used for a home occupation shall not exceed 25% of the total floor area of the buildings on the property;
- (c) No more than 5 persons in total shall be engaged in home occupation activities on the property, including the occupants or the occupant and any assistants;
- (d) No portion of such dwelling, and no home occupation shall be used for the purposes of noxious trade, risk activity or sale of alcoholic beverages;
- (e) No advertising sign shall be displayed without the written consent of the Council other than a single un-illuminated sign or notices affixed to the building or boundary

- wall or fence, and such sign must be in line with the Overstrand by-law relating to outdoor advertising and signage;
- (f) The storage of products, goods, or supplies connected to the home occupation shall be inside a building or screened from neighbours and public streets;
  - (g) The hours of operation are restricted to 07h30 and 17h30 Monday to Friday and 7h30 to 13h00 on Saturdays;
  - (h) On site parking must be provided to the satisfaction of Council, provided that at least two on site parking bays are provided;
  - (i) No more than one vehicle, not exceeding 3 500 kg gross weight, shall be utilised for the home occupation; and
  - (j) The Council may impose additional conditions in order to minimise any potential public nuisance.

The home occupation practised by Mr. van Eeden complies with the above mentioned land use restrictions applicable to home occupation.

- The primary use of Erf 6001 Kleinmond remains single residential.
- The area used for the home occupation practice is 23.7%.
- Only 3 people are engaged in the home occupation that is made up of 2 permanent employees and the owner of the property, Mr. Heinrich van Eeden.
- The use is not classified as a noxious trade or risk activity and no sale of alcohol takes place.
- There are no advertising signs displayed on the premises.
- The storage of products and goods are screened from the neighbours and from the street.
- The home occupation practice operates between the prescribed times that is 07h30 to 17h:30. No work is done over weekends.
- Ample parking is provided on-site. Please refer to the enclosed parking layout plan.
- No vehicle that exceeds 3.5 tons gross weight is utilised for the home occupation practice.
- The service provided by Mr. van Eeden to service motor vehicles is definitely not a nuisance.

In the light of the above description of the proposal it is clear that the application is desirable and that the application for the removal of a restrictive Title Deed condition can be supported.

### 3.6 THE TITLE DEED

There is a restrictive title deed condition that has to be removed to take up the primary right of home occupation on Erf 6001 Kleinmond.

- Please refer to Page 3, Clause No. C2 of Title Deed T21872/1991 that reads as follows:

"The company reserves to itself and its successors in title the sole right all Hotels and all Liquor Licences and no purchaser of erven or their successor in title shall erect any Hotel or hold any Liquor Licence or General Dealer's licence without the written consent of the Directors of the Company or its successors in title, first had and obtained, and no shop, store or business shall be erected or opened on any stand herein sold, without the written permission of the Company by its Directors or its successors in title, first has and obtained thereto."

Due to the fact that a portion of the existing dwelling is being used as a business it would be required that the above mentioned restriction be removed. Please refer to the enclosed Conveyancer Certificate from the Conveyancer Mrs. Hanlie Ferreira, Senior Associate, Smith Tabata Buchanan Boyes Attorneys.

A bond is registered over the property by ABSA bank. We have enclosed a copy of the bondholder's consent for your records.

### 3.7 CHARACTER OF THE ENVIRONMENT

It is not proposed to change the primary land use that is single residential. It is proposed that a Title Deed restriction be removed in order for Mr. van Eeden to continue with his home occupation that is provided as a primary right under the property's current zoning. The impact on the character of the area will remain unchanged.

Furthermore the home occupation is in line with the applicable land use restrictions in terms of the Zoning Scheme. The proposed removal of the restrictive Title Deed Condition in order for Mr. van Eeden to service motor vehicles from his premises does not have a negative impact on the surrounding neighbours and are in fact an asset to the community of Kleinmond. Please refer to the enclosed 77 questionnaires completed by neighbouring and surrounding land owners in support of Mr. van Eeden's operations.

### **3.8 POTENTIAL OF THE PROPERTY (DESIRABILITY OF THE PROPOSED UTILIZATION)**

The subject property's zoning and primary land use will remain single residential with a portion of 23.7% of all the structures being used for the purpose of a home occupation as defined in the Zoning Scheme Regulations. The home occupation is in line with the land use restrictions imposed by the Zoning Scheme Regulations applicable to the property and is compatible with the surrounding land uses.

- The business that Mr. van Eeden is conducting does not exceed noise levels related to single residential uses.
- The business being conducted does not have a negative impact on the land use or property value of the surrounding properties.
- The business use as managed by Mr. van Eeden is compatible with the residential character and land use of the residential area and is not a nuisance.
- Waste is being removed by a professional waste recycling company and is therefore not dumped within the municipal refuse system, sewer system or storm water system.
- The workshop area is well maintained, neat and clean with no oil spills or parts laying around as previously mentioned. We can also confirm that the property as a whole is well maintained.

We hereby invite the municipal officials to conduct a site visit in order to confirm the above mentioned.

### **3.9 IMPACT ON EXTERNAL ENGINEERING SERVICES**

#### **3.9.1 PROVISION OF SERVICES**

All services on the subject property already exist. No additional services are required. Therefore the proposal will not have a negative impact on existing services that are provided by the Overstrand Municipality and the removal of a restrictive Title Deed condition can therefore be supported in order to accommodate a home occupation.

#### **3.9.2 TRAFFIC IMPACT, PARKING AND ACCESS**

The existing access to the existing garage situated on erf 6001 Kleinmond will be used and no additional access point from 10<sup>th</sup> Avenue would be required. A double garage is situated at the rear of the property and is attached to the dwelling leaving the northern portion of the erf vacant towards 10<sup>th</sup> Avenue. Ample parking can be provided on site. 2 parking bays are provided on site as per the land use restrictions applicable to home occupation. Please refer to the enclosed parking layout plan.

### **3.10 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION**

#### **3.10.1 HERITAGE VALUE**

Erf 6001 Kleinmond is not earmarked for heritage conservation purposes.

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

In the light of the above mentioned it is evident that the proposed departure will not have a negative impact on the heritage value of the Kleinmond area.

### **3.10.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

The proposed removal of a restrictive Title Deed condition does not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

### **3.11 FORWARD PLANNING AND LAND USE DOCUMENTS**

The Overstrand Municipal Growth Management Strategy (OMGMS) indicates Erf 6001 Kleinmond within Planning Unit 9. Planning Unit 9 consists of a larger single residential cluster north of the Main Road. Erf 6001 Kleinmond also falls within a predominantly single residential area. The zoning of Residential Zone I will be retained and home occupation can be accommodated on site as a primary right. The removal of the restrictive Title Deed condition can be supported due to the fact that the primary land use that is single residential will be retained and that only a portion of 23.7% of the structures on site will be utilised as home occupation as a primary land use right.

The Overstrand Municipal Wide Spatial Development Framework (2006) earmarks Erf 6001 Kleinmond for single residential purposes.

This proposed removal of a restrictive Title Deed condition will not have a negative impact on the surrounding land owners and is in line with the forward planning of the area.

### **3.12 PLANNING PRINCIPLES**

The planning principles of spatial justice, spatial sustainability, efficiency and spatial resilience do not apply 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:

- All services on the subject property already exist and no additional services are required;
- The existing access point from 10<sup>th</sup> Avenue will be used and will have no impact on traffic or the surrounding land owners. No vehicles are parked in 10<sup>th</sup> Avenue;
- The proposal is compatible with the existing built character of the area;
- The proposed removal of a restrictive Title Deed condition in order to utilise a portion of the property for home occupation purposes will not have a negative impact on the current character and land values of the surrounding erven.
- The home occupation land use conforms to all land use restrictions applicable to this use.

- The business that Mr. van Eeden is conducting does not exceed noise levels related to single residential uses.
- The business use as managed by Mr. van Eeden is compatible with the residential character and land use of the residential area and is not a nuisance.
- Waste is being removed by a professional waste recycling company and is therefore not dumped within the municipal refuse system, sewer system or storm water system.
- The workshop area is well maintained, neat and clean with no oil spills or parts lying around as previously mentioned. We can also confirm that the property as whole is well maintained.
- The property as perceived from the road is that of dwelling and not a dwelling with a workshop.

With regards to the above mentioned it would be appreciated if Council would approve the proposed removal of a Restrictive Title Deed condition applicable to Erf 6001 Kleinmond.



27

Tiendelaan 79

Kleinmond 7195

2016 Julie 18

Die Munisipale Bestuurder

Overstrand Munisipaliteit

Posbus 20

Hermanus 7200TP- A Theart  
(H vid Steep)

**Erf 6001, Tiendelaan 77, Kleinmond, Overstrand Munisipale area: Opheffing van beperkende voorwaardes: Plan Active (nmns HW van Eeden)**

Munisipale kennisgewing Nr. 90/2016 oor hierdie aangeleentheid is ontvang.

My naam is Gert Stephanus Rousseau.

My woonadres is Tiendelaan 79, Kleinmond 7195.

Kontak besonderhede: landlyn 028 271 5474

selfoon 082 462 8226

e-pos [gert.kleinmond@gmail.com](mailto:gert.kleinmond@gmail.com)

My belang in die aangeleentheid: Ek is die eienaar van die buurerf 6000 Tiendelaan 79, Kleinmond. Die bedryf van die motorherstel onderneming op erf 6001 affekteer my lewensgehalte direk en ek maak beswaar daarteen.

Die redes vir my beswaar is reeds in vorige korrespondensie met die Munisipaliteit uiteengesit en is steeds geldig, kopieë van my briewe van 2009 Des 04 en 2011 Mei 19 word hierby aangeheg.

In die aansoeker se aansoek om opheffing van titelbeperkinge van erf 6001 Kleinmond deur Plan Active, word in die motivering stellings gemaak wat nie korrek is nie.

1. Die motorherstelwerk wat tans op die perseel gedoen word, is nie beperk tot die ure 07h30 tot 17h30 en weekdae nie. Die werk strek dikwels buite daardie ure en word dikwels op naweke en ook op Sondae gedoen.
2. Die diens wat deur Mnr. Van Eeden gedoen word om motorvoertuie te herstel, is beslis hinderlik. Ek woon op die erf direk langs erf 6001 en is deeglik bewus van die lugbesoedeling en geraasbesoedeling.
3. Die stelling dat dit 'n bate vir die inwoners van Kleinmond is, is ongemotiveer. Hy trek wel daaruit voordeel omdat hy laer tariewe vir sy werk vra as mededingende sake-ondernemings omdat hy laer eiendomsbelasting betaal. Die inwoners van Kleinmond kan dieselfde dienste kry by ander ondernemings.
4. Daar word verwys na 'n meningsopname van 77 vraelyste hieroor van die eienaars van omliggende eiendomme, maar besonderhede van die opname en uitslag, is nie by die aansoek ingesluit nie. Ek sou dit beslis nie ondersteun het nie.

FILE NO: EL 6001 -Km
SCAN NO:
COLLABORATOR NO: 920677

Municipality Munisipaliteit	OVERSTRAND
19 JUL 2016	
HANGKLIP / KLEINMOND	

TP

20 JUL 2016

21 JUL 2016

5. Die bedryf van 'n motorherstel onderneming op 'n residensiele perseel is glad nie versoenbaar met die residensiele karakter van die omgewing nie. Vir sulke aktiwiteite is daar met goeie rede industriële gebiede voorsien in die Munisipale area.
6. Die bedryf van 'n onderneming wat so 'n negatiewe impak het op ander grondeienaars in die omgewing, verlaag die waarde van daardie eienaars se eiendomme.



G.S. Rousseau



Posbus 441  
Kleinmond 7195  
2011-05-19

Die Munisipale Bestuurder  
Hangklip-Kleinmond Administrasie  
Privaatsak X3  
Kleinmond

TP-A Theart  
(H vld Stoep)

**Appel teen weiering van aansoeke vir opheffing van beperkings, 1967 (Wet 84 van 1967) en voorgestelde afwyking van grondgebruikbeperking van erf 6001, Kleinmond**

U brief gedateer 2011-05-03 en die appellant se appelstukke gedateer 2011-04-19 verwys.

1. Daar word aangevoer dat ABSA bank by toestaan van 'n verband op die eiendom, ten gunste was van opheffing van die gebruiksbepenkings. Dit is onduidelik watter jurisdiksie ABSA oor hierdie aangeleentheid het en waarom hul mening hieroor in ag geneem moet word.
2. Daar word verder aangevoer dat bedryf van 'n voertuig herstelonderneming in die residensiële gebied van Kleinmond, teenstrydig met grondgebruik beperkings, nie skadelik is vir die Omgewing of die karakter van die residensiële gebied nie. Inteendeel, daar word gestel dat bedryf van so 'n onderneming juis lede van die laer inkomstegroep bevoordeel.

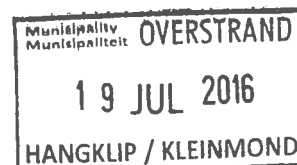
Die onderneming veroorsaak besoedeling van die lug en gaan gepaard met baie geraas en hoort glad nie tuis in 'n stil woonbuurt nie. Die doel van sonering is juis om sulke ondernemings te beperk tot gebiede wat geskik is daarvoor, sodoende word die belange van inwoners beskerm.

Dit is onredelik van die aansoeker om van die Munisipaliteit te verwag om hom finansiële te bevoordeel ten koste van eienaars van eiendomme in die omgewing, aangesien bedryf van sy besigheid die waarde van hul eiendomme verminder. Indien die aansoek om afwyking van gebruiksbepenkings in hierdie geval toegestaan word, skep dit 'n presedent vir die toestaan van vergunnings aan ander sake-ondernemings, en raak die Munisipale regulasies niksseggend.

Dit mag moeilik wees vir die aansoeker om 'n ander perseel in die nywerheidsgebied te vind waar hy sy onderneming kan bedryf, teen 'n koste wat vir hom aanvaarbaar is. Ander ondernemings het met dieselfde situasie te doen en slaag daarin om hul besighede suksesvol te bedryf.

Dit word van die plaaslike owerheid verwag om eerstens sy eie regulasies toe te pas en tweedens die belange en regte van al die inwoners te beskerm, sonder om enkele individue uit te sonder en te bevoordeel.

FILE NO: EL 6001-KM
SCAN NO:
COLLABORATOR NO:
920665



TP  
20 JUL 2016

21 JUL 2016

A handwritten signature in black ink, appearing to read 'G.S. Rousseau'. The signature is written in a cursive style with a large, looping initial 'R'.

G.S. Rousseau  
(Eienaar van die buurperseel erf 6000)



Tiendelaan 79  
Kleinmond 7195  
2009-12-04

Die Munisipale Bestuurder  
Hangklip-Kleinmond Administrasie  
Overstrand Munisipaliteit  
Privaatsak X3  
Kleinmond 7195

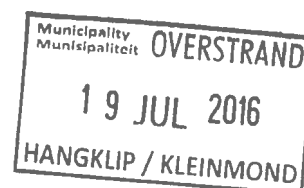
TP- A Theart  
(Huld Stoep)

**Wet op opheffing van beperkings, 1967 (Wet 84 van 1967) en voorgestelde afwyking van grondgebruikbeperking van erf 6001, Kleinmond**

Ek is die eienaar van erf 6000 Kleinmond en kennisgewing KKM 6001 van 30 Oktober 2009 is deur my ontvang. Beswaar word hiermee gemaak teen die aansoek.

1. Ek woon sedert 2003 in my woonhuis te Tiendelaan 79, direk langs aan die betrokke perseel erf 6001. Die motorherstelwerk word reeds jarelank ooglopend deur die Munisipaliteit toegelaat soos bevestig in gesprekke deur my met amptenare van die Munisipaliteit.
2. Die doel van grondgebruik beperkings is om die belange van die gemeenskap te orden en te beskerm en ek verwag dat die beperkings deur die Munisipaliteit toegepas sal word. Dit is onregverdig dat die finansiële belange van slegs sekere individue in die gemeenskap onregmatig bevoordeel word tot nadeel van ander lede van die publiek.
3. Die bedryf van die motorherstelwerk onderneming in die woongebied gaan gepaard met geraas afkomstig van voertuie wat na en van die perseel gebring word en die geraas van die herstelwerk. Ek hoor dikwels die gebrul van enjins wanneer die toere opgejaag word, in die geval van swaar voertuie is dit oorverdowend. Die werk word ook na ure gedoen en gedurende naweke. In 'n woongebied veroorsaak alle inwoners geraas, maar dit is afkomstig van grassnyers, sosiale verkeer, bouwerk, normale padverkeer ens. en is van korte duur, maar die bedryf van 'n sake-onderneming gaan deurlopend voort.
4. Die motorherstelwerk veroorsaak dat 'n groot hoeveelheid uitlaatgasse in die lug geblaas word, veral wanneer enjins koud is en ingestel word. Die besoedeling van lug in 'n woongebied is ongewens, sulke werk moet in 'n afsonderlike nywerheidsgebied gedoen word.
5. Die aansoeker se onvermoë om 'n geskikte alternatiewe perseel te vind, is nie ter sake nie en ander ondernemings slaag tog daarin om dit te doen.

FILE NO: EL 6001 - km
SCAN NO:
COLLABORATOR NO: 920675



TP

20 JUL 2016

21 JUL 2016

6. Die onvermoë of onwilligheid van die Munisipaliteit om vir jare lank die bestaande beperkings af te dwing, maak enige beloftes of ondernemings oor die toekomstige bedryf van die motorherstelwerk onderneming waardeloos. Indien die afwyking toegestaan word soos versoek, kan verdere afwykings plaasvind sonder dat die Munisipaliteit optree om dit te verhoed of te staak. Daar kan verwag word dat die besigheid sal uitbrei met 'n toename in geraas- en besoedelingsvlakke, daar sal mos amptelike goedkeuring voor wees.
7. Voortsetting van die motorherstelwerk onderneming op my buur-erf verlaag die verkoopwaarde van my eiendom en van die ander omliggende eiendomme.



G.S. Rousseau