

**4.5**

**ERF 10347, 17 LONG STREET, NORTHCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE: MESSRS PLAN ACTIVE ON BEHALF OF ER SCHIMMER AND BU RIEDELSHEIMER**

**10347 HNC (3536/2019)**

**H van der Stoep**

**29 September 2020**

**(028) 313 8900**

**Hermanus Administration**

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**1. EXECUTIVE SUMMARY**

An application was received on 9 December 2019 from Messrs Plan Active Town and Regional Planners on behalf of ER Schimmer and BU Riedelsheimer on Erf 10347, Hermanus for a consent use in order to establish a live entertainment venue consisting of a night club and outdoor venue to be utilized for occasional live entertainment on the above-mentioned property.

The motivation report indicated an application to establish an informal trading area on occasion.

A Locality Plan of the property concerned is attached as Annexure A. The proposed Site Development Plan is attached as Annexure B, while the Motivation Report from the applicant in support of the proposal is attached as Annexure C. The Noise Impact Assessment, conducted by Mackenzie Hoy Consulting Acoustics Engineers is attached as Annexure D.

**2. DECISION AUTHORITY**

Municipal Planning Tribunal

**3. BACKGROUND / SITE HISTORY**

The property is located on the corner of Long Street and Mitchell Street and measure 2213m<sup>2</sup> in extent. The property, known as "White Rabbit Pub and Grill" (hereinafter referred to as White Rabbit), is situated in the Hermanus Central Business District (CBD).

The property is surrounded by erven zoned as Business and General Residential, which consist of restaurants, offices, businesses, tourist accommodation and residential dwellings.

The structures on the application erf consists of an office, cold store room, unisex bathroom, bar counter with seating, seating areas in and outside, gaming area (five slot machines) and a dance floor.

It is important to note that the informal trading is a consent use in terms of the Zoning Scheme, 2013.

**4. SUMMARY OF APPLICANT'S MOTIVATION**

**The motivation for the application is as follows:**

Consent for a night club:

The proposed night club will diversify the current business use on the property and attract a diverse group of people to the CBD that will create business opportunities for surrounding businesses as well. The CBD of Hermanus has seen a decline in opportunities due to the event of the Whale Coast Mall. The proposed night club will attract people to the CBD, which will create opportunities for other businesses to gain income and an opportunity for better investments.

The operating hours of the night club will be from Monday to Saturday from 20:00 until 02:00, if the need arises. The night club will operate within the guidelines set out by the Noise Impact Assessment (NIA) by Messrs Mackenzie Hoy Consulting Acoustics Engineers dated 24 May 2019. The owner will make the necessary adjustments in order to comply with the NIA.

Occasional live entertainment:

The intention of the owner is to offer occasional live entertainment, which can be divided into two (2) categories e.g. live shows during festivals and live music by means of occasional live entertainment outside.

The first category: Whale Festival, Kalfie Festival, Hermanus Wine and Food Festival, Hermanus Fynarts Festival and Walker Bay Xtreme. The artists will be accommodated outside under roof of the area depicted on the site plan as multipurpose area. The performing artists will not perform beyond 22:00 in the evening. Due to the fact that these artists make use of amplified sound equipment that could exceed the noise limits as prescribed in the NIA, it is proposed that when hosting an event that the live entertainment will be stopped at 22:00, to ensure the minimal impact on properties with residential uses.

The intention is to host, where possible, the events indoors to ensure minimum noise pollution.

The second category is live music with non-amplified sound. The intention is to invite artists with non-amplified sound that will provide background music to patrons of the establishment. These artists will perform occasionally in a two (2) hour slot and no later than 22:00. The intention of the owner is to create an environment of a mature crowd. The sound generated by the latter category will be in line with the recommendations of the NIA.

The application for the consent uses with the implementation of the recommendations of the NIA should mitigate the noise pollution associated with a place of entertainment.

Informal food stalls:

The owner intends to accommodate occasional informal food stalls in the area demarcated as multipurpose area on the site plan. It is to give local community members the opportunity to sell trendy street food to patrons of the White Rabbit.

Access and Parking:

Parking is calculated in terms of Chapter 17, Section 17.1 of the Overstrand Zoning Scheme Regulations in the Overstrand Municipal Area and it is determined that forty

(40) parking bays are required, and forty (40) parking bays can be accommodated on site.

Services:

Erf 10347 is already developed and all services are in place and no additional services would be required.

**Forward Planning**

Overstrand Municipal Wide Spatial Development Framework, 2019:

The property is earmarked for business purposes.

Overstrand Growth Management Strategy, 2010:

The property falls within Unit 13 that consists of the Hermanus Central Business District (CBD). Residential densification is proposed for this planning unit to create a mixed land use area.

Heritage Value:

The property is located within the Heritage Overlay Zone and is also earmarked for heritage conservation purposes as per the Overstrand Heritage Survey Report (2009) and is graded as a 3B. The latter entails the following:

Historical fabric is partially intact, some evidence of historical layering, typical or good example of a type and for, etc. The contextual significance is as follows: contributes to historical, visual and spatial character of a place. The application is for additional use and no physical changes to the existing structures are proposed.

Hermanus CBD Regeneration Framework:

The framework describes the area where the application property is situated as "Mitchell Street Square", which emphasizes the following: Internationally, spatial planning professionals have timelessly agreed that the efficient use of land needs to be compatible with social well-being and healthy environment objectives. Therefore, concepts such as densification, urban growth management and the mixing of land uses have become popular in the process towards achieving these universal goals. Diverse environments provide a variety of opportunities, experiences and choice. The more varied a place, the more valued because of the individual qualities that make it distinctive from other places. Activity should be concentrated in core areas and important nodes and provide a cluster of complementary, but diverse set of uses. This provides people with choices and promotes walking between destinations.

Overall Framework

The establishment of a new CBD heart at Mitchell Street Square including a new mixed-use development, structured parking, public space and road upgrades. One of the objectives is to develop High Street into a pedestrian priority street that connects the new retail complexes at Station Square to Mitchell Street.

Mitchell Street Square Redevelopment

Mitchell Street Square is strategically located within the centre of Hermanus CBD. It sits at the junction of several pedestrian networks and links to a number of public and civic amenities such as the cliff walk, Market Square, Civic and Municipal Precinct, Taxi Rank and Commercial Nodes along Long-, High- and Mitchell Streets. The Mitchell Street Square will be released for the development of a high-quality public square with ground floor activation with new business/café and restaurant opportunities. The proposed intervention is a key investment into the public environment in the core of the CBD, knitting together key destination and pedestrian routes along High-, Mitchell- and Long Streets. The proposed consent use can be accommodated within these guidelines.

**Planning Principles**Spatial Justice:

N/A

Spatial sustainability:

The proposed night club will have no impact on the conservation worthy areas of the CBD. Spatially the land use will be in keep with the business character of the area that consist of general businesses, take-aways, shops, public parking areas and limited residential properties.

Efficiency:

The proposed night club is screened from other patrons visiting the White Rabbit. It is easily accessible to the locals and tourists conveniently located within the Hermanus CBD where ample parking is available. The live entertainment venue will be well managed taken the limited residential uses in the vicinity into consideration.

Spatial Resilience:

N/A

Good Administration:

The application will follow due procedure as stipulated by the Overstrand Municipality.

**5. ADMINISTRATIVE COMPLIANCE**

Methods of advertising		Date published	Closing date for comments
Press	Yes	29 January 2020	6 March 2020
Notices	Yes	3 February 2020	6 March 2020
Ward councillor	Yes	3 February 2020	6 March 2020
Total comments	<b>EIGHT (8)</b>		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			<b>Yes</b>
Was the application processed correctly (if no, elaborate below):			<b>Yes</b>

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

Name	Date received	Summary of comments
Engineering Services	25/06/2020	See Annexure G.
Fire Department	26/03/2020	No objection provided that the structure complies to the National Fire Protection Regulations SANS-T:2011 and the By-Law relating to Community Fire Safety.
Building Control	4/02/2020	No objection. Building plan applications to comply with NBR and all other applicable law.
Local Heritage Committee	3/02/2020	No objection.

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Objections were received from eight (8) individuals. See Annexure E.

The objections were received from the following parties:

- ❖ Hermanus History Society
- ❖ C Maree
- ❖ ENSafrica (S Levetan)
- ❖ M Garzia & W Steiner
- ❖ GAM McPherson
- ❖ BM Shaw
- ❖ V Prior
- ❖ Ritcarlo Investments Pty Ltd (B Sabbe)

The applicant's response to the objections received is attached as Annexure F.

The objections can be summarized as follows:


- ❖ **OBJECTOR 1 - Hermanus History Society (Dr R Lee)**

### Objection 1.1

*The cottage presently standing on the site is one of the few remaining sites in the Hermanus CBD that is recognisably part of the town's heritage. Until recently, it was the location of The Book Cottage (previously of Harbour Road). The ample space at the rear of the site is undeveloped and would presumably be used for the "live shows and music concerts" contemplated in the application. The music and other noises will inevitably reach several streets in the vicinity. There are private residential properties in these streets.*

Applicant's response

As discussed in our motivation report Erf 10347, Hermanus is situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010) (GMS). The property is also earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009). Please refer to the abstract below from the Heritage Survey Report:

Hermanus House	10347	Hermanus 19 Long Str 34 25' 09.22" 19 14' 26.72"	3B	Architectural/ aesthetic: typical, period example with some alterations incl extended eaves overhang. Surviving small pane front sash windows. Interior appears to be intact. Contributes to streetscape in terms of scale & overall envelope mass	
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The 3B Grading Criteria and management implications are tabled as follow:

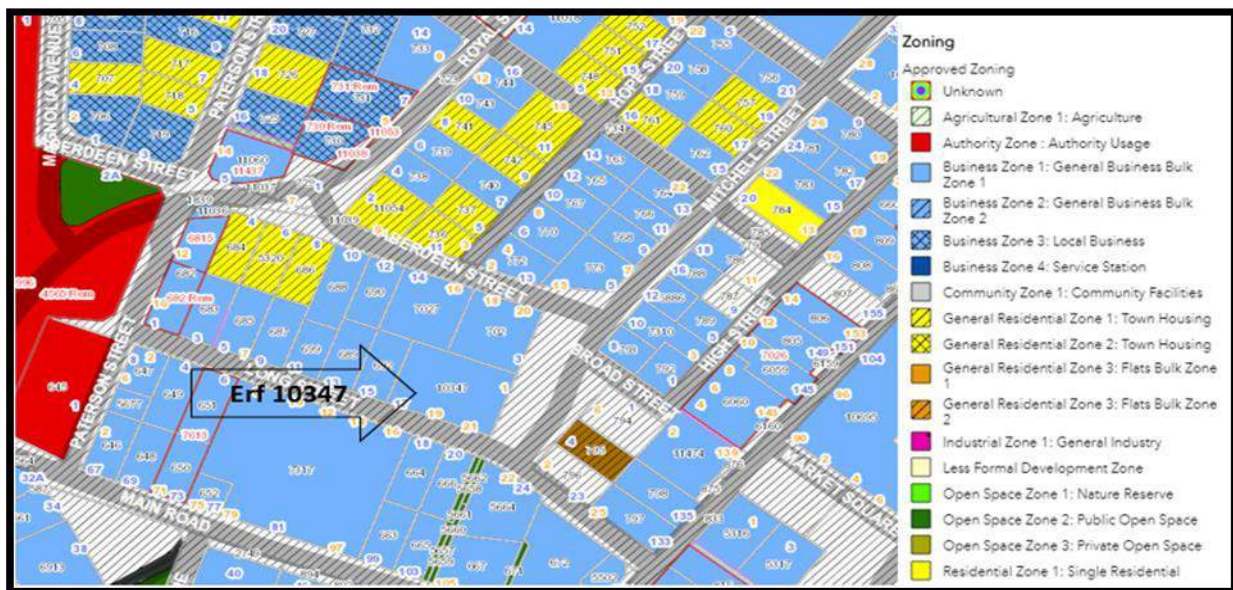
	Intrinsic Significance	Associational Significance	Contextual Significance
GRADE 3B	<ul style="list-style-type: none"> <li>Historical fabric is partially intact (past damaged is reversible)</li> <li>Some evidence for historical layering</li> <li>Some elements of construction are authentic</li> <li>Fabric dates to an historical period in the evolution of a place</li> <li>Typical or good example of a type and form</li> <li>Fabric illustrates an historical period in the evolution of a place</li> <li>Fabric illustrates the key uses and roles of a place over time</li> </ul>	<ul style="list-style-type: none"> <li>Some association with an historic person or social dynamic</li> <li>Some association with historic events or activities</li> <li>Some association with the uses or roles of a place over time</li> <li>Some association with public memory</li> <li>Some association with living heritage</li> </ul>	<ul style="list-style-type: none"> <li>Contributes significantly to the historical, visual-spatial character of a place</li> <li>Contributes significantly to the quality of setting of a Grade 3A heritage resource.</li> </ul>

Grade 3C Buildings/ Precincts	Heritage resources of local contextual value for social, historical and/or aesthetic reasons.	Local Authority HRS	<ul style="list-style-type: none"> <li>Conserve wherever possible.</li> <li>Retain historical fabric wherever possible (exterior only)</li> <li>Conserve and enhance contribution to overall character and streetscape (predominantly public/private interface)</li> <li>Demolition could only be considered if appropriate adaptive reuses cannot be established.</li> </ul>
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The application however mainly constitutes the **change of land use and no physical changes to the existing structures** or to the existing buildings on the subject property. We however do not anticipate any heritage issues with our proposed application. The intention is only to allow occasional live entertainment mainly to fit in with festivals that are held throughout the year in Hermanus.

With reference to the festivals other local businesses also intend to generate extra income from these festivals as it is a clear mechanism for local businesses to boost their income during the yearly festivals.

Cognisance should be taken of the fact that Erf 10347, Hermanus is located within an area consisting of primary business uses within the CBD of Hermanus. The owners of the erven being used for residential purposes have knowledge of the fact that their properties are located within a CBD (as seen below). Hermanus has grown exponentially and our CBD has expanded. It is only a question of time before all the erven that still have a single residential use within the CBD will be used for business related uses in the future.



As discussed in the motivation report, the owner has appointed professional sound engineers to ensure that live shows have the minimum impact possible on the residential properties in the vicinity. Unfortunately, performing artists could make use of amplified sound equipment that could exceed the noise limits as prescribed in the NIA by Messrs Mackenzie Hoy Consulting Acoustics Engineers. It is therefore proposed that when hosting an event with performing artists entertaining patrons outside, that the live entertainment will stop at 22:00. Please note that live entertainment shows will not occur every weekend, but occasionally and during festivals. There will also be local and solo artists performing that will provide live entertainment without making use of amplified equipment i.e. acoustic guitar, saxophone, etc. When artists entertain patrons outside, the owner of the establishment will adhere to all recommendations from the professional sound engineers with regards to the permissible noise levels that will ensure that the performance will have the least impact on the property owners in the area, especially the properties with residential uses. The intention is however to accommodate the majority of the shows within the buildings to ensure minimum noise pollution.

#### Town Planner's response

Due cognisance is taken of the possible noise pollution. A NIA has been done with recommendations to address the noise pollution.

#### Objection 1.2

***The society believes that permitting the activities mentioned in the application will inevitably lead to further damage to an important building from the town's heritage and constitute an unacceptable imposition of noise and inebriated customers on businesses in the vicinity, and residents in Aberdeen- and Hope Street, at least.***

#### Applicant's response

The owner of the White Rabbit on Erf 10347, Hermanus leases the subject property from Mr ER Schimmer and Ms BU Riedelsheimer. Mr Clive Gildenhuys, owner of the White Rabbit cannot make any physical changes to the existing building on the

subject property without the consent of the owners. Changes can also not be made without building plans and heritage approvals. There would be major consequences as the building is situated within the Heritage Overlay Zone as determined by the GMS. It would also be a requirement from the lessee that the building be maintained in a good state of repair.

It is also clear that businesses in the area (with the exception of restaurants) are already closed for the day and week when the White Rabbit starts to operate and therefore the proposed consent use as per the application will not have any impact on the businesses in the area.

As previously mentioned, the owner has appointed a professional sound engineer, and a NIA was compiled. The owner intends to apply the findings of the mentioned report and will adhere to the recommendations with the exception of live entertainment being conducted outside during festivals that will not continue later than 22:00 at night.

#### Town Planner's response

The noise aspect has been dealt with. Please refer to point 1.1.1. of the comment/response document (attached as Annexure F) above. The historical value of the building is being catered for under the Heritage Overlay Zone and the Western Cape Heritage Act, which the applicant has to comply with. The aspect of inebriation and therefore misbehaving of patrons cannot be contributed to the proposed consent use of a night club. Consumption of alcohol is permitted in every restaurant and pub in the CBD, thus it will be unfair to treat the White Rabbit as the sole transgressor in this regard.

#### **Objection 1.3**

***The History Society further objects to this (and any other application for consent use) in the CBD. The public participation phase of the long-delayed revitalisation of the CBD is not complete, and no formal plan exists to provide guidelines for changing the consent use. The Department of Town Planning has never clarified why it continues to advertise applications for changes in consent use when there is no plan to define what are and what acceptable criteria for proposing such changes are not.***

#### **Reasons for comment:**

***This is the fourth application in the past nine months for similar consent use of ordinary commercial properties for entertainment purposes and (in the other cases) betting and gambling purposes that must inevitably result in public nuisances and make the promised revitalisation of the area yet more challenging. The Hermanus History Society is gravely concerned at the number of applications.***

#### Applicant's response

The Revitalisation Plan for the CBD is a mechanism for proposals that are planned, for the future. The application that is lodged is not in terms of the Revitalisation Plan for the CBD, but Chapter 4, Section 16(2)(o) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2015. The Municipality cannot refuse land use applications on the basis that the Revitalisation Plan for the CBD is not approved. The proposed application is in line with the principles of SPLUMA and LUPA. The

proposed application is also in line with the Spatial Development Framework for the Overstrand area.

Please take note of the following:

The Hermanus CBD Regeneration Framework described the area where Erf 10347, Hermanus is located as “Mitchell Street Square”. Please refer to the abstracts below from the Hermanus CBD Regeneration Framework for easy reference pertaining to the area in question.

Internationally, spatial planning professionals have timelessly agreed that the efficient use of land needs to be compatible with the social well-being and healthy environment objectives. Therefore, concepts such as densification, urban growth management and the mixing of land uses have become popular in the process towards achieving these universal goals.

Diverse environments provide a variety of opportunities, experience and choice. The more varied a place, the more valued because of the individual qualities that make it distinctive from other places.

Activity should be concentrated in core areas and important nodes and provide a cluster of complementary, but diverse set of uses. This provides people with choices and promotes walking between destinations.

Overall Framework:

Establish a new CBD heart at Mitchell Street Square including a new mixed use development, structured parking and public space and road upgrades. Develop High Street into a pedestrian priority street that connects the new retail complexes at Station Square to Mitchell Street

Mitchell Street Square Redevelopment:

Main Ideas:

Mitchell Street Square is strategically located within the centre of Hermanus CBD. It sits at the junction of several pedestrian networks and links to a number of public and civic amenities such as the cliff walk, Market Square, Civic and Municipal Precinct, Taxi Rank and Commercial Nodes along Long-, High- and Mitchell Streets.

The development of Mitchell Street Square has the potential to become the heart of Hermanus CBD as a vibrant public amenity for both locals and visitors to the town. The Mitchell Street Square development proposal accommodates the surface parking lot within structured parking levels within the new development. As a result the Mitchell Street Square will be released for the development of a high quality public square with ground floor activation with new business/cafe/restaurant opportunities. This proposed intervention is a key investment into the public environment in the core of the CBD, knitting together key destinations and pedestrian routes along High-, Mitchell- and Long Streets.

Retain existing heritage buildings

Reuse as cafe/hospitality space.

With reference to the above abstract from the Hermanus CBD Regeneration Framework it is clear that the proposed consent use can be accommodated within these guidelines. The proposed place of entertainment is in line with the proposals as it also falls within the hospitality spectrum of land uses.

Please take note that our client will do his utmost best to ensure that the White Rabbit establishment will not create a nuisance, that the sound will be contained and that ill-behaved patrons will not be tolerated. A well-managed establishment will therefore be to its own advantage. Having a negative impact on surrounding land uses related to the tourism industry will therefore also be detrimental to the success of White Rabbit Restaurant. It is therefore essential that the proposed nightclub be well managed and that they take the surrounding land uses of the area into consideration.

### **Overall Framework**

- Establish a new CBD heart at Mitchell Street Square including a new mixed use development, structured parking, public space and road upgrades.
- Develop High Street into a pedestrian priority street that connects the new retail complexes at Station Square to Mitchell Street.

### **Town Planner's response**

The revitalisation plan is to enhance the mixed use land uses and opportunities in the CBD. The application is in line with the revitalisation of the CBD.

### **Mitchell Street Square Redevelopment**

#### **Main Ideas:**

Mitchell Street Square is strategically located within the centre of Hermanus CBD.

It sits at the junction of several pedestrian networks and links to a number of public and civic amenities such as the Cliff Walk, Market Square, Civic and Municipal Precinct, Taxi Rank and Commercial Nodes along Long-, High- and Mitchell Streets.

The development of Mitchell Street Square has the potential to become the heart of Hermanus CBD as a vibrant public amenity for both locals and visitors to the town. The Mitchell Street Square development proposal accommodates the surface parking lot within structured parking levels within the new development, as a result the Mitchell Street Square will be released for the development of a high quality public square with ground floor activation with new business/cafe/restaurant opportunities. This proposed intervention is a key investment into the public environment in the core of the CBD, knitting together key destinations and pedestrian routes along High-, Mitchell- and Long Streets.

Retain existing heritage building.

Reuse as cafe/hospitality space.

With reference to the above abstract from the Hermanus CBD Regeneration Framework it is clear that the proposed consent use can be accommodated within these guidelines. The proposed five (5) slot machines within the existing bar are in line with the proposals as it also falls within the hospitality spectrum of land uses.

Town Planner's response

The Town- and Spatial Planning Department cannot prohibit the public to submit a land use application for land uses that are catered for in the Zoning Scheme. The CBD caters for a diverse group of people from the Overstrand community. The CBD has the responsibility to cater for locals and tourists, whether it is national or international. The CBD is reliant on the local economic input, which contribute on a daily basis and not only once a year or a week or two. Therefore a balance between the two income streams need to be catered for and the Regeneration Plan is such a mechanism, which does not exclude land uses associated with a CBD.

❖ **OBJECTOR 2 - C Maree****Objection 2.1**

***Since last year they have changed the way they are conducting their business and the noise levels have increased substantially and affect the quality of my life. The area is no longer peaceful and quiet, instead there is loud music and the reverberations of the bass of a big sound system. It disturbs my sleep and keeps me awake at night.***

Applicant's response

The owner has disclosed that he has used the premises for live entertainment purposes of which some of the events were held legally with an events licence.

The proposal had been discussed with Ms Hanneen van der Stoep (Senior Townplanner) before submission and the owner had the proposed site plan amended in order to have the least impact on the surrounding property owners. The mentioned Site Development Plan accompanied our application. A Noise Impact Study was completed for the venue and the information obtained by the study was taken into consideration in order to mitigate noise measures before submitting the application for a nightclub and a venue for live entertainment.

Town Planner's response

It is correct that the applicant was requested to submit a Noise Impact Assessment (NIA), due to the complaints received. The objector is also correct that the applicant did operate live entertainment and a night club without the necessary approvals. The NIA clearly shows the excessive noise levels during the operation of the night club.

**Objection 2.2**

***The White Rabbit has attracted a sordid clientele which behave badly. As a result, the drug dealers now drive and walk around looking for deals. I have seen deals going down in front of my house. I do not want those kinds of people in my suburban neighbourhood. It offends me.***

Applicant's response

The owner of White Rabbit takes the operation of his business very seriously and will ensure that the night club is properly managed inside and outside during operational hours and that drunk behaviour and loitering will not be tolerated. The White Rabbit cannot be held accountable for unlawful activities taking place in public areas within the CBD area that also accommodates a number of other pubs/bars and restaurants. Unlawful behaviour within the premises and within the parameters of where their patrons park will not be tolerated.

Security personnel will be appointed to ensure the safety of patrons. Should any unlawful activity take place, the local South African Police Services (SAPS) will be contacted to assist the security personnel on site to address any issues that may evolve.

Town Planner's response

The aspect of drug related issues is the mandate of the SAPS.

**Objection 2.3**

***The Hermanus Old Town is a very special neighbourhood. Because of its unique historical architecture, it distinguishes it from other villages, it was a fisherman's village. The Overstrand Municipality cannot allow businesses to operate which would allow this special character to disappear.***

Applicant's response

The objection refers to the heritage history of the subject property and has already been discussed. Please refer to point 1.1.1. of the comment/response document (attached as Annexure F) above.

Town Planner's response

Hermanus Old Town does have a special character, but it is also part of the CBD, the economic hub of the Overstrand. A compromise in this regard needs to be made and is addressed in the Regeneration Framework. The physical structures of the Old Town is legally catered for, but not the type of uses. However, the application property is located along a vital economic street, with an old physical structure. The latter which will not be changed.

**Objection 2.4**

***The Hermanus Old Town was traditionally where the fishermen lived. It was a residential area. And today most of the fishermen's cottages are still lived in by residents, who have lived here for years. It is not true to assume that the neighbourhood is largely commercial, it is not. In addition, many new flats have been built which has further increased the residential population in the village. The residents have the right to enjoy the peace and tranquillity and safety of their homes.***

Applicant's response

With reference to the zoning map of the CBD area [under point 1.1.1 of the comment/response document (attached as Annexure F)] it is safe to make the following statement: All the erven south-east of Hope Street, south-west of Dirkie Uys Street, Main Road (south-east) and extending Hope Street to Main Road (south-west) have a Business Zone 1 : Bulk Zone 1 zoning with the exception of Erf 795, Hermanus that is used as a parking area for the surrounding business erven and has a zoning of General Residential Zone 3.

Please refer to the aerial photograph below depicting the existing parking area.

Town Planner's response

The intention is a mixed-use development within the CBD and most of the residential developments have a commercial component on the ground floor. The CBD with its zonings and consent uses have been in existence since the 1940's. The Bulk Zone 1 was demarcated with all its land uses applicable to the erven to the full knowledge of all the residents residing in the CBD.

**Objection 2.5**

***The recent Overstrand Municipal Draft Spatial Development Framework proposes an increase of residential dwellings in the Hermanus Old Town. A nightclub is therefore contradictory to the proposal. Most of the businesses which do operate in Hermanus Old Town are quiet and co-exist well with the residents. They are open during working hours. And allow the residents to enjoy the peace and quiet after hours.***

Applicant's response

The above-mentioned statements received from the objector are out of context. We concur with the statements made in our motivation report that read as follows:

*“In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for business purposes. The business zoning of the subject property will be retained after the proposed nightclub and bar is established on the subject property.”*

With reference to the GMS the subject property falls within Planning Unit 13 that consists of the Hermanus CBD. Residential densification is proposed for this planning unit to create a mixed land use area. Being a business node and the fact that the business zoning will be retained the proposed GMS has no relevance to the proposed land use change.



With the proposal, the above mentioned forward planning documentation applicable to the Hermanus CBD, the proposed land use change will not have a negative impact on the surrounding businesses as the proposal constitutes the establishment of a nightclub and bar within this planning unit. Therefore, the proposed consent use application falls within the prescribed guidelines for the specific area of Hermanus.

Town Planner's response

The application property is located in the CBD of Hermanus, along a business street corridor and is in line with the policy documents.

❖ **OBJECTOR 3 - Edward Nathan Sonnenberg's Inc on behalf of Ms D Myburgh (Erf 740, Hermanus)**

**Objection 3.1**

***In respect of the earlier application (consent use application to establish five (5) slot machines) we lodged our client's comment/objection indicating that in***

***respect of that application our client did not raise an objection for the consent use to accommodate the five (5) slot machines, but our client objected to the fact that noisy, live entertainment both inside and outside the premises was unlawfully occurring and intimated that she objected to any consent use in respect of operating the establishment known as White Rabbit as a night club with live music. The White Rabbit has in the past held live music events apparently utilising the open back garden of the subject property, which events have generated loud noise well into the early hours of the morning causing a noise nuisance and disturbance to our client, her guest house establishment and her guests. Your Ms van der Stoep is aware of these unlawful events and has engaged in email correspondence with our client regards thereto.***

***Our client has been advised to resort to lodging complaints with the South African Police Services (SAPS) if such noise nuisance occurs which is of cold comfort to our client bearing in mind that the SAPS do not have the capacity to enforce the Provincial Noise Regulations. On the other hand, the Municipality should and could enforce its Zoning Scheme in terms of the provisions of Chapter 10 of the By-Law. In the email correspondence between Ms van der Stoep and our client, she indicated to our client that the Municipality would only be able to act if an unlawful event would occur. This would be tantamount to acting after the horse has bolted and would be too little too late in order to protect the rights of our client and her guests.***

#### Applicant's response

As discussed in our motivation the live entertainment will only operate occasionally and not later than 22:00 at night. The owner of the White Rabbit indicated that mitigating measures will be taken to ensure that the noise levels will not be a disturbance to surrounding residential property owners. Recommendations were set out in the Noise Impact Report by Messrs Mackenzie Hoy Consulting Acoustics Engineers. The owner intends to adhere to these recommendations mentioned in the NIA in order to comply with the proposals.

We, as the applicant, cannot comment on behalf of the municipal official as we do not have insight in all the facts with regards to correspondence between the objector and the mentioned official.

Our client discussed the proposed matter with Ms Hanneen van der Stoep and it was advised at the time that an application for consent use was required.

#### Town Planner's response

It is correct that the applicant was advised to lodge a consent use application. The events were advertised on Facebook and the objector was informed to send the relevant information to the Town- and Spatial Planning Department to take the matter further through the Municipal Court. Once referred the matter is out of the Planning Department's domain. To emphasise one aspect, the applicant was informed not to hold the event, however unfortunately the Municipality can only act should the request be ignored.

#### **Objection 3.2**

***Our client was told by Ms van der Stoep that the White Rabbit was notified that they did not have the correct zoning for live music events and that they need to***

***apply for consent use for a place of entertainment in order to hold such events. Despite not having the correct zoning rights, the White Rabbit continued to arrange/advertise and hold live music events in complete disregard for the rights of including those of our client. Examples taken off the White Rabbit Facebook page of these live music events as well as a picture of the rear structure of the premises constructed to accommodate these events, are enclosed. (Forms part of the objections attached as Annexure E.) The last page of this annexure relates to an upcoming live music event to be held on 11 April 2020. This is the Saturday of the Easter weekend when our client instructs us that the guest house will be fully occupied.***

***Note that the event is advertised as lasting from "14h00 tot laat". This event will be completely unlawful as this consent use application will not have been finalised by then. This again demonstrates the operators of the White Rabbit's complete disregard to compliance with the law and to our client and her guests' rights.***

Applicant's response

This event was organised even though the land use rights were not in place. The owner anticipated that he would have had an approval by then for the proposed consent use for live entertainment. Please note that this event did not take place. The event was supposed to start during the day and not commence beyond 22:00.

Town Planner's response

All the Facebook events when informed was directed to Law Enforcement to establish whether such an event did take place and give an affidavit in this regard to take the matter further. The feedback on the notification of one event, Law Enforcement did indicate that the event did not take place.

**Objection 3.3**

***We are also instructed that Ora de Wet, the occupier of Erf 738, situated at No. 1 Hope Street; was told by the operator of the White Rabbit, Clive Gildenhuys, to stop complaining about the noise emanating from his live music events as she was making things difficult for him. He intimated to her that he should be entitled to run his business as he pleases. Our client has recently ascertained that Ora de Wet has placed her property on the market citing the continual noise nuisances from the White Rabbit as the main reason therefore.***

Applicant's response

Mr Clive Gildenhuys took note of the complaints that were received from Ms Ora de Wet regarding the noise aspect and decided to discuss the matter with her. His intentions were to remedy the situation. Mr Gildenhuys was invited into Ms De Wet's home where they discussed the matter. He conveyed that he is not always at the establishment and that it is being run by a manager. Mr Gildenhuys provided Ms de Wet with his personal phone number in order for her to contact him directly should she have a problem in order for him to deal with the matter immediately. According to Mr Gildenhuys he never intimidated her.

Ms Ora de Wet's son, who resides with her frequently visited the White Rabbit. According to Mr Gildenhuys and his manager, Mr de Wet would enjoy himself at the

White Rabbit and when leaving late at night he would make a nuisance of himself. He would then request that the volume of the music be turned down as he is going home. Both Mr and Mrs de Wet would phone the establishment requesting that the volume of the music be turned down and that was subsequently done. The last time Mr de Wet contacted the White Rabbit to turn down the volume was on 30 November 2019. A Happy Christmas message then followed on 25 December 2019. Sometime after that Mr de Wet had a dispute with the bar personnel and due to his unorderly behaviour he was later banned from the White Rabbit.

Mr Gildenhuis is a reasonable man and he has always acted on complaints immediately and dealt with it to the satisfaction of the complainants without intimidating them. At the date of this letter we could not find any evidence of Ms de Wet's property being on the market or that it has been sold. This statement by the objector is therefore questionable.

Town Planner's response

No comment.

**Objection 3.4**

***It is clear that in order to legitimise its use of the property the operators of the White Rabbit have sought to obtain the necessary consent use to enable them to operate a night club and live music events at their establishment in so doing and recognising that the live music and the operation of a night club will constitute a noise nuisance to persons in the position of our client. The applicant procured a NIA from Messrs Mackenzie Hoy Consulting Acoustics Engineers hereinafter referred to as ("the report"). The report is dated 24 May 2019 and we note from the copy submitted with the application that it is still marked "DRAFT". The reason for this is not readily apparent.***

Applicant's response

As discussed under point 1.3.1 of the comment/response document (attached as Annexure F) the NIA was done on the 17th of May 2019. The study was done to determine if the noise generated is exceeding the allowable decibels. As stated in the NIA it was clear that on the night of the assessment that the noise that was generated exceeded the allowable decibels and that's precisely why the professional sound engineer made recommendations in the report for the owner of the White Rabbit to guide him to adhere to the laws of the Western Cape Noise Control Regulations, 2013.

Town Planner's response

For an application for live entertainment, the Town- and Spatial Planning Department requires a NIA, since noise pollution will be evident due to the nature of the use.

**Objection 3.5**

**Our client's comments on the NIA are as follows:**

***It is noted that on the night the measurements were taken (17th May 2019) the noise levels with both the venue entrance doors closed and the outdoor area doors closed, the level of noise emanating from the venue constituted a***

***disturbing noise. In other words, the noise levels exceeded that permitted in terms of the Western Cape Noise Control Regulations, 2013.***

Applicant's response

As discussed under point 1.3.1 of the comment/response document (attached as Annexure F) the NIA was done on 17 May 2019. The study was done to determine if the noise generated is exceeding the allowable decibels. As stated in the NIA it was clear that on the night of the assessment that the noise that was generated exceeded the allowable decibels and that is precisely why the professional sound engineer made recommendations in the report for the owner of the White Rabbit to guide him to adhere to the laws of the Western Cape Noise Control Regulations, 2013.

Town Planner's response

It is evident in the Noise Assessment Report.

**Objection 3.6**

***It was unclear to us whether on the night the measurements were taken (17 May 2019) there was a live music event or whether the night club was functioning. From what was advertised on the White Rabbit's website, it would appear that some sort of event was taking place to attract patrons. See Annexure "C" (forms part of Annexure E). While it is noted that the special was running only between 7 and 8 pm, it may have had the effect of attracting more patrons than would otherwise have been the case on those two evenings.***

***We raised a number of queries with Mackenzie Hoy Consulting Acoustic Engineers one of which was whether Friday night 17 May 2019 was an ordinary Friday night at the establishment or whether there was a special event taking place. The response from the expert was to the effect that they did not know but seems clear from Annexure "C" (forms part of Annexure E) hereto that there was an event taking place at the venue that evening.***

Applicant's response

The 17th of May 2019 was a Friday night. The White Rabbit had "Happy Hour" from 19:00 to 20:00. This is a common occurrence in the pub industry. The sound engineers were called out to convey their measurements on the busiest day of the week, hence Friday, 17 May 2019. The sound engineers were in control of the sound equipment and tested the noise volumes by turning the volume to the maximum to conduct their tests. There was no event held on the specific day other than the "Happy Hour" where certain liquors were sold at a discounted price from 19:00 to 20:00.

Town Planner's response

Noted.

**Objection 3.7**

***If the venue would operate as a night club, and the venue doors do not remain closed, the level of the disturbance noise would be even higher. Table 1 to the report demonstrates that with the doors open, the noise levels are significantly***

*higher. In this regard, we rose as a query with the expert whether the team testing the noise levels on the night in question observed any of the patrons milling around on the pavement outside the premises as young people usually do at night clubs. The answer we received was that "it's hard to say who is a patron and who not". While this may be so, the obvious inference to be drawn by this response is that there were people around on the pavement, such a case, we would expect the venue doors to be open as this is the usual behaviour of young people attending these kinds of night spots, in such event the disturbing noise levels would be exacerbated, as table 1 clearly demonstrates.*

*As indicated in Table 1 to the expert's assessment records, that the noise levels with the venue doors open were significantly higher than the measurements taken with the doors dosed. With the doors closed the noise levels caused by the amplified music constituted a disturbing noise. With the venue doors open, the noise was significantly higher, and it is for this reason that the expert recommends as one of the mitigating measures that the entrance doors both to the venue and to the garden area be kept closed at all times. However, it may be very difficult for the operators of the White Rabbit to implement such measures as patrons come and go and the doors to the garden area will frequently be opened when those patrons get served in that area, such a mitigating measure is therefore hardly effective.*

*A further mitigating measure suggested by the expert is the installation of a tamperproof loudspeaker management system to ensure that noise from the venue does not exceed 57.0 dBA on the "property projection plane". In accordance with the regulations of a "property projection plane" means a vertical or horizontal plane, whichever is applicable on a boundary line of premises defining a boundary of the premises in space. Our client assumes that this means on the outer boundary of the White Rabbit premises. What is not clear from the report is what the noise levels would be at the neighbouring residential sites if this was adhered to.*

*Our client also considers significant that measurements were taken on a night that the music event was taking place at the establishment. To accommodate such events, our instructions are that the outside area is filled to capacity and the live band usually performs from a stage that is constructed in the garden area.*

*Clearly, noise levels will be significantly higher during these events. It is noted that notwithstanding the expert's recommendations that no amplified music be permitted the outdoor areas of the venue and that the existing powered loudspeaker at that outdoor venue must be removed, the Motivation Report states that the outdoor events will not continue beyond 22:00 in the evening taking into consideration the residential properties located in the vicinity. The Motivation Report suggests that professional sound engineers will be appointed to ensure that the outdoor shows have a minimum impact on the residential properties in the vicinity but goes on to state "unfortunately, the performing artists will make use of amplified sound equipment that could exceed the noise limits prescribed, for this reason the proposal is that these events stop at 22:00. This proposal is at variance with the applicant's own expert and should not be countenanced by the Municipality under any circumstances.*

Applicant's response

The White Rabbit is located within the heart of Hermanus' CBD where there are a number of restaurants and pubs situated in the vicinity. It is extremely difficult to differentiate between milling patrons outside the White Rabbit and general public coming from or going to surrounding restaurants and pubs.

With reference to the noise levels that escape from the building when doors are opened for patrons to enter or leave the establishment or when food or drinks are served outside will be mitigated once an approval has been obtained. It is proposed that the kitchen be moved to the adjoining building situated directly west of the White Rabbit bar area, on the same property.

The serving of drinks to patrons making use of outside seating will also be rerouted. Subsequently the noise from the night club will be much better contained inside the building.

The owner has already spent a lot of time and effort to install an upgraded sound system that provides a much better sound quality that is more manageable to be contained in the building itself. The owner will also continue to investigate and implement new sound technology as technology develops. Automated self-closing doors to and from the nightclub will be installed. The possibility of a set of two (2) doors at the rear exit/entrance will also be investigated to ensure that when waiters/waitresses and patrons enter or exit the night club that a set of doors will always be closed.

Mr Gildenhuis is also willing to have another sound impact report conducted, once approval has been obtained and alterations have been made, to contain the noise and to comply with the outcome of the recommendations of the initial sound report.

With reference to live entertainment shows held at the premises – they are limited and not a weekly occurrence. Only three (3) live shows were held of which the last one was on 27 December 2019. This show did not carry on beyond 22:00 that night.

It should also be noted that Mr Gildenhuis intended to apply for an events license at the Overstrand Municipality for the shows that took place, but it was advised that he applies for a consent use for a place of entertainment. He was also advised that a short term events license will not be granted. Mr Gildenhuis did what was required from him and a consent use application was lodged.

Due to the fact that Mr Gildenhuis was advised that short term events licenses will not be granted, he decided to make it part of the application to include the provision for outside live entertainment even though the sound engineer's report stated that no amplified sound be used outside the building. We have included it in the application due to the fact that Hermanus hosts a number of festivals during the year. This would give the owner the opportunity to make provision for outside entertainment only during these festivals. It is not proposed that this is a weekly occurrence, but only a few shows spread throughout the year. Mr Gildenhuis has agreed that when shows are held outside that the sound will be projected away from the permanent residences and that these shows will not continue beyond 22:00 at night.

Because it will be difficult to contain the noise within the boundaries of the site when the outside area is used to host an artist a mitigating measure is proposed by means of a time limit on the duration of the show as mentioned above. These shows will be

limited, and the number of patrons will also not exceed the approved number of people that they may accommodate as per the Fire Department's approval to ensure the safety of patrons.

Mr Gildenhuys will do his utmost best to work within reason with adjoining residents not to cause a nuisance.

#### Town Planner's response

The milling of young people would be in Long- and Mitchell Street, since there is no access towards Aberdeen Street. The CBD is for young and old people and thus the milling around or standing in groups whether at a bar or restaurant is not a crime in South African Law. Young people have a right to stand on public property.

The objector is correct that it would be very difficult to control the open/close door scenario.

The objector's point is unclear, since if it complies with the outer boundary of the application site, the impact will obviously be less for the adjacent area.

The outdoor events will exceed the noise parameters due to the amplified sound systems used. However, during the festivals, this aspect is part and parcel of the festivals held in the CBD in Hermanus and its outskirts. In the spirit of the Hermanus festival events, it is unclear why this aspect should be a problem. The accommodation fraternity flourishes during this period and generates much income for the hospitality business.

#### **Objection 3.8**

***You are well aware that our client lodged an objection for a similar application in respect of an establishment known as "The Mock Turtle Night Club" on Erf 702, 3 Mitchell Street, Hermanus under your reference 702 HNC (2977/2019), which has been withdrawn.***

***Erf 702 is the adjacent property to the subject property of this application. Our client's objection in respect of the Mock Turtle application, we provided detail of how that application would breach a number of the planning instruments operative in the area. The same considerations would apply in respect of this application.***

#### Applicant's response

We, as the applicant, believe that all applications should be evaluated on its own merit. The proposed application shows potential and is in line with important policies such as the SDF. It is clear that the Overstrand Municipal Area (especially Hermanus) experiences problems as a lot of businesses are leaving the CBD as a result of low business opportunities. Although there are residential properties situated within the CBD it is clear that the business zoning of properties are more dominant. It is clear that more and more property owners within the CBD intend to create even more business opportunities (a recent rezoning application is on Erf 11054, Hermanus). It is clear that the proposal will attract people to the CBD, which can create business opportunities for other property owners to create their own

opportunities. The proposed night club will create opportunities for other business owners that trade after normal trading hours (after 17:00).

Town Planner's response

Noted.

**Objection 3.9**

***While the Mock Turtle application impacted the heritage area of Aberdeen Street, we are instructed that many of the properties in Long Street are of heritage status and indeed from some of the photographs set out in the Motivation Report. This is quite apparent. However, the Motivation Report is misleading where it states in paragraph 3.3 that "land uses that surrounds the subject property is general businesses: takeaways, shops, offices, public roads and public parking areas and a few General Residential zoned properties". As we demonstrated in the objection filed in respect of the Mock Turtle application there are a number of guest houses and properties of a residential nature in the surrounding neighbourhood of which would find the activities, which a night club and live music venue would allow, to be irreconcilable with their interests.***

Applicant's response

*The objection refers to the heritage history of the subject property and has already been discussed.*

*Please refer to point 1.1.1. of the comment/response document (attached as Annexure F).*

Town Planner's response

Mock Turtle was located in the Aberdeen Street area and closer to residential and accommodation establishments, whilst the White Rabbit is located in Long Street, which is an economic corridor.

**Objection 3.10**

***It is significant that in the table set out at the end of paragraph 3.3 of the Motivation Report when listing the properties with a zoning in the area with their estimated distance from the subject property of the application, that our client's property, Erf 740, is approximately 130m from the subject property, is not even listed. In view of our client's comment/objection to the previous application dealing with the 5 slot machines, this omission was probably by design. Having regard to the close proximity of a number of residential properties to the White Rabbit premises, it places the assertion that "surrounding properties are zoned for business purposes, restaurant and pub uses" in paragraph 3.2 of the Motivation Report into some doubt.***

***In addition, the assertion in paragraph 3.3 of the Motivation Report that land uses "that surround the subject property is general businesses, shops, offices, public roads, public parking areas and a few general/residential zoned properties" is misleading. A number of the general residential zoned properties in the area are operating as guest houses including our client's Vishuis Guest House and these are not even mentioned in the report.***

Applicant's response

It is clear that not all the properties in the vicinity are listed in the table as per our motivational report. The property of the objector was not intentionally left out of the table. It is mentioned by the objector that Erf 740, Hermanus is approximately 130m away from the subject property (Erf 10347, Hermanus) and the properties that we have listed in the table indicating the distances vary from  $\pm 90\text{m}$  to  $\pm 230\text{m}$ , which means that the distance of 130m from the subject property falls within the threshold that was covered in the table. There are properties situated closer to the White Rabbit that did not submit any objections to the proposed application, which means that they don't experience any problems from the subject property at all. A number of one hundred and forty one (141) additional notices have been sent out during the public participation process and only eight (8) objections have been received. It is clear that the proposal is only a problem to some of the property owners within the vicinity of the White Rabbit.

Town Planner's response

Concur with the applicant's response.

**Objection 3.11**

***In the chapter dealing with Hermanus Central in the Overstrand Spatial Growth Management Strategy Report (October 2010), the subject property falls within the area identified as Panning 13. It is stated in this report that "Planning Unit 13 consists of the Hermanus CBD, which is a heritage area and is mostly used for business purposes with limited number of permanent residential units" (emphasis supplied).***

***The report goes on to recommend that "given that this area is an economic area it will subsequently form part of mixed use developments being residential developments on top of the business buildings", it is envisaged in the report that this proposal can potentially contribute to 1242 additional units at a gross density of 30,5 dwelling units per hectare.***

Applicant's response

The above-mentioned statement from the objector is quoted out of context. We concur with the statements made in our Motivation Report that read as follows:

*"In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for business purposes. The business zoning of the subject property will be retained after the proposed night club and bar are established on the subject property."*

With reference to the Overstrand Growth Management Strategy (GMS) the subject property falls within Planning Unit 13 that consists of the Hermanus CBD. Residential densification is proposed for this planning unit to create a mixed land use area. Being a business node and the fact that the business zoning will be retained the proposed GMS has no relevance to the proposed land use change.

Town Planner's response

Concur with the applicant.

**Objection 3.12**

***The proposed use by the White Rabbit of its rented premises as a place of entertainment for a night club and live music events, within this area would not fit in with this growth strategy. Such use by the White Rabbit would detract from the growth strategy as potential buyers of any newly created residential opportunities within the area would not want to be disturbed by the noise and behavioural patterns of the patrons of the facility and therefore our client contends, unlike the applicant, that the proposed consent use is directly relevant and would contravene this growth strategy.***

***The statement in paragraph 3.8 of the Motivation Report that the "Proposed growth management strategy has no relevance to the proposed land use change" is therefore clearly wrong. So too, is the statement, also contained in paragraph 3.8 of the Motivation Report that "the proposed consent use application falls within the prescribed guidelines for the specific area of Hermanus". On the contrary and having regard to our further submissions set out hereinafter, this is clearly wrong.***

Applicant's response

The above-mentioned statements received from the objector are out of context. We concur with the statements made in our motivation report that read as follows:

*"In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for business purposes. The business zoning of the subject property will be retained after the proposed night club and bar is established on the subject property."*

With reference to the GMS the subject property falls within Planning Unit 13 that consists of the Hermanus CBD. Residential densification is proposed for this planning unit to create a mixed land use area. Being a business node and the fact that the business zoning will be retained the proposed GMS has no relevance to the proposed land use change.

With reference to the CBD Regeneration Framework the study area for the CBD is defined as follows:



With reference to the abstract above is it clear that Erf 10347, Hermanus is indeed located in the centre of the CBD.

Town Planner's response

Concur with the applicant.

**Objection 3.13**

***In terms of the Overstrand Municipal Wide Spatial Development Framework (SDF) which was formally adopted by the Municipality on 27 October 2006 and incorporated into the Overstrand Integrated Development Plan for 2006/2007, the following aspects are highlighted:***

***In Volume II: Development Strategy of the SDF in dealing with Business and Economic Development Policy, Statement 21.2 states, inter alia that "business/commercial related land uses should be confined to the core urban areas (central business district) and secondary/lower order nodes. The infiltration of business/commercial uses into residential areas or the periphery of the CBD, should be avoided, unless beneficial to local residents (emphasis supplied) Policy Statement P21.7 is to the effect that "home enterprises and house shops should be permitted in residential areas, provided that the uses will not impact on the well-being of residents in the neighbourhood" (emphasis supplied).***

*The owners of the surrounding properties and in particular the properties in close proximity to the subject property which includes our client's guesthouse, have a constitutional right to an environment "that is not harmful to their health or well-being (Section 24 of the Constitution of the Republic of South Africa, 1996). The concept of "wellbeing" has been decided by our Courts as having a low threshold. So, for example, in the case of Hichange Investments (Pty) Ltd Cape Produce Co (Pty)Ltd t/a Pelts Products & Others Lid Others 2004 (2) SA 393 (E), the Court found that the well-being of workers in a property adjacent to a tannery would be negatively impacted by the bad odours emanating from the open tannery.*

*Residents in the surrounding properties as well as guests of the guesthouses will certainly be negatively impacted by the noise and other disturbances emanating from the White Rabbit which, as this application states, is a late-night venue as it stays open until 02:00. At present most of the businesses in the surrounding properties close at 17:00 and there is thus no disturbance to residents and guests in guesthouses of the surrounding properties. Being allowed to conduct live music events in this context would be viewed by our client and the surrounding residential property owners as being a "public nuisance".*

*The statement therefore in paragraph 3B of the Motivation Report that "the proposed land use change will not have a negative impact on the surrounding businesses as mitigating measures will be put in place is therefore rejected by our client. On the contrary, our client contends that the proposed activities associated with a night club and live music events within the existing premises most certainly have a negative impact on her and her guests in much the same way that has happened in the past when live music events have been conducted from the subject property. The live music events attract large crowds of young people and therefore it is not only what happens inside the premises that matters. It is what inebriated young adults get up to outside in the streets around the premises that matters.*

*Experience has shown that inebriated young adults get involved in bad behaviour, fights, vehicles doing wheelies and drug trading in the surrounding streets. This kind of behaviour is typical in the area outside most night clubs and bars. In regard to loud music events which have been conducted at the subject property, no real attempt appears to have been made to contain the noise within the premises. On the contrary, these events appear to have been held in the open back garden of the premises; thus, exacerbating the problem.*

*During the previous live music events, the manner in which the White Rabbit traded totally disregarded the rights of the neighbouring residents including our client and, in this way, most definitely infringed our client's and her guests' constitutional right to an environment that is not harmful to their well-being.*

*Under the heading "Urban Conservation Districts" the following statement appears: "Protecting the urban heritage provides an attractive incentive for tourism development and related investment in the urban area". The fact that there are a number of guesthouse/bed and breakfast establishments in the area bears this aspect of the SDF out.*

*One of the Local Spatial Development in the SDF is to maintain the unique village character of Greater Hermanus. This finds application in the Land use*

*proposals at the Local Planning Level (LPL) with LPL 6 suggesting that "high density residential uses should be promoted within the CBD area" and LPL 8 promotes the protection and management of heritage resources aimed at, inter alia including 'the fine-grained urban form and positive house-street relationships of the village precinct" and, in regard to the core historical area of Hermanus, retaining "its fine grained urban form and positive streetscape qualities" and "its historical fabric and activities relating to the role of the town as an early 20th century holiday and tourist destination".*

*Amongst the recommendations in this section of the SDF is the recommendation to "concentrate business uses and promote high density residential uses within the central business district of Hermanus town".*

*For all the above reasons, to allow consent use for the operation of a night club and to hold live music events on the subject property would be tantamount to breaching the SDF.*

#### Applicant's response

The above-mentioned statements received from the objector are out of context. We concur with the statements made in our motivation report that read as follows:

*"In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for business purposes. The business zoning of the subject property will be retained after the proposed night club and bar is established on the subject property."*

With reference to the GMS the subject property falls within Planning Unit 13 that consists of the Hermanus CBD. Residential densification is proposed for this planning unit to create a mixed land use area. Being a business node and the fact that the business zoning will be retained the proposed GMS has no relevance to the proposed land use change.

With the proposal the above-mentioned forward planning documentation applicable to the Hermanus CBD, the proposed land use change will not have a negative impact on the surrounding businesses, and that the proposal constitutes the consent use to establish a night club and live entertainment within the planning unit. Therefore, the proposed consent use application falls within the prescribed guidelines for the specific area of Hermanus.

#### **The objector makes the following statements:**

- **that "business/commercial related land uses should be confined to the core urban areas (CBD) and secondary/lower order nodes.**
- **The infiltration of business/commercial uses into residential areas or the periphery of the CBD, should be avoided, unless beneficial to local residents".**
- **"home-enterprises and house shops should be permitted in residential areas, provided that the uses will not impact on the well-being of residents in the neighbourhood".**

With reference to the above statements the applicant comments are as follow:

- With this application is it proposed that the business/commercial enterprise is confined to the core areas of the CBD, where Erf 10347, Hermanus is situated and as motivated in our comments under section 1.2.5 of the comments/response document (as Annexure F) above.
- Erf 10347, Hermanus is located within the centre of the Hermanus CBD and not the periphery. Therefore business/commercial uses infiltrating into residential areas or the periphery of the CBD is avoided and not applicable to this application.

Erf 10347, Hermanus is not located within a residential area, but located within the centre of the Hermanus CBD.

#### Town Planner's response

The application site is located in the Hermanus CBD, thus Bulk Zone 1, the core of the CBD. Tourist accommodation is not the only land use activity, a restaurant, bar and night clubs are part and parcel of the tourism related activities.

The other aspect of the historical character of the Old Hermanus, as indicated by the objector, does not relate to Long Street due to the transformation over the years. Any tourist, local or international, have a choice of accommodation and the environment of the accommodation will depict whether it is suitable for the tourist, depending on its needs and expectations.

#### **Objection 3.14**

***We have referred to the existing SDF, but are aware that the Municipality has published in January 2020 a new Draft SDF. While this is not in force at present, it is clear from the proposed SDF that the Municipality considers that the historic CBD continue to be protected by an area Heritage Protection Overlay Zone as it is recognised that it is of unique value. The use of the subject premises as a night club and a venue for outdoor live music events denigrates from this ideal. In dealing with the objective to maintain the Municipality's National and International Tourism Market, the proposed SDF proposes to encourage and facilitate the development of high-quality tourism and heritage related infrastructure, heritage buildings where appropriate and in this way ensure the inclusion and enhancement of tourism. The consent use application, for all the reasons set out above, will impact negatively on our client's establishment which, as we have mentioned, sees repeated visits by international tourists. Allowing the consent would be in direct contravention of this proposed policy.***

#### Applicant's response

The application was submitted on the 9th of December 2019 and therefore the SDF (2006) is still applicable to the proposed application.

Town Planner's response

Noted and agree with the heritage conservation, which is protected in terms of the Heritage Act. No changes will be made to the physical structures. However, to reiterate, the Overstrand cannot only cater for high end tourism, local tourism is more important on a continual basis for the economic input versus international tourist once or twice a year for a week at a time.

**Objection 3.15**

***Under the heading "Local Spatial Development and Growth Management Principles", Paragraph 5.8.3.1 of the proposed SDF, it is stipulated that conservation of cultural heritage resources, including the character of the historical fishing/holiday areas of Hermanus and the number of buildings of historical architectural and social value should be promoted. Allowing a night club in the historical centre of the CBD runs contrary to this principle.***

Applicant's response

As discussed under point 1.1.1. of the comment/response document (attached as Annexure F) the proposal does not propose any physical changes to the existing structures on the subject property. Therefore the proposal does not interfere with the heritage status of the subject property. It is important to understand that after approval of the application at hand, the existing structure will still be in its original form as the owner of the White Rabbit facility fully understands the consequences if any changes are made to the original building without the necessary applications and approval, especially from Heritage Western Cape.

Town Planner's response

Noted.

**Objection 3.16**

***In paragraph 3.10 of the Motivation Report the applicant suggests that the consent use application to conduct a night club and live events at the subject property is consistent with the Hermanus CBD Regeneration Framework. While it is clear that the Mitchell Square area is identified for regeneration and redevelopment the framework suggests that the redevelopment of Mitchell Square has the potential to become the heart of the Hermanus CBD as a vibrant public amenity for both locals and visitors to the town. While the framework does suggest ground floor activation with new business/café/restaurant opportunities, it does not suggest the establishment of night clubs and venues for live music events which will impact negatively as we have shown herein on the heritage nature of the CBD and on establishments such as our clients. To suggest therefore, as the application does, that the proposed consent use can be accommodated within the frameworks guidelines and that the proposal is in line with the recommendations, is denied by our client.***

Applicant's response

As mentioned before, the Hermanus CBD Regeneration Framework described the area where Erf 10347, Hermanus is located as Mitchell Street Square.

Please refer to the abstracts below from the Hermanus CBD Regeneration Framework for easy reference pertaining to the area in question.

*“Internationally, spatial planning professionals have timelessly agreed that the efficient use of land needs to be compatible with the social well-being and healthy environment objectives. Therefore, concepts such as densification, urban growth management and the mixing of land uses have become popular in the process towards achieving these universal goals.”*

*“Diverse environments provide a variety of opportunities, experience and choice. The more varied a place, the more valued because of the individual qualities that make it distinctive from other places.”*

*“Activity should be concentrated in core areas and important nodes and provide a cluster of complementary but diverse set of uses. This provides people with choices and promotes walking between destinations.”*

#### **Overall Framework:**

Establish a new CBD heart at Mitchell Street Square including a new mixed use development, structured parking and public space and road upgrades. Develop High Street into a pedestrian priority street that connects the new retail complexes at Station Square to Mitchell Street.

#### **Mitchell Street Square Redevelopment:**

##### Main Ideas:

Mitchell Street Square is strategically located within the centre of Hermanus CBD. It sits at the junction of several pedestrian networks and links to a number of public and civic amenities such as the Cliff Walk, Market Square, Civic and Municipal Precinct, Taxi Rank and Commercial Nodes along Long-, High- and Mitchell Streets.

The development of Mitchell Street Square has the potential to become the heart of Hermanus CBD as a vibrant public amenity for both locals and visitors to the town. The Mitchell Street Square development proposal accommodates the surface parking lot within structured parking levels within the new development. As a result the Mitchell Street Square will be released for the development of a high quality public square with ground floor activation with new business/cafe/restaurant opportunities. This proposed intervention is a key investment into the public environment in the core of the CBD, knitting together key destinations and pedestrian routes along High-, Mitchell- and Long Streets.

Retain existing heritage buildings.

Reuse as cafe/hospitality space.

With reference to the above abstract from the Hermanus CBD Regeneration Framework it is clear that the proposed consent use can be accommodated within these guidelines. The proposed night club and bar are in line with the proposals as it also falls within the hospitality spectrum of land uses.

Town Planner's response

Concur with the applicant.

**Objection 3.17**

***It is clear from Annexure "D" hereto that there are a number of properties surrounding the subject properties that are used for residential purposes. We have marked these properties with a red dot on Annexure "C".***

***There are also a number of village type pubs in the surrounding area, namely: Tipples in Mitchell Street, Bojangles on Main Road and Jack's Bar between High Street and Main Road. There is also a restaurant/pub called Puzzles in High Street. These establishments do not play loud music and are quiet village type pubs.***

***The position regarding the White Rabbit is different. This establishment has also begun to operate as a night club playing loud music to attract patrons.***

***The property in which this establishment is situated is not authorised to operate as a night club. Written complaints have been submitted by local residents to the Municipality and with the SAPS regarding the noise disturbance.***

***Your Ms van der Stoep confirmed to our client that the establishment did not have the requisite zoning rights and that her department needed to address this issue. Over and above this, and as indicated on Annexure "D" there are other establishments such as Barney's Sports Bar (which is constantly acting in conflict with the neighbouring residents) and a number of restaurants in the area including Barefoot Cook, Tosca's, The Cuckoo Tree, Rossi's Italian, Tullip, Oskars, Betty Blue, The Fishermans Cottage, Embers, Fabio's and The Eatery. None of these restaurants have created any noise problems for our client and the guests of her guesthouse. Further there are a number of other restaurants as can be seen marked on Annexure "O".***

Applicant's response

The objector confirms above that there are a number of established bars/pubs situated in the area. This is the reason for our earlier comments pertaining to noise, misbehaving patrons in public areas, etc. Cognisance should be taken of the location of these bars/pubs in the vicinity of which patrons also make use of public areas within the CBD such as roads, sidewalks and public parks. Noise is also generated at these establishments.

To make a statement that it is only patrons from the White Rabbit that are misbehaving in public areas and that the noise is deriving from the White Rabbit only is speculation and cannot be confirmed. As mentioned in our comments earlier, the owner has gone through great lengths to ensure that the proposed night club does not cause to be a nuisance and that the sound will be contained within the prescribed limits.

Patrons will not be allowed to bring in or exit the premises with any alcoholic beverages.

The White Rabbit also has cleaning staff that keeps the inside and outside areas clean for the duration of their trade. After trading hours, the management of the White Rabbit also ensures that the area outside the night club and across the street are cleaned.

Town Planner's response

It is correct to that one cannot assume that the White Rabbit patrons are the only ones that contribute to noise pollution in the CBD, however the establishment did start to operate without the necessary approvals. One aspect that needs to be clarified is that Barneys did in the past have problems with noise pollution, but has to a great extent resolved its issues.

**Objection 3.18**

***Section 66(1) of the By-Law sets out the general criteria for the consideration of this application. For the purposes of this objection, we have dealt with the applicability of the Municipality's SDF and other planning policies that have been issued to guide decision making. In regard to the planning principles referred to in Chapter 6 of the Provincial Land Use Planning Act No. 9 of 2015 (LUPA), our client notes the rather limited submissions contained in paragraph 3.11 of the Motivation Report. In regard to the principle of "spatial justice", our client has no comments. In regard the principle "spatial sustainability", our client disagrees with the contentions set out in the Motivation Report.***

Applicant's response

The guidelines with reference to "spatial justice", refer to the need to redress the past apartheid spatial development imbalances and aim for equity in the provision of access to opportunities, facilities, services and land. In the broadest sense, it seeks to promote the integration of communities and the creation of settlements that allow the poorest of the poor to access opportunities. In a spatially just settlement, opportunities and access are provided to those whose historical access and opportunities have been impeded by the practice of apartheid spatial planning. Land development procedures must include provisions that accommodate access to, and facilitation of, security of tenure and the incremental upgrading of informal areas. With reference to the above guidelines we have mentioned in our motivation report that spatial justice is not applicable to this application.

Spatial sustainability essentially refers to a sustainable form of development. A part of this means promoting less resource consuming development typologies that promote compaction, pedestrianisation and mixed-use urban environments, which allow for the development of a functional public transport system and space economy. A spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.

The proposed nightclub and bar will be accommodated in an established business area. The proposed application will have no impact on the conservation worthy areas of the Hermanus CBD. Spatially the land use will be in keeping with the business character of the surrounding area that consists of restaurants/pubs/bars and shops.

Town Planner's response



Spatial sustainability has reference to the viability of the use of a development in optimizing infrastructure. It is therefore advisable to maximize the use of an erf versus locating to an area, which relates to sprawl and added pressure on infrastructure. The application is to optimize the rights allocated to the property.

### **Objection 3.19**

***Firstly, to the extent that activities may be conducted from the subject property, it is not correct that this application will have no impact on the conservation worthy areas of the Hermanus CBD. We have indicated above how the proposed use of the premises as a night club with live music both inside and outside impact negatively on the heritage resources in the area and how it will impact negatively on the surrounding landowners including our client's right to an environment that is not harmful to their well-being***

### **Applicant's response**

Erf 10347, Hermanus is situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009), but no major alterations are proposed for the existing structure that will be used to accommodate the proposed night club and bar. The structures on Erf 10347 have a 3B grading. Please refer to the abstract below from the Heritage Survey Report.

Hermanus House	10347	Hermanus 19 Long Str 34 25' 09.22" 19 14' 26.72"	3B	Architectural/ aesthetic: typical, period example with some alterations incl extended eaves overhang. Surviving small pane front sash windows. Interior appears to be intact. Contributes to streetscape in terms of scale & overall envelope mass	
Hermanus House	10347	Hermanus 17 Long Str 34 25' 09.06" 19 14' 26.18"	3B	Architectural/ aesthetic: typical, period example with some alterations. Street façade contains substantially intact surviving historic period detailing. Contributes to streetscape in terms of scale, envelope mass & public/private street interface.	

### **Grade 3B**

This grading is applied to buildings and/or sites of a marginally lesser significance than Grade 3A; and such marginally lesser significance militates against the regulation of internal alterations. Such buildings and sites may have similar significances to those of a grade 3A building or site, but to a lesser degree.

Like Grade 3A buildings and sites, such buildings and sites may be representative, being excellent examples of their kind, or may be rare, but less so than Grade 3A examples: as such they should receive less stringent protection than Grade 3A buildings and sites at local level and internal alterations should not be regulated (in this context).

The application mainly constitutes the change of land use.

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 consent use application will not have a negative impact on the heritage value of the subject property or the greater area of the Hermanus CBD area.

### **Town Planner's response**

The property is graded and thus protected in terms of the structural heritage value. The application is for a land use not a change in structure.

**Objection 3.20**

***Secondly, the rather glib statement that "spatially the land use will be keeping with the business character of the area that consists of general businesses, takeaways, shops, offices, public roads and public parking areas and limited residential properties" is superficial. The statement fails to deal with the heritage resources in the surrounding areas in particular, Section 59(2)(a)(vi) as LUPA sets out, as part of the spatial sustainability principle that land development must be promoted "in locations that are sustainable and limit urban sprawl" and that "result in communities that are viable".***

***From the analysis set out by us above, our client disputes that these planning principles have been adequately considered by the applicant. It is clear from our analysis that allowing consent use for a night club with live music and live music events on the subject property is unsustainable and will render some of the surrounding land uses as unviable. Guests who have used our client's guesthouse are predominantly visitors from overseas who post unfavourable reports on various sites such as TripAdvisor and this may well lead to a substantial fall-off of business not only for our client's establishments, but other establishments the area as identified on Annexure "D" hereto.***

***Tourism has, and remains, Hermanus' major economic activity and the sustainability of the tourism industry may be severely prejudiced if consent use for a place of entertainment for a night club with live music and live music events is allowed into the quieter and more quaint area of the CBD that we have described above.***

**Applicant's response**

As already mentioned, spatial sustainability essentially refers to a sustainable form of development. A part of this means **promoting less resource consuming development typologies that promote compaction**, pedestrianisation and **mixed-use urban environments** which allow for the development of a functional public transport system and **space economy**. A spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.

It should be noted that our client has done his utmost best to ensure that the White Rabbit will not create a nuisance, that the sound will be contained and that ill-behaved patrons will not be tolerated. Upmarket bars, pubs and night clubs are also dependent on tourists visiting Hermanus. A well-managed establishment will therefore be to its own advantage.

Having a negative impact on surrounding land uses related to the tourism industry will therefore also be detrimental to the success of the White Rabbit. It is therefore essential that the proposed night club be well managed and that they take the surrounding land uses of the area into consideration.

**Town Planner's response**

The erf is located along Long Street, which is commercial and not residential in nature. The property is located in the CBD, earmarked for predominantly business uses. International visitors have a choice of various accommodation establishments in Hermanus, thus the option of the CBD comes with land uses not catered for in the residential or farm stays and the activities associated with the uses prevalent in the CBD.

The viability of the establishment has not been validated by either party and only assumptions are made. Again, tourism facilities are not only accommodation, but other activities as well, which includes a night club.

### **Objection 3.21**

***Thirdly, the Motivation Report does not deal at all in paragraph 3.11 with the planning principles in Section 59(2)(b) of LUPA. In this subsection provision is made that "the sustained protection of the environment should be ensured by having regard to", inter alia, provincial heritage and tourism resources and the economic potential of the relevant area. Our client contends that the consent use applied for on the subject property would infringe these planning principles.***

#### **Applicant's response**

The objection has already been discussed. Please refer to point 1.1.1 and 1.3.14 of the comment/response document (attached as Annexure F).

#### **Town Planner's response**

The environment has reference to the green and blue environment, thus in the Hermanus area it would be Fernkloof and its coastal strip.

### **Objection 3.22**

***Fourthly, if one considers the provisions in Section 59(3) of LUPA dealing with the planning principle of efficiency, then it is clear that none of the categories making up this principle are even addressed. The allegation in paragraph 3.11 of the Motivation Report that the proposed night club will be easily accessible to the locals and tourists, because there is ample parking available does not resort under any of the principles set out in Section 59(3)***

#### **Applicant's response**

With reference to the objections received it is clear that the White Rabbit does not compromise the sustainability of the surrounding restaurants. A well-managed night club will attract more visitors to the CBD, that will be beneficial to the surrounding businesses. If the night club is not properly managed it will not only be detrimental to the surrounding land uses, but also its own sustainability. The White Rabbit is therefore obliged to be well managed for its own benefit and the benefit of the surrounding businesses by attracting people to the CBD of Hermanus. The proposed night club will also attract more people to the area, which can help with crime as more people will be visible in the area.

#### **Town Planner's response**

The objector is vague that it does not address where the report fall short of dealing with efficiency. The latter deals with infrastructure and the optimizing of such services. The application is to optimize the services rendered to the site and thus deals with the principle of efficiency.

### **Objection 3.23**

***Finally, our client agrees that the spatial resilience planning principle set out in Section 59(5) of LUPA does not find application in this application. However, in regard to the planning principle embodied in Section 59(4) relating to the principles of good administration for the reasons set out in our analysis above, we would encourage the decision maker to find that this application exacerbate negative financial social and environmental impacts and that it does not amount to an appropriate utilisation of the subject property. Section (54)(g) and (i).***

### **Applicant's response**

As discussed in our motivational report the principle of good administration is very important to our company. We are committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant Municipality's By-Law and related provincial and national land use planning legislation.

All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's By-law on Municipal Land Use Planning, 2015.

### **Town Planner's response**

Procedure has been followed.

### **Objection 3.24**

**In conclusion of the objection from Edward Nathan Sonnenberg's Inc. on behalf of Ms D Myburgh Erf 740, Hermanus the following is requested:**

- **Our client, as a directly interested and affected party objects to this application for and the reasons submitted above and in particular for the negative impact that the proposed night club with live music and live music events will have on her and her establishment.**
- **the event that this application referred to the Municipal Planning Tribunal (MPT) for determination, we advise that our client wishes make an oral representations to the Tribunal and we therefore request the administrator to advise us in advance of the date of the MPT hearing so that we can ensure that 14 days prior thereto we can request in writing to make a representation at the hearing as envisaged by Section 77(3) of the By-Law.**
- **in order for us to ensure that such representation is apposite, we request that prior to the 14 day cut off period, a copy of the planning report to the MPT be made available to us so that we can consider any aspects thereof that require our clarification on our client's behalf at the hearing.**

Applicant's response

We take note of your above request that is conveyed to the Overstrand Municipality for their comments in this regard.

Town Planner's response

Duly noted.

**❖ OBJECTOR 4 - Maria Grazia and Wolfgang Steiner (Erf 781, Hermanus)****Objection 4.1**

***The centre of Hermanus is not only a business zone, but also a pleasant and practical residential area for many inhabitants, not a predominant business area (many side streets).***

Applicant's response

The objection refers to the heritage history of the subject property and it has already been addressed under point 1.1.1. and 1.1.3 of the comment/response document (attached as Annexure F) of the above.

Town Planner's response

The objector is correct with regard to still residential uses within the CBD, but predominantly it is earmarked for business purposes, since the 1940's.

**Objection 4.2**

***We already have a few noisy places in town, also in the Mitchell Street with very unpleasant traffic problems, car racing at night, loud high-tuned motorcycles, loud music, drunken people, which causes us trouble and disturb our sleep at night. (We have already complained with a letter a couple of years ago). We are about 6 months a year in Hermanus and chose this place as a beautiful place by the ocean, with wonderful art galleries, nice shops with a remarkable choice of handicrafts, practical location in a town with access to all facilities. We do not want the town to become loud, noisy and maybe dangerous.***

Applicant's response

This objection was already addressed earlier in this document under point 1.2.2. of the comment/response document (attached as Annexure F).

Town Planner's response

Noted.

**Objection 4.3**

***I am sure that the rules you describe, will not be followed once the business has begun, the music will be too loud, the control will not work, also it will disturb very much the many nice adjacent restaurants. And probably until 02:00 at night (do not tell me that a night club stops the music at 22:00!).***

**Applicant's response**

As discussed under point 1.2.2 and 1.3.13. of the comment/response document (attached as Annexure F) in this document the owner takes the management of his business very seriously and is determined to make a success of the night club. It is proposed that live entertainment (to be held outside) will end 22:00 at night. The proposed night club will trade for longer hours and that is why recommendations were made in the NIA in order for the proposed night club to adhere to the sound regulations. The objector cannot assume that the owner of the White Rabbit will not adhere to the rules as it can jeopardise the success of his business and opportunity to create an income for himself. It was also already discussed that the proposal can create an opportunity to neighbouring restaurants to grow their businesses.

**Town Planner's response**

The assumption of the objector is not totally wrong, since the applicant did not adhere to any of the discussions that the night club is illegal and should stop operating.

**Objection 4.4**

***And do not emphasize the employment possibilities - some waiters, two barmen, two cooks, one manager and some striptease girls.***

**Applicant's response**

As the proposal will not be able to create job opportunities for a lot of people it will still create an opportunity to someone to provide for their family. The proposed night club and live entertainment will help a number of people to generate an income to provide for their families. The owner intends to use the workers from the local community, and this will help some of the local community members to enhance a better livelihood and better lifestyle.

**Town Planner's response**

This type of objection will not be entertained, it is derogative.

**Objection 4.5**

***The Whale Coast Mall is not the only place we want to shop, as retired people we very much enjoy not having to drive every time we have to buy something. There must be other alternatives to make the town more and more interesting. The rooms could be used for art schools, meetings, conventions, etc.***

Applicant's response

The above comment is not relevant as the proposal does not entail to close any of the existing shops in the CBD of Hermanus. Residents within the CBD will still be able to make use of shops in the CBD. The proposed night club and live entertainment will not have any impact on the existing shops and shopping hours of the local residents.

Town Planner's response

Noted.

**Objection 4.6**

***The events you are listing Whale Festival, Food & Wine Festival and Fynarts Festival are events which only last a few days and do not impact continuously on the pleasant and peaceful atmosphere in town (lively enough). The night club cannot be compared with these events. It will be a permanent noise source, and an amenity which MOST citizens in town DO NOT NEED OR WANT.***

Applicant's response

The intention is to be a part of the yearly festivals by means of creating opportunities within the venue that will be in line with general yearly festival programs that are known in Hermanus. The intention was never to compare the festival themes and the proposed nightclub as it is two totally different types of entertainment.

Town Planner's response

Concur with objector.

**Objection 4.7**

***A multipurpose space for exhibitions, occasional markets (Easter, Christmas, etc.) could be established, or concert rooms for small groups and classical music. You can find a property outside town for a night club and the owner can provide transportation to and from such a place, and sufficient parking lots.***

Applicant's response

We appreciate all the business proposals that are mentioned by the objector, but the owner of the White Rabbit already has a practical proposal at hand. We are not sure if the objector has noticed that the CBD has turned into a ghost town and the proposal can help to attract local and international visitors to the CBD and help grow the local economy. The owner does not need to find another location as the White Rabbit is perfectly located for business.

Town Planner's response

Noted.

❖ **OBJECTOR 5 - Graham McPherson (Erf 737, Hermanus)**

**Objection 5.1**

**Our property (Erf 737) was acquired in 1996. We bought the property because it is situated in a quiet, residential and heritage area within walking distance of shops and restaurants. The fisherman's cottages (3 and 5 Hope Street) were established approximately 120 years ago. My wife and I are almost 80 years old and often have our three granddaughters (aged 10 to 15 years) to stay over weekends and holidays. If the Municipality is promoting this area of Northcliff as a residential area with a mix of restaurants, cafes and bookshops, etc. I fail to see how the Municipality could allow the establishment of a night club so close or within this quiet residential area where families with children of all ages live.**

**Applicant's response**

The objection has been discussed in detail under points 1.1.1 to 1.1.3, 1.2.4, 1.3.11 and 1.3.13. of the comment/response document (attached as Annexure F).

**Town Planner's response**

Noted.

**Objection 5.2**

***The objector strongly objects to the establishment of a night club (entertainment rights) at the White Rabbit Pub and Grill, but have no objection to the restaurant itself.***

**Applicant's response**

The establishment of a night club has been motivated in detail in the motivation report that was attached to the application. Some of the other objectors have also raised some points that are in conjunction with the points Mr Graham McPherson mentioned and have been commented on earlier in this document.

**Town Planner's response**

Noted.

**Objection 5.3**

***I respectfully request the Municipality not to approve their application to run an entertainment business (night club) at this location.***

**Applicant's response**

The application cannot be rejected by the Municipality just because the objector finds the application unsuitable. The application should be evaluated thoroughly and follow due process. According to the motivation and comments on the objections at hand the application will have little negative impact and therefore can be supported.

Town Planner's response

The application will be evaluated taking into consideration all relevant facts as indicated in the motivation, but also take due cognisance of the objections received and the impact it may have on the surrounding community.

**❖ OBJECTOR 6 - Mr BM Shaw (Erf 760, Hermanus)****Objection 6.1**

***I am the owner of Erf 760 situated at 17 Mitchell Street, Hermanus and will be severely impacted by it if the change of use is allowed. I object to the application for consent use being allowed based on the following - the proposed change in use of Erf 10347 will impact on my peaceful use and enjoyment of my property. We are retired and live full time on the property.***

***There are many residents in this area and the applicant's argument that Erf 10347 is in an area where there are only businesses located is simply not true as many properties in Mitchell Street and adjacent Long-, High-, Hope, Aberdeen- and Dirkie Uys Streets are residential. The applicant conveniently only lists the few restaurants and bars in the area, but none of the residential properties like the houses, flats in Long Street and other accommodation in Long-, High-, Dirkie Uys-, Aberdeen-, Hope and Mitchell Streets.***

***The noise and activity during the night that will be generated (and is already being generated) will disturb the peace, possibly bring more crime to the area and change the tranquil atmosphere. An entertainment license will allow them to play loud music, until 02:00, hold music concerts and festivals, run a strip joint, etc. Businesses operate in many properties in the area, but these are mainly shops and offices which close by 17:00 where after the area is quiet and residential.***

***According to the recently published guidelines by the Overstrand Municipality the central area is planned to be for combined business and residential use. The object being to densify the central area (like many/most overseas countries).***

***The densification will of course come from the residential sector and allowing a loud and usually rowdy business in the middle of this seems to directly contradict what is desired. What concerns me also is the fact that they are already trading, as if they have the requisite rights, demonstrates that they have a disregard for the law. In other words, they won't stick to the parameters of the consent use rights. There have been many complaints from residents.***

Applicant's response

It is clear from the above objection from Mr BM Shaw that the reasons for the objections are all similar to the ones that were raised as per the above and that were previously addressed. It is clear that the main issues were mentioned again like the noise that will be generated from the proposed establishment, crime and the fact that the establishment is already trading. All of the aforementioned issues have already been addressed in this document.

Town Planner's response

The objector is correct that the applicant did operate the night club without obtaining the necessary land use rights, which has lead to disturbing noise pollution.

❖ **OBJECTOR 7 - V Prior (Erf 702, Hermanus)****Objection 7.1**

***Mrs V Prior also raises issues like the residential character in the CBD, noise, crime and the high-speed car races in Mitchell Street. The objector also states that she does not believe in the employment theory and the operating times.***

Applicant's response

All the issues that are mentioned above have been raised by the other objectors and have been addressed in detail.

Town Planner's response

Noted.

❖ **OBJECTOR 8 – Ms Brigitte Sabbe on behalf of Ritcarlo Investments (Pty) Ltd (Erf 5664, Hermanus )****Objection 8.1**

***According to the objector they have submitted a video that indicates the amount of noise that is generated from the premises of the White Rabbit. The objector however is not opposed to the night club as long as the noise that is generated is controlled. The objector also has a concern that as soon as the proposal will be approved that it would be more difficult to control especially with the live show and concerts.***

Applicant's response

We as the applicant cannot comment on the video as we did not receive any footage. We can however confirm (as discussed previously) that a professional sound engineer has compiled a NIA and the owner intends to adhere to the recommendations set out in the Noise Impact Report in order to comply with the Western Cape Noise Control Regulations, 2013.

In conclusion it is clear that the owner of the White Rabbit has gone through a lot of mitigation measures before the application for a consent use to establish a night club and occasional live entertainment was submitted to the Overstrand Municipality. The above comments that were received from the general public have been addressed in detail and we believe that the positive impacts outweighs the negative.

Town Planner's response

Noted.

**8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS**

See Paragraph 7 above.

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

See Paragraph 7 above.

**Internal and External Departments**

See Paragraph 7 above.

**10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)****10.1 Background**

N/A

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

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

The objectives relating to:

Spatial Justice

N/A

Spatial sustainability

The development does not impact on environmental or agricultural potential of the property since it is a developed erf. The erf is optimally developed within the acceptable parameters of the Zoning Scheme

Efficiency

All municipal services are available. The proposed development will place unduly pressure on the available infrastructure in the CBD.

Spatial Resilience

The building has been approved in terms of the National Building Regulations and thus compliant. The application is to optimize the use of the erf and its buildings, thus ensuring the economic viability of the property.

Good administration

The applicant's consultant did follow the prescribed procedure in terms of documentation submitted and public participation.

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

Same as Point 10.2 above.

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

N/A

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

N/A

**10.6 Impact on Municipal engineering services**

None.

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

Western Cape Noise Control Regulations, 2013 - the present activity of the night club and live entertainment do transgress the limits set out by the Regulations. Mitigating measures have been proposed.

**10.8 Existing and proposed zoning comparisons and considerations**

The application complies with the existing zoning.

**11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS**

N/A

**12. THE DESIRABILITY OF THE PROPOSAL**

The application consists of a consent use for a Place of Entertainment, which relates to a night club and live entertainment venue. The informal trading is a primary right, which does not trigger an application. The latter will be dealt with as a separate entity.

Most of the aspects raised by the objectors have been dealt with in the comment and response heading (Paragraph 7) and will suffice.

The desirability of the consent use will be dealt with from a town planning point of view in the CBD context. Firstly, the erf is zoned Business Zone 1: Bulk Zone 1, thus located in the core of the Hermanus CBD. It is also located in Long Street that consists of various forms of businesses and flats above ground level and thus in line with land uses in its immediate vicinity.

The main issues that needs to be dealt with are the following:

The nature of the proposed use: The use of the erf as a night club and outdoor live entertainment venue creates excessive noise pollution. The impact therefore cannot only be evaluated in terms of the direct neighbours, but also the impact on the surrounding area. The NIA clearly indicates that the present noise levels far exceed the allowable decibels as prescribed in the Western Cape Noise Control Regulations, 2013. The recommendation of the Assessment does indicate that the establishment can comply only if the doors of the establishment are closed and non-amplified sound systems are used. This in itself poses a problem, since it will not be possible to enclose the doors permanently. Movement of patrons in and out the

building cannot be controlled and in a similar manner the movement from inside the establishment to the outdoor seating area. The sound will immediately travel every time the door is opened. The next recommended mitigating measure is the tamper proof loudspeaker management system, which who will control to ensure compliance with allowed decibels. The management thereof has not been addressed by the applicant.

In terms of the NIA, the non-amplified sound systems can comply with the regulations dealing with noise levels. This however will entail that the sound system be set by a professional sound engineer and checked during the event. The latter will be the responsibility of the applicant and audited by the Environmental Management Department. The latter does not have the man power or equipment to do so. Again, this matter has not been sufficiently addressed by the applicant on the operational management during such an event.

The intention to use the establishment during the Hermanus Festivals can be considered, only if the establishment is part of the venues listed by the various festival committees. The exception can be made due to the responsibility and compliance with the Events By-Law by the various events co-ordinators. The aforementioned does provide the professionals that ensure compliance with all the conditions stipulated in the approval. Such events do occur within a limited period and is not constantly on an ad-hoc basis.

Due cognisance must be taken that although the proposed consent use is allowable in terms of the Zoning Scheme, the type of use has a ripple effect beyond the erf boundaries, which needs to be taken into consideration. This is evident in the comment received from the Directorate: Protection Services (Law Enforcement). In their comment they indicated the constant complaints of unruly behaviour and relentless noise emanating from the premises to the detriment of the surrounding area.

In the motivation, the applicant constantly indicated that the intention of the owner of the establishment is to implement the recommendations of the NIA and ensure minimum disturbance of his establishment. This does pose a serious problem, since up until now the owner has not made any effort to cease the night club operation and or sound proof the establishment. Thus, raises the question, if the application is approved subject to conditions, what will his intention be in terms of compliance.

The statement that an informal trading area is a primary right is not correct. In terms of the Overstrand Zoning Scheme, 2013 it is a consent use on Business Zone I erven. The proposed informal street food trading stalls on the property is not desirable, and is a consent use. The food vendors transport vehicles and trailers will have to make use of parking allocated for patrons of the establishment and thus will be forced to park their vehicles and trailers on municipal parking spaces. The ablution facilities on the property are not sufficient to cater for patrons and public visiting the vendors. The motivation indicates that the vendors will cater for patrons of the establishment however it will have to be open to the public in order to be viable.

In summary:

The proposed night club will operate from 20:00 to 02:00 in the morning if the need arises. No reason was given on why the club needs to operate from Monday to

Saturday, since most people work during the week. Most night clubs operate on weekends only, with the exception on a Wednesday. Thus, the area surrounding the property will be inundated with noise pollution six (6) days a week from 20:00 to 02:00, which does impact and is to the detriment of people residing in the CBD.

### 13. RECOMMENDATION

1. that the application in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 on Erf 10347, Hermanus for a consent use in order to establish a live entertainment venue consisting of a night club and outdoor venue to be utilized for occasional live entertainment on the above-mentioned property, **not be approved**.
2. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above decision.

### 14. REASONS FOR RECOMMENDATION

- ❖ The night club has been operating illegally.
- ❖ The establishment has held live concerts illegally.
- ❖ The applicant ignored the request for compliance with the Zoning Scheme and shown total disregard for the issues raised by the complainants.
- ❖ The Noise Impact Assessment (NIA) clearly indicates excessive noise pollution from the establishment.
- ❖ The proposed mitigating measures will not ensure the elimination of noise pollution of the surrounding area.
- ❖ The Municipality does not have the measuring instruments of professional qualification to ensure compliance.
- ❖ The ripple effect of the use of the establishment for a nightclub and or live entertainment will severely impact the surrounding area as indicated by the NIA.
- ❖ The management of the recommendations as per the NIA by the applicant is not indicated. Therefore, it is unclear what measures will be put in place and the responsible person to ensure compliance with the recommendations and monitoring of the situation.
- ❖ Informal trading is a consent use on Business Zone I erven in terms of the Overstrand Zoning Scheme, 2013. An application was not submitted for the informal trading area.

### 14. ANNEXURES

- Annexure A: Locality Plan
- Annexure B: Site Development Plan
- Annexure C: Motivation Report
- Annexure D: Noise Impact Assessment
- Annexure E: Objections received
- Annexure F: Applicant's response to objections received
- Annexure G: Services Report

**SIGNATURE****REGISTERED PLANNER**Name: **H VAN DER STOEP**SACPLAN Reg No: **A/1708/2013**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

ANNEXURE A



<b>PLA<sup>n</sup></b> <b>Active</b> Stads- en Sireeksbeplanners Town & Regional Planners	All distances approximate and subject to survey. COPY RIGHT RESERVED	Property Description: <b>ERF 10347</b> <b>HERMANUS</b>	Plan Description: <b>LOCALITY MAP</b>	Scale: <b>NTS</b> Drawing No: <b>HER10347.dwg</b> Date: <b>11/2016</b>
				

**PROPOSED CONSENT USE****ERF 10347 HERMANUS****DIVISION: CALEDON****OVERSTRAND MUNICIPALITY****MOTIVATION REPORT****1. BACKGROUND**

The owner of the White Rabbit Pub and Grill, Mr. Clive Gildenhuys, has instructed the company Plan Active to apply for a consent use to establish a place of entertainment consisting of a night club and occasional live entertainment outside. The nightclub will be located within a portion of the existing pub and grill and the occasional live entertainment will be located outside. The detail of the nightclub and live entertainment will be clearly described later in this motivation report.

The owner also intends to accommodate occasional informal food stalls on the subject property at specially demarcated areas on Erf 10347 Hermanus that is within the current land use rights of the property. Erf 10347 Hermanus is owned by Mr. E.R. Schimmer and Mrs. B.U. Riedelsheimer whom have completed the enclosed special power of attorney. Mr. Clive Gildenhuys is leasing the property from them.

An application was lodged in July 2019 to install 5 slot machines within the existing building of the White Rabbit Bar and Grill establishment.

Erf 10347 Hermanus is 2213m<sup>2</sup> in extent and is held by Title Deed No. T25619/2006.

As mentioned above, the owner of White Rabbit Pub and Grill intends to establish a place of entertainment consisting of a night club and occasional live entertainment within one of the existing buildings established on Erf 10347 Hermanus and to accommodate occasional live entertainment outside. The intention is to accommodate live entertainment that will operate concurrent with the established festivals in the Hermanus area throughout the year and during peak holiday seasons. In order to operate a night club and live entertainment on the existing business zoned property it would be required that we apply for a consent use to establish a place of entertainment on the subject property.

## **2. APPLICATION DETAILS**

In order to accommodate a nightclub and live entertainment on Erf 10347 Hermanus an application is lodged in terms of:

- Chapter 4, Section 16(2)(o) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for a consent use for a place of entertainment.

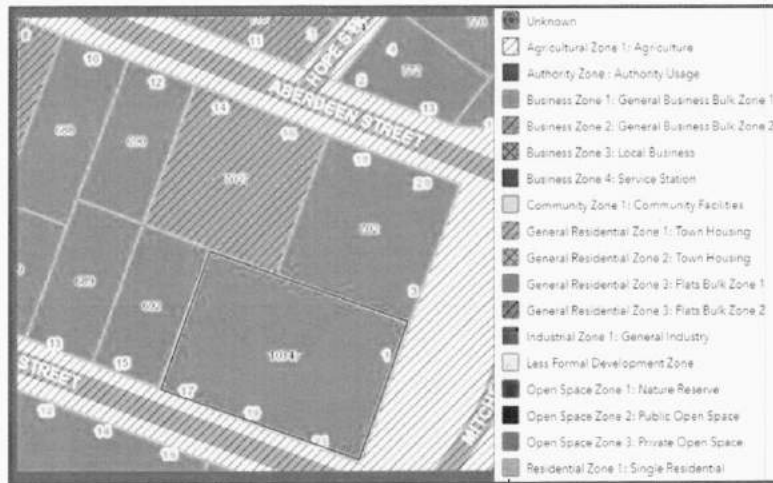
## **3. DESIRABILITY**

### **3.1 PROPERTY DESCRIPTION**

The subject property is situated on the corner of Long Street and Mitchell Street, Hermanus. Please refer to the enclosed locality plan. Erf 10347 Hermanus is 2213m<sup>2</sup> in extent and it is situated within the Hermanus CBD.

### **3.2 ZONING**

Erf 10347 Hermanus is zoned Business Zone 1: Bulk Zone 1 and is utilized as such. Surrounding properties are also zoned for business purposes, restaurants and pub uses.



### 3.3 LAND USE

Erf 10347 Hermanus is used for business purposes. The White Rabbit Bar and Grill is established on the subject property. Land uses that surround the subject property is general businesses, take-aways, shops, offices, public roads, public parking areas and a few General Residential zoned properties.

Examples of other businesses established in Long Street and Mitchell Street in close proximity of the site are as follow:



ABERDEEN STREET	MITCHELL STREET
Hermanus Cycles	My Design
Beds from home	Remax
Hermanus Furniture	Chilli Pepper
Frames for Africa	Goozi

Properties with a residential zoning in the area are identified below with the estimate distance situated from the subject property, Erf 10347 Hermanus:

Erf	Zoning	Distance from Erf 10347 Hermanus
757	General Residential Zone 1	±230m
760	General Residential Zone 1	±214m
736	General Residential Zone 1	±81m
737	General Residential Zone 1	±103
742	General Residential Zone 1	±140m
745	General Residential Zone 1	±159m
784	Residential Zone 1	±118m
786	General Residential Zone 1	±90m
726	General Residential Zone 1	±192m

### 3.4 PROPOSAL

In order to accommodate a nightclub and live entertainment on Erf 10347 Hermanus an application is lodged in terms of:

- Chapter 4, Section 16(2)(o) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for a consent use for a place of entertainment.

It is the intention of the owner of White Rabbit Bar and Grill to establish a night club with occasional live entertainment and informal food stalls on Erf 10347 Hermanus. The proposed nightclub will be accommodated within the existing building situated on the subject property. Please refer to the enclosed plan with **drawing number 02: REVISION 2** from **KWG DESIGN** clearly indicating the dancing floor and bar area which is in the existing building.

The White Rabbit Bar and Grill consists of the following:

- An office;
- Cold Storeroom;
- Unisex bathroom;
- Service area (Bar), bar counter with seating;
- Seating areas inside and outside;
- Gaming Area (5 slot machines, currently in an application process at the Overstrand Municipality).

Access to the White Rabbit Bar and Grill is from Long Street to an established parking area for the sole use of the White Rabbit Bar and Grill and the access to and from the parking area will remain the same.

White Rabbit Bar and Grill is open from 10:00am until 2:00am. Being located within the CBD of Hermanus within a predominant business use area it is our opinion that the proposed land use change to establish a night club will not have a negative impact on the surrounding businesses. Most of the businesses located in the area open at 9:00am and closes at 17:00pm. The only other land uses in the area that operate beyond these hours are the other restaurants, pubs and limited residential uses.

According to the zoning scheme regulations the definition of a place of entertainment read as follows:

***"Place of entertainment" means a place used for commercial entertainment which may attract large numbers of people, operate outside normal business hours or generate noise from music or revelry on a regular basis, including a cinema, theatre, amusement park, dance hall, night club, gambling and live music.***

Please take note of the following:

The owner of White Rabbit Bar and Grill also appointed Mackenzie Hoy Consulting Acoustics Engineers to do a Noise Impact Assessment which confirmed that the noise in generated will cause a disturbance to the surrounding property owners. The report dated 24<sup>th</sup> of May 2019 however made a few recommendations that the owner will implement in order to comply with the requirements of the Western Cape Noise Control Regulations, 2013. Please refer to the attached Noise Impact Assessment dated 24<sup>th</sup> of May 2019 by Mackenzie Hoy Consulting Acoustics Engineers.

The intention is to establish a night club, occasional informal food stalls and occasional live entertainment on the subject property, Erf 10347 Hermanus. Please note that the proposed food stalls fall within the land use restrictions of the current zoning of the subject erf and does not require an approval.

The detail of the application can be described as below:

**The night club**

The intention is to establish a night club on the subject property. The proposed night club that will be established within White Rabbit Bar and Grill will diversify the current business use on the subject property and will attract a diverse group of people to the Hermanus CBD that will create business opportunities for surrounding businesses as well.

The proposed night club will attract a group of people to the CBD of Hermanus that will boost the local economy as the area can operate as a network that will be beneficial to most business owners

in the CBD of Hermanus. Business opportunities are declining in the CBD due to the fact that more and more businesses are closing their doors due to the current economic climate in the Country and residents make more use of the Whale Coast Mall to do their shopping. The proposed nightclub will attract people to the CBD which will create opportunities for other businesses to gain income and an opportunity for better investments.

The operating hours of the nightclub will be from Monday to Saturday from 20:00pm until 2:00am if the need arises. The nightclub will operate within the guidelines set out by the Noise Impact Assessment by **Mackenzie Hoy Consulting Acoustics Engineers dated 24<sup>th</sup> of May 2019**. The owner will make the necessary adjustments in order to comply with the Noise Impact Assessment. The doors at the venue of the Night club will be kept closed at all times which will ensure that noise spillage will be kept to a minimum. Please refer to the enclosed Noise Impact Assessment. (Annexure A).

**Occasional live entertainment**

The intention of the owner of the White Rabbit Bar and Grill is to offer occasional live entertainment which can be divided into two categories. The first category is made out of live shows which will be accommodated during festivals (Easter weekend, Kalfie Fees, The Whale Festival etc.) and the second category will be live music by means of occasional live entertainment outside, whereby live entertainers will perform for patrons of White Rabbit Bar and Grill. The two categories can be described as below:

- **Live shows**

The intention is to accommodate live shows that will fit in with the occasional festivals that are held throughout the year in Hermanus.

Some of the mentioned festivals are listed below:

1. Whale festival
2. Kalfie festival
3. Hermanus Wine and Food festival
4. Hermanus Fynarts festival
5. Walker Bay Xtreme

The above-mentioned festivals happen throughout the year in Hermanus and many local businesses depend on these festivals to make extra profit. The local communities also benefit economically from these festivals.

The intention of the owner is to create events that will fit in with the themes of the festivals held in Hermanus. The performing artists will be located outside under the roof of the covered parking area also labelled below as a multipurpose area located on the northern portion of the site. The performing artists will not perform beyond **10:00pm** in the evening taking into consideration the residential properties located in the vicinity.

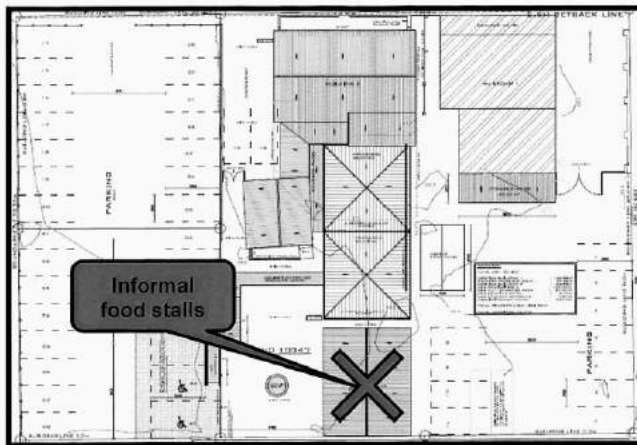
Professional Sound engineers will be appointed beforehand to ensure that the shows have the minimum impact possible on the residential properties in the vicinity. Unfortunately, the performing artists will make use of amplified sound equipment that could exceed the noise limits as prescribed in the Noise Impact Assessment by **Mackenzie Hoy Consulting Acoustics Engineers**. It is therefore proposed that when hosting an event with performing artists entertaining patrons outside, that the live entertainment will stop at 22:00. With the exclusion of occasional events where artists would entertain patrons outside, will the owner adhere to all recommendations from the professional sound engineers with regards to the permissible noise that will ensure that the shows will have the least impact on the property owners in the area, especially the properties with residential uses. The intention is to accommodate the majority of the shows within the buildings to ensure minimum noise pollution.

- **Live music with non-amplified sound**

The intention is to invite guest artists with non-amplified sound (guitarists, saxophonist, pianist etc) that will provide background music to patrons of the White Rabbit Bar and Grill. These artists will be performing with non-amplified sound occasionally, no more than 2-hour slots and no later than 10pm. The intention of the owner is to create an environment that is also suitable to a more mature crowd. Subsequently they will create a venue that can accommodate people of diverse age groups. The intention is that the sound generated will be in line with the recommendations of the Noise Impact Assessment by **Mackenzie Hoy Consulting Acoustics Engineers dated 24<sup>th</sup> of May 2019**.

### Informal Food stalls

The intention of the owner of White Rabbit Bar and Grill is to accommodate occasional informal food stalls. The intention is to give the opportunity to local community members to also sell trendy "street food" to patrons of White Rabbit Bar and Grill. This will allow the community to economically benefit from the selling of local prepared food. The food stalls will be accommodated in the multi-purpose as illustrated below.



A conveyancer certificate provided by Sonja Barlow also confirms that there are no Title Deed restrictions that prohibits the owner to establish a place of entertainment on the subject property.

The proposed consent use application to establish a place of entertainment will not have a negative impact on the surrounding properties and is not in contrast with the existing land use tendencies in the surrounding environment (Hermanus CBD). The owner will put mitigating measures in place in order not to cause a nuisance and if a live performance should be held outside during festivals and the holiday seasons, the entertainment will not exceed 22:00pm in the evenings. We therefore do not anticipate any problems with the proposed application.

### 3.5 ACCESS & PARKING

The proposal to accommodate a place of entertainment within the existing White Rabbit Bar and Grill does constitute an extension of the current gross leasable floor area by means of the inclusion of a restaurant outdoor seating area. The restaurant constitutes  $\pm 394.54\text{m}^2$  GLA and the parking requirements are 6 parking bays per  $100\text{m}^2$  GLA. The nightclub can accommodate 65 patrons and a parking ratio of 1 parking bay per 4 patrons is required in terms of the **Chapter 17, Section 17.1** of the **Zoning Scheme Regulations in the Overstrand Municipal Area**.

The parking requirements can be summarised as follow:

Parking requirements			
	Details of parking requirements	Total parking bays required	Total parking bays provided
Place of Entertainment	1 parking bay per 4 patrons	65 seats 16.25 bays	16 bays
Restaurant and Office	6 bays per $100\text{m}^2$ GLA	$\pm 394.54\text{m}^2$ GLA 23.67 bays	24 bays
Disabled parking bays	2 disabled bays required for a total of 11-50 parking bays	2 bays	3 bays
<b>Total</b>		<b>40 parking bays</b>	<b>40 parking bays</b>

The existing onsite parking area located on the eastern portion of Erf 10347 Hermanus will suffice.

### 3.6 SERVICES

Erf 10347 Hermanus is already developed, all services exist, and no additional services would be required to make provision for the proposed change of land use to establish a night club and to make provision for live entertainment onsite.

### 3.7 TITLE DEED

The Title Deed T25619/2006 has no restrictions that need to be removed in order for this application to be approved. No bond is registered over the subject property.

### 3.8 FORWARD PLANNING

#### **Overstrand Municipal Wide Spatial Development Framework**

In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for business purposes. The business zoning of the subject property will be retained after the night club and to live entertainment have been established on the subject property.

#### **Overstrand Municipal Wide Spatial Development Framework**



#### **Overstrand Growth Management Strategy**


With reference to the Overstrand Growth Management Strategy the subject property falls within Planning Unit 13 that consists of the Hermanus CBD. Residential densification is proposed for this planning unit to create a mixed land use area. Being a business node and the fact that the business zoning will be retained the proposed growth management strategy has no relevance to the proposed land use change.

With the proposal, the above-mentioned forward planning documentation applicable to the Hermanus CBD, the proposed land use change will not have a negative impact on the surrounding businesses as mitigating measures will be put in place as mentioned earlier in this motivation. Therefore, the proposed consent use application falls within the prescribed guidelines for the specific area of Hermanus.

### 3.9. OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

#### 3.9.1. HERITAGE VALUE

Erf 10347 Hermanus is situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is also earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009). Please refer to the abstract below from the Heritage Survey Report:

Hermanus House	10347	Hermanus 19 Long Str 34 25' 09.22" 19 14' 26.72"	3B	Architectural/ aesthetic: typical, period example with some alterations incl extended eaves overhang. Surviving small pane front sash windows. Interior appears to be intact. Contributes to streetscape in terms of scale & overall envelope mass	
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The 3B Grading Criteria and management implications are tabled as follow:

	Intrinsic Significance	Associational Significance	Contextual Significance
GRADE 3B	<ul style="list-style-type: none"> <li>Historical fabric is partially intact (past damaged is reversible)</li> <li>Some evidence for historical layering</li> <li>Some elements of construction are authentic</li> <li>Fabric dates to an historical period in the evolution of a place</li> <li>Typical or good example of a type and form</li> <li>Fabric illustrates an historical period in the evolution of a place</li> <li>Fabric illustrates the key uses and roles of a place over time</li> </ul>	<ul style="list-style-type: none"> <li>Some association with an historic person or social dynamic</li> <li>Some association with historic events or activities</li> <li>Some association with the uses or roles of a place over time</li> <li>Some association with public memory</li> <li>Some association with living heritage</li> </ul>	<ul style="list-style-type: none"> <li>Contributes significantly to the historical, visual-spatial character of a place</li> <li>Contributes significantly to the quality of setting of a Grade 3A heritage resource.</li> </ul>
Grade 3C Buildings/ Precincts	Heritage resources of local contextual value for social, historical and/or aesthetic reasons.	Local Authority HRS	<ul style="list-style-type: none"> <li>Conserve wherever possible.</li> <li>Retain historical fabric wherever possible (exterior only)</li> <li>Conserve and enhance contribution to overall character and streetscape (predominantly public/private interface)</li> <li>Demolition could only be considered if appropriate adaptive reuses cannot be established.</li> </ul>

The application mainly constitutes the change of land use and no physical changes to the existing structures.

In the light of the above mentioned it is evident that the proposed consent use will not have a negative impact on the heritage value of the subject property or the greater area of Hermanus.

### **3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

The proposed consent use application does not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

### **3.10. THE HERMANUS CBD REGENERATION FRAMEWORK**

The Hermanus CBD Regeneration Framework described the area where Erf 10347 Hermanus is located as Mitchell Street Square. Please refer to the abstracts below from the Hermanus CBD Regeneration Framework for easy reference pertaining to the area in question.

Internationally, spatial planning professionals have timelessly agreed that the efficient use of land needs to be compatible with the social well-being and healthy environment objectives. Therefore, concepts such as densification, urban growth management and the **mixing of land uses** have become popular in the process towards achieving these universal goals.

**Diverse environments** provide a variety of opportunities, experiences and choice. The more varied a place, the more valued because of the individual qualities that make it distinctive from other places.

Activity should be **concentrated in core areas** and important **nodes** and provide a cluster of complementary but **diverse set of uses**. This provides people with choices and promotes walking between destinations.

Overall Framework:

Establish a new **CBD heart** at Mitchell Street square including a new **mixed-use** development, structured parking and public space and road upgrades.

Develop High Street into a pedestrian priority street that connects the new retail complexes at Station Square to Mitchell Street

Mitchell Square Redevelopment:

Main Ideas:

Mitchell Street Square is strategically located within the centre of Hermanus CBD. It sits at the junction of several pedestrian networks and links to a number of public and civic amenities such as the cliff walk, Market Square, Civic and Municipal Precinct, Taxi rank and Commercial nodes along Long, High and Mitchell streets.

The development of Mitchell Street square has the potential to become the heart of Hermanus CBD as a vibrant public amenity for both locals and visitors to the town. The Mitchell Street development proposal accommodates the surface parking lot within structured parking levels within the new development, as a result the Mitchell Street Square will be released for the development of a high-quality public square with ground floor activation with new business / cafe / restaurant opportunities. This proposed intervention is a key investment into the public environment in the core of the CBD, knitting together key destinations and pedestrian routes along High, Mitchell and Long Streets.

Retain existing heritage building.

Reuse as cafe / hospitality space.

With reference to the above abstract from the Hermanus CBD Regeneration Framework it is clear that the proposed consent use can be accommodated within these guidelines. The proposal is in line with the recommendations as it also falls within the hospitality spectrum of land uses.

### 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 refers to the need to redress the past apartheid spatial development imbalances and aim for equity in the provision of access to opportunities, facilities, services and land. In the broadest sense, it seeks to promote the integration of communities and the creation of settlements that allow the poorest of the poor to access opportunities. In a spatially just settlement, opportunities and

access are provided to those whose historical access and opportunities have been impeded by the practice of apartheid spatial planning. Land development procedures must include provisions that accommodate access to, and facilitation of, security of tenure and the incremental upgrading of informal areas. The Principle of spatial justice is not applicable to this application.

Spatial sustainability: The proposed place of entertainment to establish a nightclub and to make provision for live entertainment will be accommodated within an established business area. The proposed application will have no impact on the conservation worthy areas of the Hermanus CBD. Spatially the land use will be in keeping with the business character of the area that consist of general businesses, take-aways, shops, offices, public roads, public parking areas and limited residential properties.

Efficiency: The proposed night club is screened from other patrons visiting the White Rabbit Pub and Grill. It is easily accessible to the locals and tourists and conveniently located within the Hermanus CBD where ample on-site parking is available. The live entertainment venue will be well managed taking the limited residential uses in the vicinity into consideration. The nightclub and live entertainment venue mentioned makes travelling to the subject property to make use of the proposed venue easy and accessible to everybody.

Spatial resilience in the context of land use planning refers to the need to promote the development of sustainable livelihoods for the poor (i.e. communities that are most likely to suffer the impacts of economic and environmental shocks). Spatial resilience also refers to the requirement for flexibility in spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. The spatial plans, policies and land use management systems should enable the communities to be able to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner, which includes the preservation and restoration of essential basic infrastructure and functions, but also adaptation in order to ensure increased resilience in terms of future shocks (United Nations Office for Disaster Risk Reduction, 2009). The Principle of Spatial resilience is not applicable to this application.

Good administration: Our company is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant

municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016.

#### 4. RECOMMENDATION

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

- The proposed consent use falls within the existing land use tendencies in the area;
- The proposal is compatible with the existing land use in the Hermanus CBD area;
- The impact on services will be minimal and no additional services will be required;
- The White Rabbit Bar and Grill creates job opportunities for a broad spectrum of local inhabitants of Hermanus that enhances their quality of life;
- The proposed consent use will not have a negative impact on the current character and land values of the surrounding erven;
- Mitigating measures will be in place in order to limit noise pollution and to operate in harmony with the limited residential uses in the CBD.
- The proposed venue is centrally situated, easily accessible within the Hermanus CBD and there is sufficient on-site parking facilities;
- The owner has already requested Mackenzie Hoy Consulting Acoustics Engineers to prepare a Noise Impact Assessment with recommendations which the owner will comply with;
- The proposed application is in line with Spatial Planning Land Use Management Act, 2013 (SPLUMA) and the Land Use Planning Act, 2014 (LUPA).

With regards to the above mentioned it would be appreciated if the application would be considered favourably for the consent use to establish a place of entertainment at the White Rabbit Bar and Grill situated on Erf 10347 Hermanus.









**Mackenzie Hoy Consulting  
Acoustics Engineers**

if you have a problem that nobody else can solve...

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24<sup>th</sup> May 2019 – DRAFT.

## The White Rabbit Pub: Noise Impact Assessment.

### 1. Introduction

This report was commissioned by Mr. Clive Peter Gildenhuys, the owner of The White Rabbit Pub, cell: +27 76 688 3839, email: atthewhiterabbit@gmail.com. This report lists measurements conducted at The White Rabbit Pub, Hermanus to establish if the venue complies with the Western Cape Noise Control Regulations, 2013.

Measurements conducted at The White Rabbit Pub during the night-time on the 17<sup>th</sup> of May 2019 established the following:

- a. The venue sound system is a fixed system comprising 2 x powered loudspeakers and 2 x subwoofers at the dancefloor area and 1 x powered loudspeaker located at the outdoor area.
- b. The sound pressure level of amplified music within the venue reaches a maximum sound pressure level of 104.1 dBA.
- c. The venue doors are generally left open with the sound pressure level at the boundary of the main entrance reaching a maximum of 87.1 dBA and the corresponding sound pressure level at the courtyard boundary wall reaching a maximum of 66.6 dBA.

T.E. Mackenzie-Hoy Pr. Eng. Bsc (Elec) M.S.A.I.E.E., M.S.P.E., IngP (Eur), AmASA (Director)  
Rachel Viljoen BEng (Mechatronics), T. Matoro BSc (Mechatronics), M. Attwood (Adv Dip S Eng), G Viljoen (Dip QS)

- d. The ambient noise level at the nearest “noise sensitive activity” (residential dwelling) is 49.3 dBA with the venue music audible. The residual noise level at the nearest “noise sensitive activity” is approximately 40 dBA.

According to the Western Cape Noise Control Regulations, 2013, the following can be concluded from the measurements conducted at The White Rabbit Pub during the night-time on the 17<sup>th</sup> of May 2019:

- a. With the venue entrance doors closed, the sound pressure level at the “property projection plane” is 73.7 dBA. This exceeds the maximum allowable limit of 57.0 dBA by 16.7 dBA thus causing a “disturbing noise”.
- b. With the venue outdoor area (courtyard) doors closed, the sound pressure level at the “property projection plane” facing the nearest “noise sensitive activity” (residential dwelling) is 61.6 dBA. This exceeds the maximum allowable limit of 57.0 dBA by at least 4.6 dBA thus causing a “disturbing noise”.

Additional noise mitigation measures must be implemented at The White Rabbit Pub to ensure that the venue noise does not cause a contravention of the Western Cape Noise Control Regulations, 2013.

The following is recommended for The White Rabbit Pub to comply with the requirements of the Western Cape Noise Control Regulations, 2013:

- a. Install a tamper-proof loudspeaker management system to ensure that noise from the venue does not exceed 57.0 dBA on the “property projection plane”.
- b. No amplified music is permitted for the outdoor areas of the venue. The existing powered loudspeaker at the outdoor area must be removed.
- c. Install automatic door closers on the main entrance door and the outdoor area access door. Ensure that doors are kept closed when the venue is operational.

The calibration of the tamper-proof loudspeaker management system and inspection of the recommended changes must be signed off by a registered Professional Engineer.

A copy of this report should be submitted by the owner to the relevant Overstrand Municipality Environmental Health Office.

## 2. Background and Present Situation

- 2.1 The White Rabbit Pub is located at number 19 Long Street in Hermanus, Overstrand, Western Cape.
- 2.2 The venue operating hours are 10h00 to 02h00 from Monday to Sunday.
- 2.3 The White Rabbit Pub, Hermanus has received some complaints related to amplified noise during their operating hours.
- 2.4 Mackenzie Hoy Consulting Engineers were commissioned by Mr. Clive Peter Gildenhuys, the owner of The White Rabbit Pub, to conduct noise measurements at the venue and to provide a report with recommendations.
- 2.5 Mackenzie Hoy Consulting Engineers visited The White Rabbit Pub on the 17<sup>th</sup> May 2019 to inspect the venue and conduct measurements.
- 2.6 This report details the follow-up measurements conducted at The White Rabbit Pub to establish if the venue complies with the Western Cape Noise Control Regulations, 2013.

### 3. Measurements

3.1 The following instruments were used to conduct measurements at The White Rabbit Pub:

- a. Norsonic Nor131 Type 1/Class 1 Precision Sound Level Meter, Serial No. 1313229, 01041. Calibration by M and N Acoustic Services cc in August 2017, SANAS Reg No 148 1302, Certificate Number 2017-AS-1759.
- b. Norsonic Nor131 Type 1/Class 1 Precision Sound Level Meter, Serial No. 1313362, 01730. Calibration by M and N Acoustic Services cc in February 2018, SANAS Reg No 148 1302, Certificate Number 2018-AS-0230.
- c. Norsonic Nor1251 Sound Calibrator, Serial No. 33747. Calibrated by M and N Acoustic Services cc in July 2018, SANAS Reg No 148 1302, Certificate Number 2018-AS-0706.

Calibration certificates of the equipment used are attached in Appendix A of this report.

**Note:** Calibration of the above sound level meters is valid for 2 years from the date of calibration.

3.2 Refer to Figure 1 on the following page for an overview of the measurement locations used at The White Rabbit Pub on the 17<sup>th</sup> of May 2019.

3.3 Refer to Table 1 and Table 2 for a summary of the measurement results.

T.E. Mackenzie-Hoy Pr. Eng Bsc (Elec) M.S.A.I.E.E., M.S.P.E., IngP (Eur), AmASA (Director)  
Rachel Viljoen BEng (Mechatronics), T. Matora BSc (Mechatronics), M. Attwood (Adv Dip S.Eng), G Viljoen (Dip QS)



Figure 1: Measurement locations used at The White Rabbit Pub on the 17<sup>th</sup> of May 2019.

T.E. Mackenzie-Hoy Pr. Eng. (Elec) M.S.A.I.E.E., M.S.P.E., IngP (Elec), AmASA (Director)  
Rachel Viljoen BEng (Mechtronics), T. Matara BSc (Mechtronics), M. Airwood (Adv. Dip. S. Eng.), G Viljoen (Dip. QS)

**Table 1:** Summary of measurements conducted at The White Rabbit Pub on the 17<sup>th</sup> of May 2019.

Measurement location	Description	Time interval/Sound Pressure Level (L <sub>Aeq</sub> ) measured	Comments
M01 The White Rabbit	Courtyard boundary	23h39 to 23h49 66.6 dBA	<ul style="list-style-type: none"> <li>Venue amplified music audible</li> </ul>
M02 The White Rabbit	Outdoor sitting area Entrance/exit door open	23h34 to 23h36 90.1 dBA	<ul style="list-style-type: none"> <li>Venue amplified music audible</li> </ul>
	Outdoor sitting area Entrance/exit door open	23h37 to 23h38 85.0 dBA	
M03 The White Rabbit	Dance floor area	23h30 to 00h40 104.1 dBA	<ul style="list-style-type: none"> <li>DJ playing amplified music</li> </ul>
M04 The White Rabbit	Entrance door open	23h53 to 23h56 87.1 dBA	<ul style="list-style-type: none"> <li>Venue amplified music audible</li> </ul>
	Entrance door open	23h57 to 23h58 73.7 dBA	

T.E. Mackenzie-Hoy Pr. Eng. BSc (Elec) M.S.A.I.E.E., M.S.P.E., InstP (Inst), AmASA (Director)  
 Rachel V. Jones BEng (Mechatronics), T. Maosa BSc (Mechatronics), M. Atwood (Adv Dip 5 Eng), G. V. Jones (Dip CG)

**Table 2:** Summary of measurements conducted at The White Rabbit Pub on the 17<sup>th</sup> of May 2019.

Measurement location	Description	Time interval/Sound Pressure Level ( $L_{Aeq}$ ) measured	Comments
M05	Across Long Street Facing entrance door	00h21 to 00h23 70.9 dBA	<ul style="list-style-type: none"> <li>Venue amplified music clearly audible</li> </ul>
M06	Corner Mitchell Street and Long Street	00h16 to 00h17 59.3 dBA	
M07	Mitchell Street Facing outdoor area	00h12 to 00h15 55.5 dBA	
M08 Nearest sensitive activity	Corner Aberdeen Street and Hope Street	00h00 to 00h45 49.3 dBA	

T.E. Mackenzie-Hoy Fr. Eng. (Elec) M.S.A.I.E.E., M.S.P.E., IngP (Eur), AmASA (Director)  
Rachel Viljoen BEng (Mechatronics), T. Matzka BSc (Mechatronics), M. Atsooski (Adv. Dip. S.Eng.), G. Viljoen (Dip. QS)

#### 4. Discussion

- 4.1 The Western Cape Noise Control Regulations, 2013 use the following definitions and descriptions:

“**disturbing noise**” means a noise, excluding the unamplified human voice, which;

- a) exceeds the rating level by 7 dBA
- b) exceeds the residual noise level where the residual noise level is higher than the rating level; or
- c) exceeds the residual noise level by 3 dBA where the residual noise level is lower than the rating level.

“**Rating level**” means the applicable outdoor equivalent continuous rating level indicated in Table 2 of SANS 10103:2008 “*The measurement and rating of environmental noise with respect to annoyance and to speech communication*”.

“**Residual noise**” means the all-encompassing sound in a given situation at a given time, measured as the reading on an integrated impulse sound level meter for a total period of at least 10 minutes, excluding noise alleged to be causing a noise nuisance or disturbing noise.

“**Noise sensitive activity**” means any activity that could be negatively impacted by noise, including residential, healthcare, educational or religious activities;

“**Property projection plane**” means a vertical or horizontal plane, whichever is applicable, on a boundary line of premises defining a boundary of the premises in space;

T.E. Mackenzie-Hoy Pr. Eng. Bsc (Elec) M.S.A. I.E.E., M.S.P.E., IngP (Eur), AmASA (Director)  
Rachel Viljoen BEng (Mechatronics), T. Matoro BSc (Mechatronics), M. Attwood (Adv Dip S.Eng), G Viljoen (Dip QS)

4.2 The White Rabbit Pub premises are located in an urban district with one or more of the following; workshops, business premises and main roads. With reference to SANS 10103:2008 “*The measurement and rating of environmental noise with respect to annoyance and to speech communication*”, the following outdoor rating levels apply:

- a. Day-time rating level (06h00 – 22h00) : 60.0 dBA
- b. Night-time rating level (22h00 – 06h00) : 50.0 dBA

4.3 Measurements conducted at The White Rabbit Pub during the night-time on the 17<sup>th</sup> of May 2019 established the following:

- a. The venue sound system is a fixed system comprising 2 x powered loudspeakers and 2 x subwoofers at the dancefloor area and 1 x powered loudspeaker located at the outdoor area.
- b. The sound pressure level of amplified music within the venue reaches a maximum sound pressure level of 104.1 dBA.
- c. The venue doors are generally left open with the sound pressure level at the boundary of the main entrance reaching a maximum of 87.1 dBA and the corresponding sound pressure level at the courtyard boundary wall reaching a maximum of 66.6 dBA.
- d. The ambient noise level at the nearest “noise sensitive activity” (residential dwelling) is 49.3 dBA with the venue music audible. The residual noise level at the nearest “noise sensitive activity” is approximately 40 dBA.

- 4.4 The applicable definition of a “disturbing noise” for The White Rabbit Pub, which is surrounded by business premises only, implies a noise that exceeds the rating level by 7 dBA. The maximum allowable noise limits at the “property projection plane” of the venue are therefore as follows:
- a. Day-time limit (06h00 – 22h00) : 67.0 dBA
  - b. Night-time limit (22h00 – 06h00) : 57.0 dBA
- 4.5 According to the Western Cape Noise Control Regulations, 2013 , the following can be concluded from the measurements conducted at The White Rabbit Pub during the night-time on the 17<sup>th</sup> of May 2019:
- a. With the venue entrance doors closed, the sound pressure level at the “property projection plane” is 73.7 dBA. This exceeds the maximum allowable limit of 57.0 dBA by 16.7 dBA thus causing a “disturbing noise”.
  - b. With the venue outdoor area (courtyard) doors closed, the sound pressure level at the “property projection plane” facing the nearest “noise sensitive activity” (residential dwelling) is 61.6 dBA. This exceeds the maximum allowable limit of 57.0 dBA by at least 4.6 dBA thus causing a “disturbing noise”.
- 4.6 Additional noise mitigation measures must be implemented at The White Rabbit Pub to ensure that the venue noise does not cause a contravention of the Western Cape Noise Control Regulations, 2013.

## 5. Recommendations

- 5.1 The following is recommended for The White Rabbit Pub to comply with the requirements of the Western Cape Noise Control Regulations, 2013:
- a. Install a tamper-proof loudspeaker management system to ensure that noise from the venue does not exceed 57.0 dBA on the “property projection plane”.
  - b. No amplified music is permitted for the outdoor areas of the venue. The existing powered loudspeaker at the outdoor venue must be removed.
  - c. Install automatic door closers on the main entrance door and the outdoor area access door. Ensure that doors are kept closed when the venue is operational.
- Refer to Appendix B for recommended suppliers.
- 5.2 The calibration of the tamper-proof loudspeaker management system and inspection of the recommended changes must be signed off by a registered Professional Engineer.
- 5.3 A copy of this report should be submitted by the owner to the relevant Overstrand Municipality Environmental Health Office.



T.E. Mackenzie Hoy Pr. Eng BSc. (Elec )

Registered professional engineer number 840428


for: **Mackenzie Hoy Consulting Engineers**

T.E. Mackenzie-Hoy Pr. Eng. Bsc (Elec) M.S.A.I.E.E., M.S.P.E., IngP (Eur), AmASA (Director)  
Rachel Viljoen BEng (Mechatronics), T. Matora BSc (Mechatronics), M. Attwood (Adv Dip S.Eng), G Viljoen (Dip QS)

## Appendix A: Calibration Certificates

T.E. Mackenzie-Hoy Pr. Eng. Bsc (Elec) M.S.A.I.E.E., M.S.P.E., IngP (Eur), AmASA (Director)  
Rachel Viljoen BEng (Mechatronics), T. Matom BSc (Mechatronics), M. Attwood (Adv Dip S. Eng), G Viljoen (Dip QS)

14/18



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1302

**M AND N ACOUSTIC SERVICES (Pty) Ltd**  
 Reg. No. 2017/2313491    VAT NO. 430255376    BQA Status Level 4  
 P.O. Box 47723, Plum (10) Wynberg, 7804  
 No. 75, Mustard Garden  
 Pieter van Ryneveld Street  
 Tel: 012 689 2607/8 • Fax: 012 311 4075  
 E-mail: calservice@mweb.co.za



### CERTIFICATE OF CONFORMANCE

CERTIFICATE NUMBER	2017-AS-1759
ORGANISATION	MACKENZIE HOY CONSULTING ENGINEERS
ORGANISATION ADDRESS	5 CONISTON WAY, PINELANDS, CAPE TOWN, 7405
CALIBRATION OF	INTEGRATING SOUND LEVEL METER with built-in ½-OCTAVE/OCTAVE FILTER and ½" MICROPHONE
MANUFACTURERS	NORSONIC
SOFTWARE REVISION	3.1.984
MODEL NUMBERS	NOR 131, 1207 and NOR 1228
SERIAL NUMBERS	1313229, 12699 and 01041
DATE OF CALIBRATION	30 AUGUST 2017
RECOMMENDED DUE DATE	-----
PAGE NUMBER	PAGE 1 OF 4

*This certificate is issued in accordance with the conditions of approval granted by the South African National Accreditation System (SANAS). This Certificate may not be reproduced without the written approval of SANAS and M and N Acoustic Services.*

*The measurement results recorded in this certificate were correct at the time of calibration. The subsequent accuracy will depend on factors such as care, handling, frequency of use and the amount of different users. It is recommended that re-calibration should be performed at an interval, which will ensure that the instrument remains within the desired limits and/or manufacturer's specifications.*

*The South African National Accreditation System (SANAS) is member of the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA). This arrangement allows for mutual recognition of technical test and calibration data by member accreditation bodies worldwide. For more information on the arrangement please consult [www.ilac.org](http://www.ilac.org)*

Calibrated by  <b>W.R. SBRANTONI</b> (CALIBRATION TECHNICIAN)	Authorised Technical Sign.  <b>M. NAUDÉ</b> (SANAS TECHNICAL SIGNATURE)	Date of Issue: <b>01 SEPTEMBER 2017</b>
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Director: Manama Naudé

**Figure 2:** Calibration certificate for Norsonic Nor131 Sound Level Meter, Serial No. 1313229, 01041.

T.E. Mackenzie-Hoy Pr. Eng. Bsc (Elec) M.S.A.I.E.E., M.S.P.E., IngP (Eur), AmASA (Director)  
 Rachel Viljoen BEng (Mechatronics), T. Matora BSc (Mechatronics), M. Attwood (Adv Dip S.Eng.), G Viljoen (Dip QS)





**M AND N ACOUSTIC SERVICES (Pty) Ltd**  
 P.O. Box 11773, Phiso van Rensburg, 7045  
 No. 15, Mustang Gate  
 Phiso van Rensburg, 7045  
 Tel: 012 689 2007/8 • Fax: 012 689 2111/12  
 E-mail: cs@service@mwo.co.za

## CERTIFICATE OF CALIBRATION

CERTIFICATE NUMBER	2018-AS-0706
ORGANISATION	MACKENZIE HOY CONSULTING ENGINEERS
ORGANISATION ADDRESS	5 CONISTON WAY, PINELANDS, CAPE TOWN, 7405
CALIBRATION OF	SOUND CALIBRATOR
MANUFACTURER	NORSONIC
MODEL NUMBER	1251
SERIAL NUMBER	33747
DATE OF CALIBRATION	02 JULY 2018
RECOMMENDED DUE DATE	JULY 2019
PAGE NUMBER	PAGE 1 OF 3

This certificate is issued in accordance with the conditions of approval granted by the South African National Accreditation System (SANAS). This Certificate may not be reproduced without the written approval of SANAS and M and N Acoustic Services.

Calibrations performed by this laboratory are in terms of standards, the accuracies of which are traceable to national measuring standards as maintained by NMISA.

The measurement results recorded in this certificate were correct at the time of calibration. The subsequent accuracy will depend on factors such as care, handling, frequency of use and the amount of different users. It is recommended that re-calibration should be performed at an interval, which will ensure that the instrument remains within the desired limits and/or manufacturer's specifications.

The South African National Accreditation System (SANAS) is member of the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA). This arrangement allows for mutual recognition of technical test and calibration data by member accreditation bodies worldwide. For more information on the arrangement please consult [www.ilac.org](http://www.ilac.org)

Calibrated by:  P. SIBANYONI (CALIBRATION TECHNICIAN)	Authorised by:  M. NTUDE (SANAS TECHNICAL SIGNATORY)	Date of Issue: 02 JULY 2018
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Director: Mananka Ntude

Figure 4: Calibration certificate for Norsonic Nor1251 Sound Calibrator, Serial No. 33747.

T.E. Mackenzie-Hoy Pr. Eng. Bsc (Elec) M.S.A.I.E.E., M.S.P.E., IngP (Eur), AmASA (Director)  
 Rachel Viljoen BEng (Mechatronics), T. Matora BSc (Mechatronics), M. Attwood (Adv Dip S.Eng), G Viljoen (Dip QS)

**Appendix B: Recommended Suppliers.**

T.E. Mackenzie-Hoy Pr. Eng. Bsc (Elec) M.S.A.I.E.E., M.S.P.E., IngP (Eur), AmASA (Director)  
Rachel Viljoen BEng (Mechatronics), T. Matora BSc (Mechatronics), M. Attwood (Adv Dip S.Eng), G Viljoen (Dip QS)

Product	Supplier details
Tamper-proof loudspeaker management system	<p><b>Wild &amp; Marr Cape Town</b>            37 Boulevard Way            Capricorn Business Park            Capricorn 7948            Email: stephen@wmc.co.za            Tel: 021 787 9378 / 082 310 4828</p> <p><b>Audiotech SA</b>            317 Lower Main Road            Observatory 7935            Email: info@audiotechsa.co.za            Tel: 021 447 6400</p> <p><b>MARS Music</b>            65 Buitengracht Street,            Cape Town 8001            Email: info@marsmusic.co.za            Tel: 021 426 6325</p>
Automatic door closer	<p><b>Builders Express Hermanus</b>            2 Mussel Road            Hermanus 7200            Tel: 0860 008 965</p>



TP. A. Iheard  
(H. Oliver)

ANNEXURE E 1/35

**OBJECTION TO APPLICATION FOR CONSENT USE AT ERF 10347, 17 LONG STREET, NORTHCLIFF, HERMANUS.**

1. The Hermanus History Society (represented by Dr Robin Lee) objects to an application in respect of the property at 17 Long Street. The application refers to the use of the site "for a nightclub and place of entertainment, which includes live shows and music concerts".
2. The cottage presently standing on the site is one of the few remaining sites in the Hermanus CBD that is recognisably part of the town's heritage. Until recently, it was the location of The Book Cottage (previously of Harbour Road),. The ample space at the rear of the site is undeveloped and would presumably be used for the "live shows and music concerts' contemplated in the application. The music and other noises will inevitably reach several streets in the vicinity. There are private residential properties in these streets.
3. The Society believes that permitting the activities mentioned in the application will inevitably lead to further damage to an important building from the town's heritage and constitute an unacceptable imposition of noise and inebriated customers on businesses in the vicinity, and residents in Aberdeen Street and Hope Street, at least.
4. The History Society further objects to this (and any other application for consent use) in the CBD. The public partition phase of the long-delayed revitalisation of the CBD is not complete, and no formal plan exists to provide guidelines for changing consent use. The Department of Town Planning has never clarified why it continues to advertise applications for changes in consent use when there is no plan to define what are and what are not, acceptable criteria for proposing such changes.

FILE NO:	CP 10347
	North Cliff
SCAN NO:	
	LEE
CONSULTATION NO:	1391393

**Details supporting the Objection**

**Name of objector:** Dr Robin Lee, on behalf of the Hermanus History Society  
**Address:** 32 Fernkloof Village, Fir Avenue, Hermanus 7200  
**Postal address:** as home address  
**Phone:** 028 312 4072  
**Email:** [robinlee@hermanus.co.za](mailto:robinlee@hermanus.co.za)

**Interest in the application:** The Hermanus History Society believes that revitalisation of the CBD, including awareness of its historical importance and its potential to advance the tourist income earned in the area, should be the guideline for all decisions. These considerations preclude the granting of changes to consent use within the Hermanus CBD.

**Reasons for comment:** this is the fourth application in the past nine months for similar consent use of ordinary commercial properties for entertainment purposes and (in the other cases) betting and gambling purposes that must inevitably result in public

TP - 5 MAR 2020

nuisances and make the promised revitalisation of the area yet more challenging. The Hermanus History Society is gravely concerned at the number of applications.

5 March 2020



TP. A. Noord 3/35  
(H. Olivier)

TO  
Overstrand Municipality  
Town Planning Department  
16 Paterson Street  
Hermanus

20 February 2020

FILE NO:	10347
SCAN NO:	HNC 10347
COLLABORATOR NO:	1391387

To whom it may concern

**RE: APPLICATION FOR CONSENT USE: ERF 10347, 17 LONG STREET, NORTHCLIFF, HERMANUS.  
APPLICATION FOR CONSENT USE: PLAN ACTIVE ON BEHALF OF ER SCHIMMER AND BU  
RIEDELSEIMER**

Dear Sir/Madam

I have resided at 6 Hope Street Hermanus, for more than 20 years. We moved here as a family as we have lived here happily for all this time. I would like to continue to live here happily.

I am extremely unhappy with the presence of the White Rabbit. Since last year they have changed the way they are conducting their business and the noise levels have increased substantially and affect the quality of my life. The area is no longer peaceful and quiet, instead there is loud music and the reverberations of the bass of a big sound system. It disturbs my sleep too, and keeps me awake at night.

The White Rabbit has attracted a sordid clientele which behave badly. As a result, the drug dealers now drive and walk around looking for deals. I have seen deals going down in front of my house. I do not want those kinds of people in my suburban neighborhood. It offends me.

The Hermanus Old Town is a very special neighborhood. Because of its unique historical architecture it distinguishes it from other villages, it was a fisherman's village. The Overstrand Municipality cannot allow businesses to operate which would allow this special character to disappear.

The Hermanus Old Town was traditionally where the fishermen lived. It was a residential area. And today most of the fishermen's cottages are still lived in by residents, who have lived here for years. It is not true to assume that the neighborhood is largely commercial, it is not. In addition, many new flats have been built which has further increased the residential population in the village. The residents have the right to enjoy the peace and tranquility and safety of their homes.

The recent Overstrand Municipality Draft Spatial Development Framework proposes an increase of residential dwellings in the Hermanus Old Town. A nightclub is therefore contra indicated.

Most of the businesses which do operate in a Hermanus Old Town are quiet and coexist well with the residents. They are open during working hours. And allow the residents to enjoy the peace and quiet after hours.

I oppose the granting of consent use to the White Rabbit.

With kind regards  
Casper Maree

MP

- 5 MAR 2020



TP. A/hoed  
(J. Olivier)

ENSafrica  
1 North Wharf Square  
Loop Street Foreshore Cape Town 8001  
P O Box 2293 Cape Town South Africa 8000  
doxxx 14 Cape Town  
tel +2721 410 2500  
info@ENSafrica.com ENSafrica.com

The Municipal Manager  
Overstrand Municipality  
P O Box 20  
HERMANUS  
7200  
(sent per email to [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za))

FILE NO: <u>ERF 10347</u> ✓
<u>North Cliff Hermanus</u>
SCAN NO: <u>ENS</u>
COLLABORATOR NO: <u>1390814</u>

S B Levetan/mhn/0459209 our ref  
10347 HNC (3536/2019) your ref

03 March 2020 date

Dear Sir

**RE: ERF 10347, 17 LONG STREET, HERMANUS : APPLICATION FOR CONSENT USE BY E R SCHIMMER AND B U RIEDELSHEIMER [MUNICIPAL NOTICE NO. 6/2020; YOUR FILE ID: 10347 HNC (3536/2019)]**

We act, as you are aware, for Ms D Myburgh, the registered owner of Erf 740, 7 Hope Street, Northcliff, Hermanus, and have been instructed by her to lodge on her behalf the following objection to the above application (hereinafter referred to as "this application"). In accordance with Section 52(3)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (the By-Law), we notify you that the address and contact details at which our client will accept notice and service of documents in relation to this application is care of our offices under the writer's above reference. The writer's email address for such communication is [slevetan@ensafrica.com](mailto:slevetan@ensafrica.com).

This objection relates to the new application by E R Schimmer and B U Reidelsheimer for consent use to establish a place of entertainment consisting of a night club and occasional live entertainment outside and is not to be confused with the earlier application, which is still pending, for consent use by the same owners to accommodate 5 slot machines (gambling machines) on the subject property.

In respect of the earlier application, we lodged our client's comment/objection indicating that in respect of that application our client did not raise an objection for the consent use to accommodate the 5 slot machines, but our client objected to the fact that noisy, live entertainment both inside and outside the premises, was unlawfully occurring and intimated that she objected to any consent use in respect of operating the establishment known as White Rabbit as a night club with live music.

law | tax | forensics | IP

Edward Nathan Sonnenberg, Incorporated registration number 200901820091

M M Katz (chairman) M Mqoliswa (chief executive) MW Mshu (chief operating officer) YA Mandelcorn (chief operating officer)

A list of directors is available on our website <http://www.ensafrica.co.za/who-we-are>.  
Level 2 BBBEE rating

TP - 4 MAR 2020

ENS.AFRICA

Accordingly, a large portion of what we stated in our comment/objection to the earlier application, is repeated herein but we do amplify certain aspects which are contained in the application such as the noise impact assessment as well as features of the Overstrand Municipality Draft Spatial Development Framework (January 2020).

We proceed to set out below details of our client's objection and the reasons therefor as required by Section 52(3)(c) and (d) and Section 52(4) of the By-Law.

#### INTRODUCTION

- 1 Our client owns Erf 740 Hermanus which is situated at 7 Hope Street, Northcliff, Hermanus. We have marked our client's property in green on the locality plan submitted with this application (Annexure "A" hereto) and you will observe that our client's property is in close proximity to the subject property of this application. Our client operates a guesthouse establishment called 'The Vishuis' on her property which has been in operation for over three years. The Vishuis guesthouse has attracted a great number of foreign tourists due to its central situation and upmarket status.
- 2 From a procedural point of view, our client has instructed us that she did not receive notification of this application. If it was sent by registered post, she did not receive a registered slip to enable her to collect same. Our client came across Municipal Notice 6 of 2020 and in this way, learned about the new application. We record that we do find this strange inasmuch as the writer did address a letter to yourselves dated 14 January 2020 to which no reply was ever received.
- 3 As your Senior Town Planner, Ms H van der Stoep, is well aware from email correspondence which has transpired between our client and her in relation to unlawful activities conducted at the subject property of this application (White Rabbit), our client has a direct and substantial interest in the application for the reasons that will become apparent hereunder.

#### OUR CLIENT'S OBJECTION

- 4 It is noted that in the covering letter which accompanied this application from Plan Active Town and Regional Planners dated 9 December 2019, that application is made under Chapter 4, Section 16(2)(o) of the Overstrand Municipality's By-Law on Municipal Land Use Planning, 2016 (By-Law), for the consent use for a place of entertainment on Erf 10347 Hermanus. In the Motivation Report it is stated that the consent use is to establish a place of entertainment consisting of a night club and occasional live entertainment outside. It is furthermore stated that the night club will be located within a portion of the existing pub and grill and the occasional live entertainment will be located outside.
- 5 The White Rabbit has in the past held live music events apparently utilising the open back garden of the subject property, which events have generated loud noise well into the early hours of the morning causing a major noise nuisance and disturbance to our client, her guest house

establishment and her guests. Your Ms van der Stoep is aware of these unlawful events and has engaged in email correspondence with our client in regard thereto. Our client has been advised to resort to lodging complaints with the South African Police Services (SAPS) if such noise nuisance occurs which is of cold comfort to our client bearing in mind that the SAPS do not have the capacity to enforce the Provincial Noise Regulations. On the other hand, the Municipality should and could enforce its Zoning Scheme in terms of the provisions of Chapter 10 of the By-Law.

6. In the email correspondence between Ms van der Stoep and our client, she indicated to our client that the Municipality would only be able to act if an unlawful event would occur. This would be tantamount to taking action after the horse has bolted and would be too little too late in order to protect our client's, and her guests', rights.
7. Furthermore, our client was told by Ms van der Stoep that the White Rabbit was notified that they did not have the correct zoning for live music events and that they need to apply for consent use for a place of entertainment in order to hold such events. Despite not having the correct zoning rights, the White Rabbit continued to arrange, advertise and hold live music events in complete disregard for the rights of others, including those of our client. Examples taken off the White Rabbit Facebook page of these live music events as well as a picture of the rear structure of the premises constructed to accommodate these events, are enclosed in Annexure "B". The last page of this annexure relates to an upcoming live music event to be held on 11 April 2020. This is the Saturday of the Easter weekend when our client instructs us that her guest house will be fully occupied. We note that the event is advertised as lasting from "14h00 tot laat". This event will be completely unlawful as this consent use application will not have been finalised by then. This again demonstrates the operators of White Rabbit's complete disregard to compliance with the law and to our client's and her guests' rights.
8. We are also instructed that Ora de Wet, the occupier of Erf 738, situated at No. 1 Hope Street and marked in pink on Annexure "A" hereto, was told by the operator of the White Rabbit, Clive Gildenhuys, to stop complaining about the noise emanating from his live music events as she was making things difficult for him. He intimated to her that he should be entitled to run his business as he pleases. Our client has recently ascertained that Ora de Wet has placed her property on the market citing the continual noise nuisances from the White Rabbit as the main reason therefor.
9. It is clear that in order to legitimise its unlawful use of the property, the operators of the White Rabbit have sought to obtain the necessary consent use to enable them to operate a night club and live music events at their establishment. In so doing, and recognising that the live music and the operation of a night club will constitute a noise nuisance to persons in the position of our client, the applicant procured a noise impact assessment from Mackenzie Hoy Consulting Acoustics Engineers (hereinafter referred to as "the report"). The report is dated 24 May 2019 and we note from the copy submitted with the application that it is still marked "DRAFT". The reason for this is not readily apparent.

10. Our client's comments on the noise impact assessment are as follows .
- 10.1. It is noted that on the night the measurements were taken, 17 May 2019, the noise levels, with both the venue entrance doors closed and the outdoor area doors closed, the level of noise emanating from the venue constituted a "disturbing noise". In other words, the noise levels exceeded that permitted in terms of the Western Cape Noise Control Regulations, 2013.
  - 10.2. It was unclear to us whether on the night the measurements were taken (17 May 2019) there was a live music event or whether the night club was functioning. From what was advertised on the White Rabbit's website, it would appear that some sort of event was taking place to attract patrons. See Annexure "C" hereto. While it is noted that the special was running only between 7 and 8 pm, it may have had the effect of attracting more patrons than would otherwise have been the case on those two evenings.
  - 10.3. We raised a number of queries with Mackenzie Hoy Consulting Acoustic Engineers, one of which was whether Friday night 17 May 2019 was an ordinary Friday night at the establishment or whether there was a special event taking place. The response from the expert was to the effect that they did not know but it seems clear from Annexure "C" hereto that there was an event taking place at the venue that evening.
  - 10.4. If the venue would operate as a night club, and the venue doors do not remain closed, the level of the disturbing noise would be even higher. Table 1 to the report demonstrates that with the doors open, the noise levels are significantly higher. In this regard, we raised as a query with the expert whether the team testing the noise levels on the night in question observed any of the patrons milling around on the pavement outside the premises as young people usually do at night clubs. The answer we received was that *"it's hard to say who is a patron and who not"*. While this may be so, the obvious inference to be drawn by this response is that there were people milling around on the pavement. In such a case, we would expect the venue doors to be open as this is the usual behaviour of young people attending these kinds of night spots. In such event, the disturbing noise levels would be exacerbated, as table 1 clearly demonstrates.
  - 10.5. As indicated, Table 1 to the expert's assessment records that the noise levels with the venue doors open were significantly higher than the measurements taken with the doors closed. With the doors closed, the noise levels caused by the amplified music constituted a disturbing noise. With the venue doors open, the noise levels were significantly higher and it is for this reason that the expert recommends as one of the mitigating measures that the entrance doors both to the venue and to the garden area be kept closed at all times. However, it may be very difficult for the operators of the White Rabbit to implement such measures as patrons will come and go and the doors to the garden area will frequently be

opened when those patrons get served in that area. Such a mitigating measure is therefore hardly effective.

- 10.6. A further mitigating measure suggested by the expert is the installation of a tamper-proof loudspeaker management system to ensure that noise from the venue does not exceed 57.0 dBA on the "property projection plane". In accordance with the regulations, a "property projection plane" means a vertical or horizontal plane, whichever is applicable, on a boundary line of premises defining a boundary of the premises in space. Our client assumes that this means on the outer boundaries of the White Rabbit premises. What is not clear from the report, is what the noise levels would be at the neighbouring residential sites if this was adhered to.
- 10.7. Our client also considers it significant that measurements were not taken on a night that a music event was taking place at the establishment. To accommodate such events, our instructions are that the outside area is filled to capacity and the live band usually performs from a stage that is constructed in the garden area. Clearly, noise levels will be significantly higher during these events. It is noted that notwithstanding the expert's recommendation that no amplified music be permitted in the outdoor areas of the venue and that the existing powered loudspeaker at the outdoor venue must be removed, the Motivation Report states that the outdoor events will not continue beyond 22h00 in the evening taking into consideration the residential properties located in the vicinity. The Motivation Report suggests that professional sound engineers will be appointed to ensure that the outdoor shows have a minimum impact on the residential properties in the vicinity but goes on to state *"unfortunately, the performing artists will make use of amplified sound equipment that could exceed the noise limits prescribed ..."*. For this reason, the proposal is that these events stop at 22h00. This proposal is at variance with the applicant's own expert and should not be countenanced by the Municipality under any circumstances.
11. You are well aware that our client lodged an objection for a similar application in respect of an establishment known as The Mock Turtle Night Club on Erf 702, 3 Mitchell Street, Hermanus, under your reference 702 HNC; 2977/2019, which application has been withdrawn. Erf 702 is the adjacent property to the subject property of this application and we have marked same in blue on Annexure "A". In our client's objection in respect of the Mock Turtle application, we provided detail of how that application would breach a number of the applicable planning instruments operative in the area. The same considerations would apply in respect of this application.
12. While the Mock Turtle application impacted on the heritage area of Aberdeen Street, we are instructed that many of the properties in Long Street are of heritage status and indeed, from some of the photographs set out in the Motivation Report, this is quite apparent. However, the Motivation Report is misleading where it states in paragraph 3.3 that *"land uses that surround the subject property is general businesses, take-aways, shops, offices, public roads and public parking areas*

and a few General Residential Zoned properties". As we demonstrated in the objection filed in respect of the Mock Turtle application, there are a number of guest houses and properties of a residential nature in the surrounding neighbourhood all of which would find the activities which a night club and live music venue would allow, to be irreconcilable with their interests.

13. It is significant that in the table set out at the end of paragraph 3.3 of the Motivation Report when listing the properties with a residential zoning in the area with their estimated distance from the subject property of the application, that our client's property, Erf 740, which is approximately 130 m from the subject property, is not even listed. In view of our client's comments/objection to the previous application dealing with the 5 slot machines, this omission was probably by design. Having regard to the close proximity of a number of residential properties to the White Rabbit premises, it places the assertion that "surrounding properties are ... zoned for business purposes, restaurant and pub uses" in paragraph 3.2 of the Motivation Report into some doubt. In addition, the assertion in paragraph 3.3 of the Motivation Report that land uses "that surround the subject property is general businesses, take-aways, shops, offices, public roads, public parking areas and a few General Residential zoned properties" is misleading. A number of the general residential zoned properties in the area are operating as guest houses including our client's Vishuis guest house. And these are not even mentioned in the report.
14. While the subject property has a Business Zone 1 zoning and various surrounding properties are similarly zoned, a number of surrounding properties are zoned for residential use so that the area in which the subject property is situated can at best be described as an area where various uses are zoned but it is certainly not primarily a purely business use area. From a consideration of the nature of the area as evidenced from a Google map (Annexure "D" hereto) it would seem that the subject property can best be described as being on the periphery of the CBD.
15. In the chapter dealing with Hermanus Central in the Overstrand Municipal Spatial Growth Management Strategy – Final Report (October 2010), the subject property falls within the area identified as Planning Unit 13:
  - 15.1. It is stated in this report that Planning Unit 13 "consists of the Hermanus CBD which is a heritage area and is mostly used for business purposes with limited number of permanent residential units". (emphasis supplied) The report goes on to recommend that "given that this area is an economic area it will subsequently form part of mixed use developments being residential developments on top of the business buildings". It is envisaged in the report that this proposal can potentially contribute to 1,242 additional dwelling units at a gross density of 30.5 dwelling units per hectare.
  - 15.2. The proposed use by the White Rabbit of its rented premises as a place of entertainment for a night club and live music events, within this area would not fit in with this growth strategy. Such use by the White Rabbit would detract from the growth strategy as potential buyers of

any newly created residential opportunities within the area would not want to be disturbed by the noise and behavioural patterns of the patrons of the facility and therefore our client contends, unlike the applicant, that the proposed consent use is directly relevant and would contravene this growth strategy.

- 15.3. The statement in paragraph 3.8 of the Motivation Report that the "*proposed growth management strategy has no relevance to the proposed land use change*" is therefore clearly wrong. So, too, is the statement, also contained in paragraph 3.8 of the Motivation Report that "*the proposed consent use application falls within the prescribed guidelines for the specific area of Hermanus*". On the contrary, and having regard to our further submissions set out hereinafter, this is clearly wrong.
16. In terms of the Overstrand Municipal Wide Spatial Development Framework (SDF) which was formally adopted by the Municipality on 27 October 2006 and incorporated into the Overstrand Integrated Development Plan for 2006/2007, the following aspects are highlighted:
- 16.1. In Volume II : Development Strategy of the SDF in dealing with Business and Economic Development policy, Policy Statement 21.2 states, *inter alia*, that "*business/commercial related land uses should be confined to the core urban areas (central business district) and secondary/lower order nodes. The infiltration of business/commercial uses into residential areas or the periphery of the CBD, should be avoided, unless beneficial to local residents*". (emphasis supplied) Policy Statement P21.7 is to the effect that "*home-enterprises and house shops should be permitted in residential areas, provided that the uses will not impact on the well-being of residents in the neighbourhood*". (emphasis supplied)
- 16.2. The owners of the surrounding properties, and in particular the residential properties in close proximity to the subject property which includes our client's guesthouse, have a constitutional right to an environment "*that is not harmful to their health or well-being*" (Section 24 of the Constitution of the Republic of South Africa, 1996). The concept of "*well-being*" has been decided by our Courts as having a low threshold. So, for example, in the case of *Hichange Investments (Pty) Ltd v Cape Produce Co (Pty) Ltd t/a Pelts Products & Others* 2004 (2) SA 393 (E), the Court found that the well-being of workers in a property adjacent to a tannery would be negatively impacted by the bad odours emanating from the open tannery. Residents in the surrounding properties as well as guests of the guesthouses will certainly be negatively impacted by the noise and other disturbances emanating from the White Rabbit which, as this application states, is a late night venue as it stays open until 2 am. At present, most of the businesses in the surrounding properties close at 17h00 and there is thus no disturbance to residents and guests in guesthouses of the surrounding properties. Being allowed to conduct live music events in this context would be viewed by our client and the surrounding residential property owners as being a "public nuisance".

- 16.3. The statement therefore in paragraph 3.8 of the Motivation Report that *"the proposed land use change will not have a negative impact on the surrounding businesses as mitigating measures will be put in place ..."* is therefore rejected by our client. On the contrary, our client contends that the proposed activities associated with a night club and live music events within the existing premises will most certainly have a negative impact on her and her guests in much the same way that has happened in the past when live music events have been conducted from the subject property. The live music events attract large crowds of young people and therefore it is not only what happens inside the premises that matters. It is what inebriated young adults get up to outside in the streets around the premises that matters. Experience has shown that inebriated young adults get involved in loud behaviour, fights, vehicles doing wheelies and drug trading in the surrounding streets. This kind of behaviour is typical in the area outside most night clubs and bars. In regard to loud music events which have been conducted at the subject property, no real attempt appears to have been made to contain the noise within the premises. On the contrary, these events appear to have been held in the open back garden of the premises, thus exacerbating the problem. During the previous live music events, the manner in which the White Rabbit traded totally disregarded the rights of the neighbouring residents including our client and in this way, most definitely infringed our client's and her guests' constitutional right to an environment that is not harmful to their well-being.
- 16.4. Under the heading "Urban Conservation Districts" the following statement appears: *"Protecting the urban heritage provides an attractive incentive for tourism development and related investment in the urban area"*. The fact that there are a number of guesthouse/bed and breakfast establishments in the area bears this aspect of the SDF out.
- 16.5. One of the Local Spatial Development Principles in the SDF is to maintain the unique village character of Greater Hermanus. This finds application in the Land Use Proposals at the Local Planning Level (LPL) with LPL 6 suggesting that *"high density residential uses should be promoted within the CBD area"* and LPL 8 promotes the protection and management of heritage resources aimed at, *inter alia*, including *"the fine-grained urban form and positive house-street relationships of the village precinct"* and, in regard to the core historical area of Hermanus, retaining *"its fine grained urban form and positive streetscape qualities"* and *"its historical fabric and activities relating to the role of the town as an early 20<sup>th</sup> century holiday and tourist destination"*. Amongst the recommendations in this section of the SDF is the recommendation to *"concentrate business uses and promote high density residential uses within the central business district of Hermanus town"*.

- 16.6. For all the above reasons, to allow a consent use for the operation of a night club and to hold live music events on the subject property would be tantamount to breaching the SDF.
17. We have referred to the existing SDF but are aware that the Municipality has published in January 2020 a new Draft SDF. While this is not in force at present, it is clear from the proposed SDF that the Municipality considers that the historic CBD continue to be protected by a local area Heritage Protection Overlay Zone as it is recognised that it is of unique value. The use of the subject premises as a night club and a venue for outdoor live music events denigrates from this ideal. In dealing with the objective to maintain the Municipality's National and International Tourism Market, the proposed SDF proposes to encourage and facilitate the development of high quality tourism and heritage related infrastructure utilising heritage buildings where appropriate and in this way ensure the inclusion and enhancement of tourism. The consent use application, for all the reasons set out above, will impact negatively on our client's establishment which, as we have mentioned, sees repeated visits by international tourists. Allowing the consent use, would be in direct contravention of this proposed policy.
18. Under the heading "Local Spatial Development and Growth Management Principles" in paragraph 5.8.3.1 of the proposed SDF, it is stipulated that conservation of cultural heritage resources, including the character of the historical fishing/holiday areas of Hermanus and the number of buildings of historical, architectural and social value should be promoted. Allowing a night club in the historical centre of the CBD runs contrary to this principle.
19. In paragraph 3.10 of the Motivation Report, the applicant suggests that the consent use application to conduct a night club and live music events at the subject property is consistent with the Hermanus CBD Regeneration Framework. While it is clear that the Mitchell Square area is identified for regeneration and redevelopment, the framework suggests that the redevelopment of Mitchell Square has the potential to become the heart of the Hermanus CBD as a vibrant public amenity for both locals and visitors to the town. While the framework does suggest ground floor activation with new business/café/restaurant opportunities, it does not suggest the establishment of night clubs and venues for live music events which will impact negatively as we have shown herein on the heritage nature of the CBD and on establishments such as our client's. To suggest therefore, as the application does, that the proposed consent use can be accommodated within the framework's guidelines and that the proposal is in line with its recommendations, is denied by our client.
20. It is clear from Annexure "D" hereto that there are a number of properties surrounding the subject property that are used for residential purposes. We have marked these properties with a red dot on Annexure "C". There are also a number of village type pubs in the surrounding area, namely, Tipples in Mitchell Street, Bojangles on the Main Road and Jack's Bar between High Street and the Main Road. There is also a restaurant/pub called Puzzles in High Street. These establishments do not play loud music and are quiet village type pubs. The position regarding the White Rabbit is different. This establishment has also begun to operate as a night club playing loud music to attract

patrons. The property in which this establishment is situated, is not authorised to operate as a night club. Written complaints have been submitted by local residents to the Municipality and with the SAPS regarding the noise disturbance. Your Ms van der Stoep confirmed to our client that this establishment did not have the requisite zoning rights and that her department needed to address this issue. Over and above this, and as indicated on Annexure "D" there are other establishments such as Barney's Sports Bar (which is constantly acting in conflict with the neighbouring residents) and a number of restaurants in the area including Barefoot Cook, Tosca's, The Cuckoo Tree, Rossi's Italian, Tulip, Oskars, Betty Blue, The Fisherman's Cottage, Embers, Fabio's and The Eatery. None of these restaurants have created any noise problems for our client and the guests of her guesthouse. Further afield there are a number of other restaurants as can be seen marked on Annexure "D".

21. Section 66(1) of the By-Law sets out the general criteria for the consideration of this application. For the purposes of this objection, we have dealt with the applicability of the Municipality's SDF and other planning policies that have been issued to guide decision making. In regard to the planning principles referred to in Chapter 6 of the Provincial Land Use Planning Act No. 9 of 2015 (LUPA), our client notes the rather limited submissions contained in paragraph 3.11 of the Motivation Report. In regard to the principle of "spatial justice", our client has no comments. In regard to the principle "spatial sustainability", our client disagrees with the contentions set out in the Motivation Report:
  - 21.1 Firstly, to the extent that activities may be conducted from the subject property, it is not correct that this application will have no impact on the conservation worthy areas of the Hermanus CBD. We have indicated above how the proposed use of the premises as a night club with live music both inside and outside will impact negatively on the heritage resources in the area and how it will impact negatively on the surrounding landowners', including our client's, right to an environment that is not harmful to their well-being.
  - 21.2. Secondly, the rather glib statement that *"spatially the land use will be in keeping with the business character of the area that consists of general businesses, take-aways, shops, offices, public roads and public parking areas and limited residential properties"* is superficial. The statement fails to deal with the heritage resources in the surrounding areas. In particular, Section 59(2)(a)(vi) and (vi) of LUPA sets out, as part of the spatial sustainability principle, that land development must be promoted *"in locations that are sustainable and limit urban sprawl"* and that *"result in communities that are viable"*. From the analysis set out by us above, our client disputes that these planning principles have been adequately considered by the applicant. It is clear from our analysis that allowing consent use for a night club with live music and live music events on the subject property, is unsustainable and will render some of the surrounding land uses as unviable. Guests who have used our client's guesthouse are predominantly visitors from overseas who will post unfavourable reports on various sites such as TripAdvisor and this may well lead to a substantial fall-off of business not only for our client's establishment, but other

establishments in the area as identified on Annexure "D" hereto. Tourism has, and remains, Hermanus' major economic activity and the sustainability of the tourism industry may be severely prejudiced if consent use for a place of entertainment for a night club with live music and live music events is allowed into the quieter and more quaint areas of the CBD that we have described above.

- 21.3. Thirdly, the Motivation Report does not deal at all in paragraph 3.11 with the planning principles in Section 59(2)(b) of LUPA. In this subsection, provision is made that *"the sustained protection of the environment should be ensured by having regard to"*, *inter alia*, provincial heritage and tourism resources and the economic potential of the relevant area. Our client contends that the consent use applied for on the subject property would infringe these planning principles.
- 21.4. Fourthly, if one considers the provisions in Section 59(3) of LUPA dealing with the planning principle of efficiency, then it is clear that none of the categories making up this principle are even addressed. The allegation in paragraph 3.11 of the Motivation Report that the proposed night club will be easily accessible to the locals and tourists because there is ample parking available does not resort under any of the principles set out in Section 59(3).
- 21.5. Finally, our client agrees that the spatial resilience planning principle set out in Section 59(5) of LUPA does not find application in this application. However, in regard to the planning principle embodied in Section 59(4) relating to the principles of good administration, for the reasons set out in our analysis above, we would encourage the decision maker to find that this application will exacerbate negative financial, social and environmental impacts and that it does not amount to an appropriate utilisation of the subject property (Section 59(4)(g) and (i)).

#### CONCLUSION

22. In conclusion, our client, as a directly interested and affected party, objects to this application for all the reasons submitted above and in particular for the negative impact that the proposed night club with live music and live music events will have on her and her establishment.
23. In the event that this application is referred to the Municipal Planning Tribunal (MPT) for determination, we advise that our client wishes to make an oral representation to the Tribunal and we therefore request the administrator to advise us in advance of the date of the MPT hearing so that we can ensure that 14 days prior thereto we can request in writing to make a representation at the hearing as envisaged by Section 77(3) of the By-Law.
24. In order for us to ensure that such representation is apposite, we request that prior to the 14 day cut-off period, a copy of the planning report to the MPT be made available to us so that we can consider any aspects thereof that require our clarification on our client's behalf at the hearing.

Kindly acknowledge receipt of this objection.

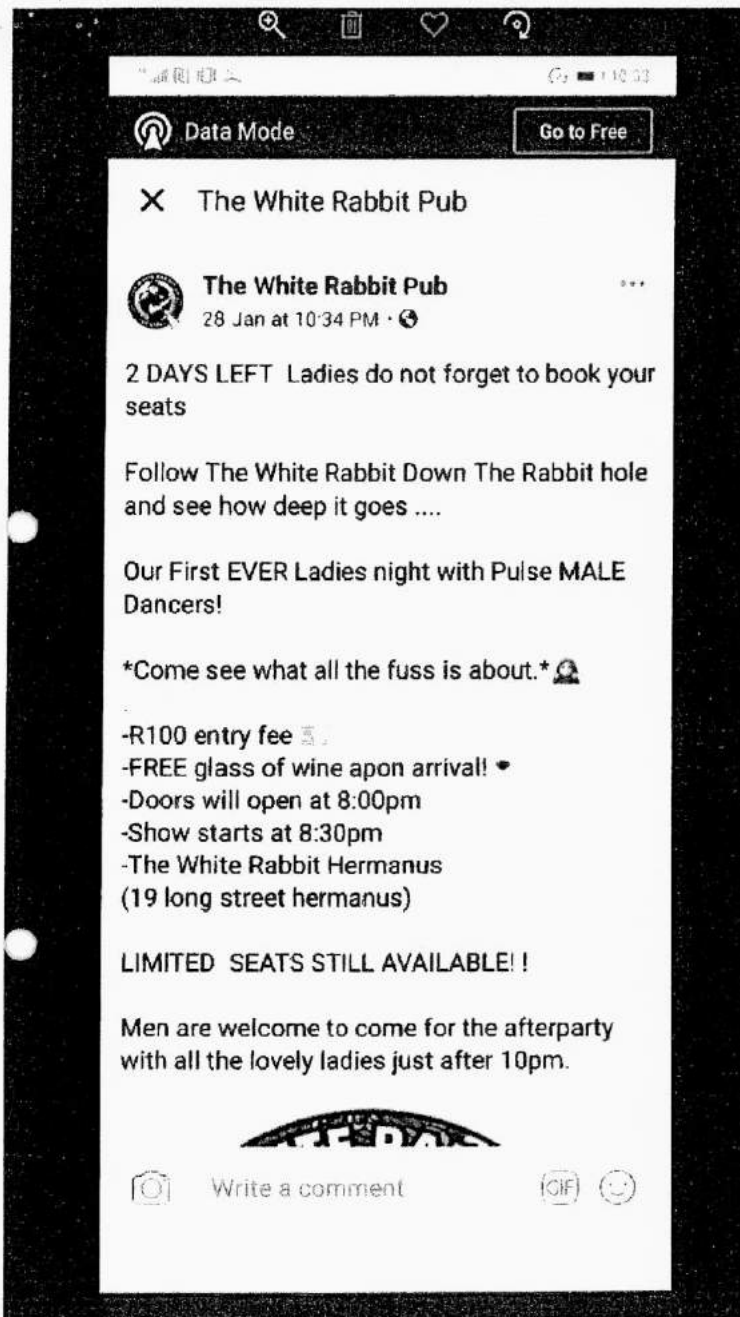
Yours faithfully  
**EDWARD NATHAN SONNENBERGS INC.**

Per: 


16/35  
ANNEXURE "A"



<b>PLAN</b> <b>Active</b>	Scale: NTS	Plan Description: LOCALITY MAP	Property Description: ERF 10347 HERMANUS	Scale: NTS Drawing No: her10347.dwg Date: 11/2016
	State-of-Streetsplanners Town & Regional Planners			



Data Mode Go to Free



**SEP 13** **Pik Swart Live at The White Rabbit Pub**  
 Public · Hosted by Pik Swart and 1 other


Interested
Going
Save
More

🕒 **Fri, 13 Sep at 7:00 PM - 10:00 PM SAST**  
 Event started one month ago

📍 **The White Rabbit Pub**  
 19 Long Street, 7200 Hermanus, Western Cape · 93.8 km

ABOUT
DISCUSSION

---



**Went** **Interested** **Shares**

2
10
6

🔍 🗑️ ❤️ 🔄

📶 Data Mode Go to Free

**X The White Rabbit Pub**

-The White Rabbit Hermanus  
 (19 long street hermanus)

**LIMITED SEATS STILL AVAILABLE!!**

Men are welcome to come for the afterparty  
 with all the lovely ladies just after 10pm.


👍 Like 💬 Comment ➦ Share

📷 Write a comment... 📷 😊

RETIER 113:53


Data Mode Go to Free

**X Posts**

 **Johan Johnson** ▸ Hermanus ...  
13 Aug at 10:50 AM · 🌐

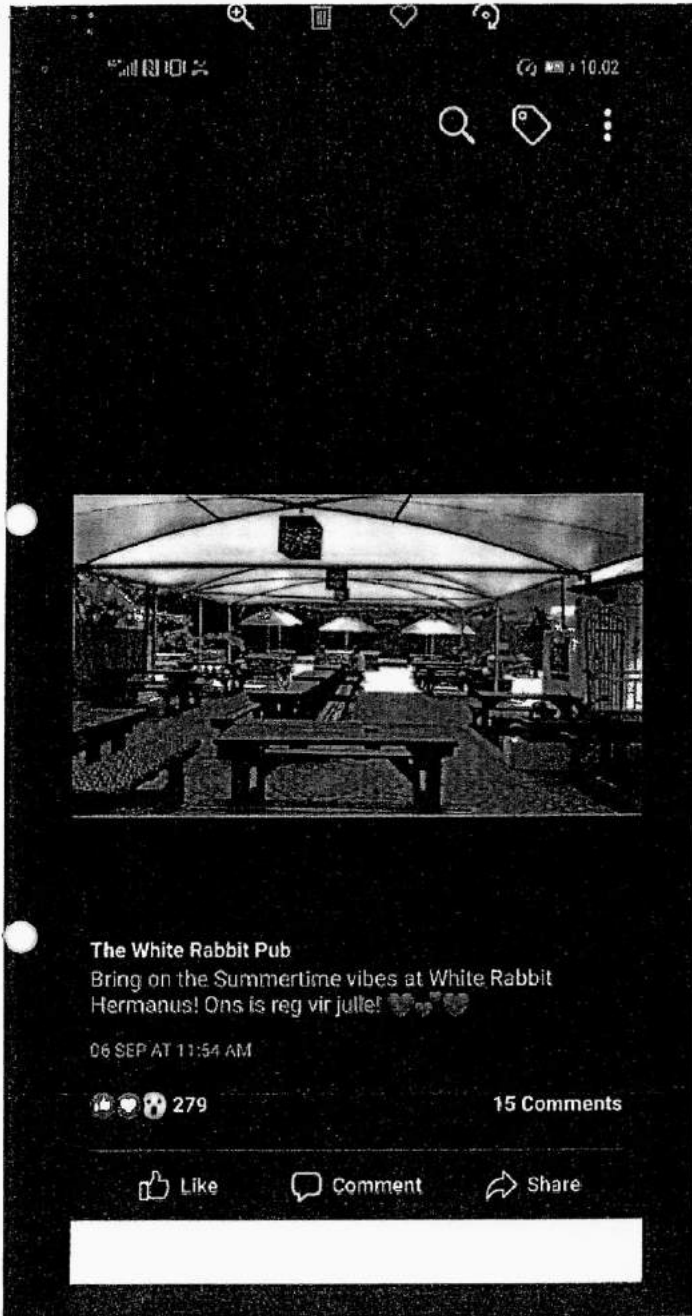
Join us for an incredible day of live music on 28th of September at the White Rabbit, Hermanus. Tickets available at venue. Loads of specials available. First time in Hermanus, Crafted BOET BEER on tap, and Vuilhond Brandy on tap. A full fun day, we cater for the whole family, young and old! This will be something not to be missed. — with **Izak Burger** and **Viljoen Retief Full**.

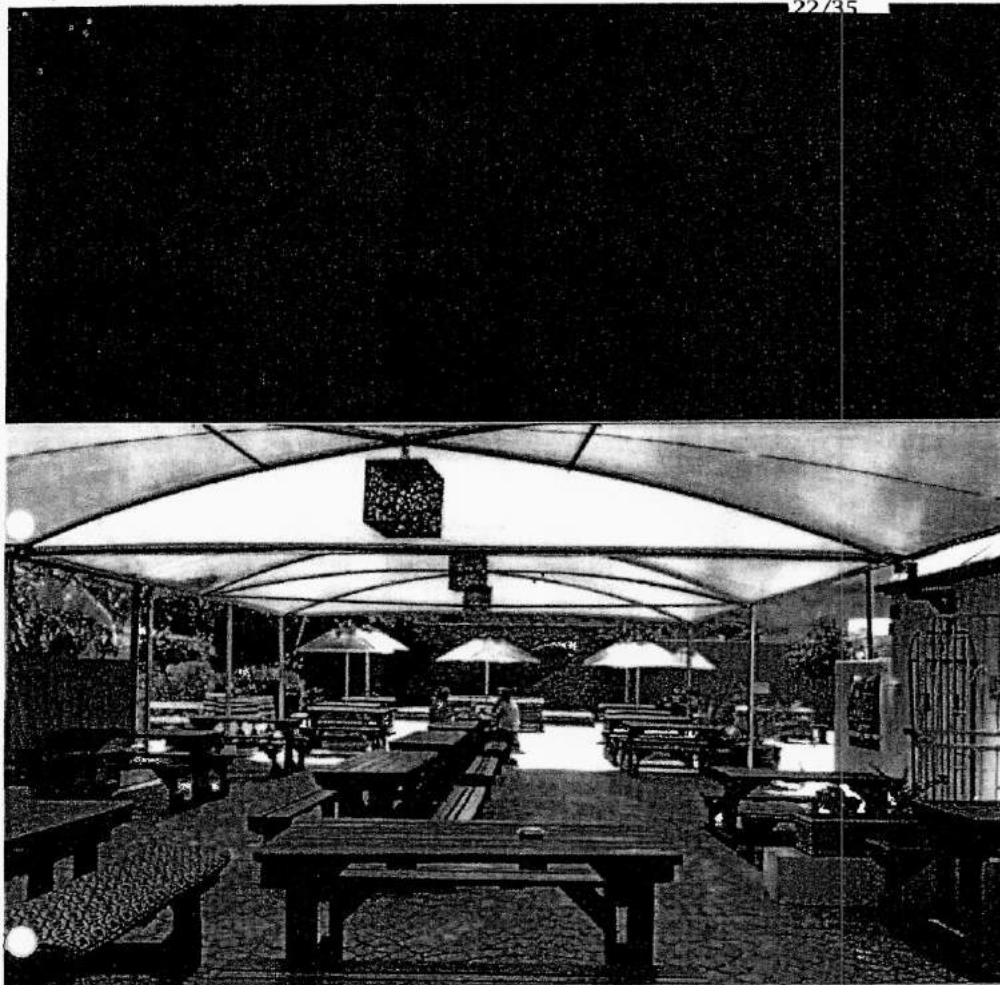
**WHITE RABBIT**  
HERMANUS  
PRESENTS



Background music	
Live DJ by HIS Media from 11:00	
Byron Minnie	15:00 – 15:45
Marochelle	16:00 – 16:45
1915 Band	17:00 – 17:45
Byron Minnie	18:00 – 18:30
Burger Le Roux	18:45 – 19:30
Viljoen Retief	19:40 – 20:25
1915 Band	20:30 – 21:15
Burger Le Roux	21:20 – 22:15
Viljoen Retief	22:30 – 23:15
Background music	
Live DJ by HIS Media *till 24:00	

To post and comment, join **Hermanus** Join

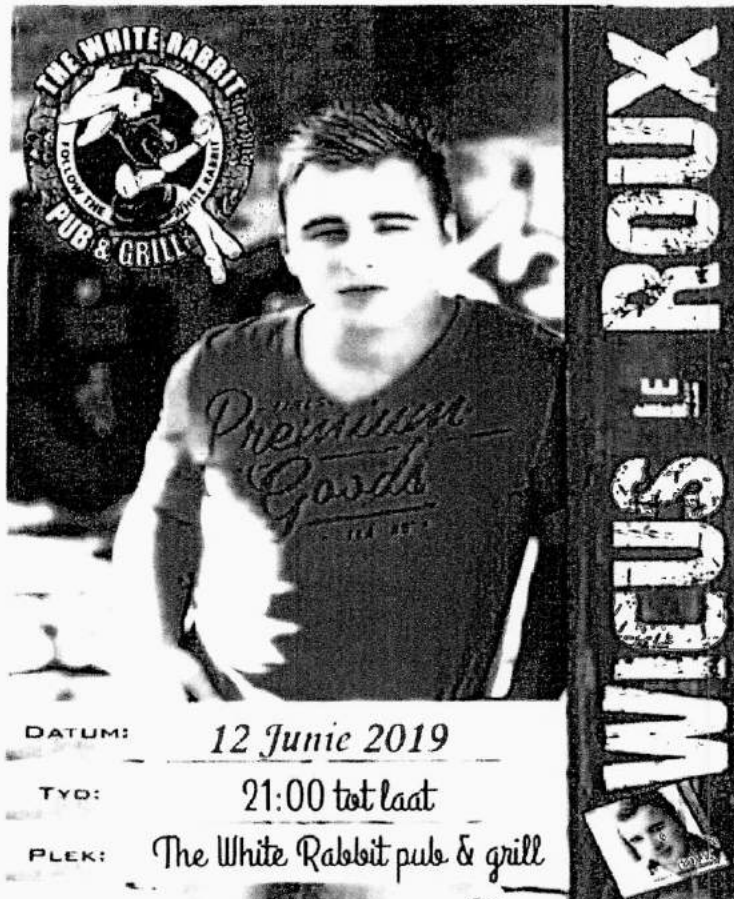




**The White Rabbit Pub**

Bring on the Summertime vibes at White Rabbit  
Hermanus! Ons is reg vir julle! 🍷💕💕💕

06 SEP AT 11:54 AM



**DATUM:** *12 Junie 2019*

**TYD:** *21:00 tot laat*

**PLEK:** *The White Rabbit pub & grill*



**R50 INGELEGDE KERRIEVIS  
R100 KREEF & SLAAI**



**MarulaBoom 1925Band Marochelle Munro**

**R50  
INGANG**

—————▶ **GROOT PROMOSIES!**

**KWV**



**LITE**



Home Posts Photos Videos Reviews



**The White Rabbit Pub**

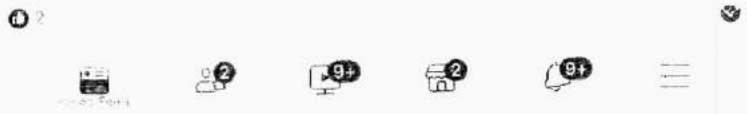
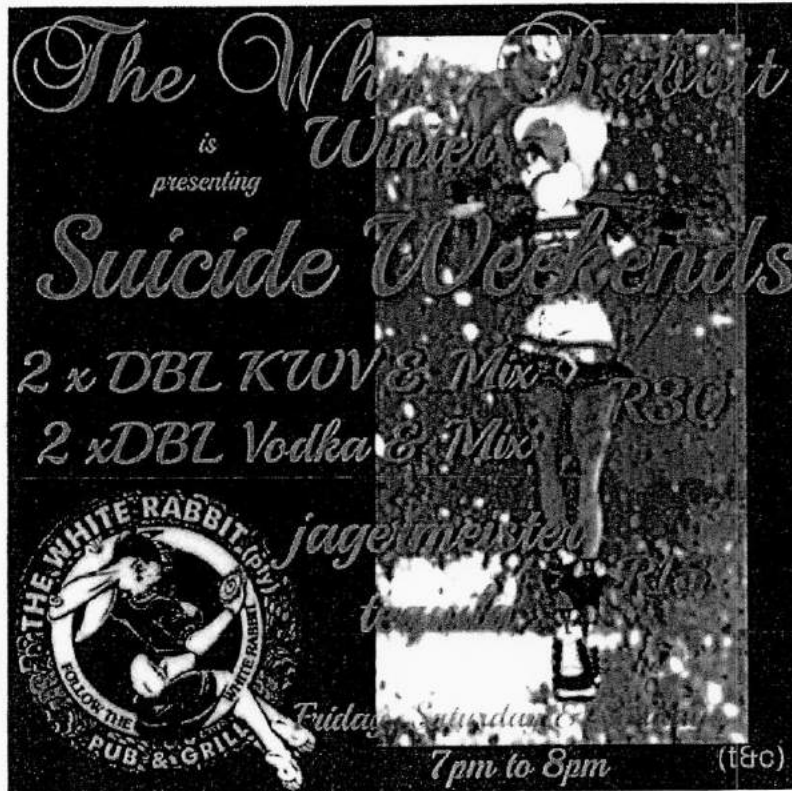
1<sup>st</sup> May 2019 · 🌐

Follow The White Rabbit down the rabbit hole and see how deep .....

#shareshare

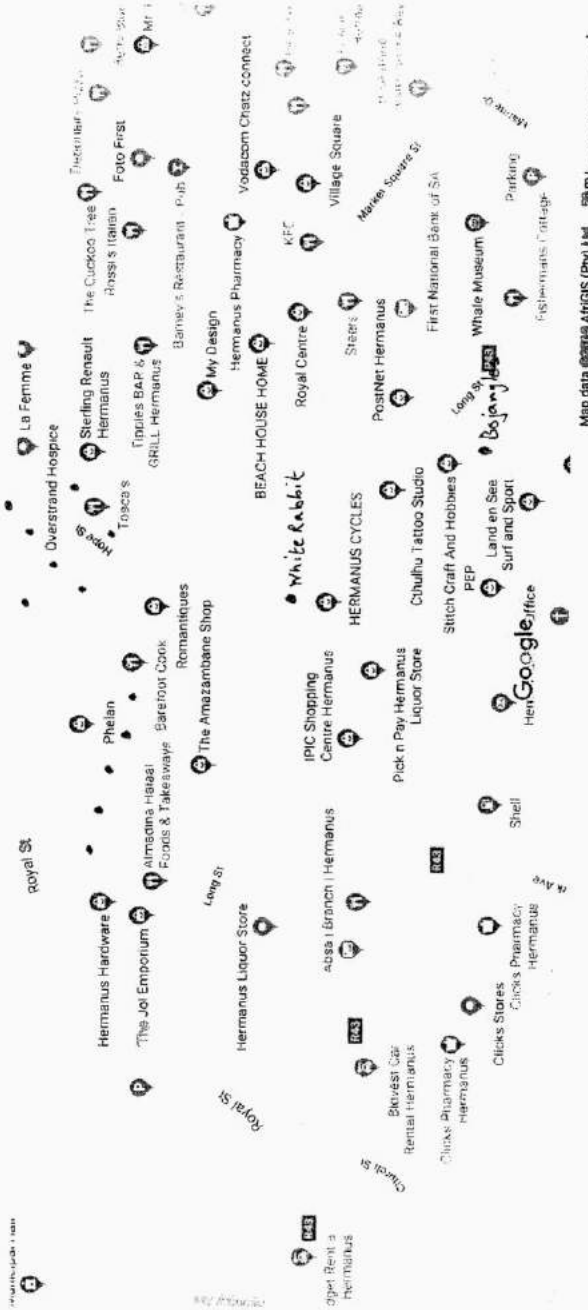
See Y'all

Hop Hop



Google Maps

Google Maps



<https://www.google.com/maps/@-34.41936,19.24056,18z>



Page 1

Hermanus, 2 March 2020

TP- A. / throat  
(H. Olivier)

Overstrand Municipality  
16, Patterson Street  
Hermanus  
Email : [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)

FILE NO:	EF 10347 v
	North Cliff Hermanus
SCAN NO:	
	STEINER
COLLABORATOR NO:	
	1390809

To your kind Attention

**OVERSTRAND MUNICIPALITY  
ERF 10347, 17 LONG STREET  
NORTHCLIFF ,HERMANUS :  
APPLICATION FOR CONSENT USE:  
PLAN ACTIVE ON BEHALF OF E, R  
SCHIMMER AND B.U RIEDELSHEIMER**

Ladies and Gentlemen,

we :

Maria Grazia and Wolfgang Steiner  
Home Adress : Georg-Dehio-Weg 5  
37075 Goettingen, Germany  
mail : [grazia.steiner@googlemail.com](mailto:grazia.steiner@googlemail.com)  
Mobil 079 104 04 68

**As owner of the Property ERF 781  
24, Mitchell Street  
Hermanus**

**COMPLETELY DISAGREE** with the intention of establishing a place of entertainment consisting of a night club and occasional live entertainment outside. (White Rabbit and Grill).

TP - 4 MAR 2020

The center of Hermanus is not only a business zone but also a pleasant and practical residential area for many inhabitants, not a predominant business area (many side streets)!!!

We have already a few noisy places in town, also in the Mitchell Street, with very unpleasant traffic problems, car racing at night, loud high-tuned motorcycles, loud music, drunken people, which causes us trouble and disturb our sleep at night.

(We have already complained with a letter a couple of years ago).

We are about 6 months a year in Hermanus and chose this place as a beautiful place by the ocean, with wonderful art galleries, nice shops with a remarkable choice of handicrafts, practical location in town with access to all facilities.

We do not want the town to become loud, noisy and maybe dangerous.

I am sure that the rules you describe, will not be followed once the business has begun, the music will be too loud, the control with not work, also it will disturb very much the many nice adjacent restaurants. And probably until 2,00 at night (don't tell me that a night club stops the music at 10,00 !)

And do not emphasize the employment possibilities, some waiters, two barmen, two cooks, one manager and some Streeptease girls ???

The whale coast mall is not the only place we want to shop, as retired people we enjoy very much not having to drive all the time we have to buy something.

There must be other alternatives to make the town more and more interesting.

The rooms could be used for art schools, meetings, conventions a.s.o

The events you are listing :

Whale Festival, wine and food festival, FYNARTS FESTIVAL, are events which only last a few days and don't impact continuously the pleasant a peaceful atmosphere in town (lively enough).

Page 3

The night club cannot be compared with these events, it will be a permanent noise source, and an amenity which MOST citizens in town DO NOT NEED OR WANT !!!

Also,, the VARSITY project could profit and rent some rooms for teaching courses.

A multipurpose space, for exhibitions, occasional markets (Easter, Christmas.....) could be established, or concert rooms, for small groups an classical music !

You can find a property outside town for a night club and the owner can provide transportation to and from such a place. And sufficient parking lots !

**SO, DON'T DO THIS MISTAKE !!!! NO NIGHT CLUB IN HERMANUS !**

Vours faithfully,

Grazia and Wolfgang Steiner

**Loretta Gillion - Objection to the proposed White Rabbit nighthclub**

**From:** "Irma McPherson" <mcpherson@iafrica.com>  
**To:** <loretta@overstrand.gov.za>  
**Date:** 01/03/2020 11:33 AM  
**Subject:** Objection to the proposed White Rabbit nighthclub



TP - N. Ahearne  
C.I. Olivier

Dear Sir / Madam,

Re : NOTICE TO AFFECTED PERSONS ( File Ref 10347 HNC )  
OBJECTON TO THE WHITE RABBIT ESTABLISHING A NIGHTCLUB  
( Erf 10347 Northcliff )

I am the owner of Erf 737 Northcliff ( No 3 & 5 Hope Street ) which is located about 80m from the proposed entertainment area of the White Rabbit.

Our property ( Erf 737 ) was acquired in 1996. We bought the property because it is situated in a quiet residential and heritage area within walking distance of shops and restaurants .The fishermans cottages ( 3 & 5 Hope Street ) were established approx 120 years ago. My wife and I are almost 80 years old and often have our three granddaughters ( aged 10 to 15 years ) to stay over weekends and holidays.

If the Municipality is promoting this area of Northcliff as a residential area with a mix of retaurants cafes and bookshops etc., I fail to see how the Municipalty could allow the establishment of a night club so close or within this quiet residential area where families with children of all ages live.

I strongly object to the establishment of a night club ( entertainment rights ) at the White Rabbit Pub and Grill, but have no objection to the restaurant itself.

I respectfully request the Municipality not to approve their application to run an entertainment business ( night club ) at this location.

Thank you  
Graham McPherson

FILE NO:	Erf 10347 ✓
	North Cliff Hermannus
SCAN NO:	HNC 10347
COLLABORATOR NO:	1389434

TP - 2 MAR 2020



18 February 2020  
 Overstrand Municipality  
 16 Patterson Street  
 Hermanus  
 By email: [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)

TP- 1A/Heart  
 Kl/ Olivia

FILE NO:	2F 10347 ✓
SCAN NO:	HNC 10347
COLLABORATOR NO:	1385357

31/35

B.M.Shaw.  
 17 Mitchell Street.  
 Hermanus.  
 7200.

FOR URGENT ATTENTION

Dear Sirs

**ERF 10347, NORTHCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA:  
 APPLICATION FOR CONSENT USE: PLAN ACTIVE TOWN AND REGIONAL  
 PLANNERS ON BEHALF OF Mr CLIVE GILDENHUYS (OWNER OF WHITE  
 RABBIT PUB AND GRILL ON THE PROPERTY OF ERF 10347 OWNED BY  
 ER SCHIMMER AND BU RIEDELSHEIMER AND LEASED FROM THEM.**

**COMMENTS AND OBJECTION**

**OVERSTRAND MUNICIPALITY App ID REF: 3536/2019 [H vd Stoep]  
 Municipal Notice 6/2020**

In accordance with Sections 51 and 52 of the Overstrand Municipality Bylaw on Municipal land Use Planning of 2015 I hereby submit the following comment and objection regarding the above Application.

I am the owner of Erf 760 Hermanus, situated at 17 Mitchell Street, Hermanus, and will be severely impacted by it if the change of use is allowed.

**Object to the Application for Consent use being allowed based on the following:**

The proposed change in use of Erf 10347 will impact on my peaceful use and enjoyment of my property. We are retired and live full time on the property.

There are many residents in this area and the Applicant's averment that Erf 10347 is in an area where there are only businesses located is simply not true as many properties in Mitchell and adjacent Long, High, Dirkie Uys, Aberdeen St and Hope Street are residential.

The Applicant conveniently only lists the few restaurants and bars in the area but none of the residential properties like the houses, flats in Long Street and other accommodation in Long, High, Dirkie Uys, Aberdeen St and Hope and Mitchell Streets.

The noise and activity during the night that will be generated (and is already being generated) will disturb the peace, possibly bring more crime to the area and change the tranquil atmosphere. An entertainment license will allow them to play loud music, until 2.00am; hold music concerts and festivals; run a strip joint, etc.

Businesses operate in many properties in the area, but these are mainly shops and offices which close by 17:00 where after the area is quiet and residential.

B M Shaw  
 P O Box 33  
 Hermanus  
 7200

[bruce@shaw.co.za](mailto:bruce@shaw.co.za)

Tel 028 3130464  
 Cell 082 8016106  
 Fax 088 028 3130464

20 FEB 2020

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**B.M.Shaw.**  
17 Mitchell Street.  
Hermanus.  
7200.

A conflict between different land uses being business, residential and entertainment will be created.

According to the recently published guidelines by the Overstrand Municipality the central area is planned to be for combined business AND residential use. The object being to densify the central area (like many/most overseas countries). The densification will of course come from the residential sector and allowing a loud and usually rowdy business in the middle of this seems to directly contradict what is desired.

What concerns me also is the fact that they are already trading, as if they have the requisite rights, demonstrates that they have a disregard for the law. In other words, they won't stick to the parameters of the consent use rights. There have been many complaints from residents to date.

Yours faithfully,



B. M. Shaw.  
ID 4102105005086  
082 801 6106

B M Shaw  
P O Box 33  
Hermanus  
7200

[bruce@shaw.co.za](mailto:bruce@shaw.co.za)

Tel 028 3130464  
Cell 082 8016106  
Fax 088 028 3130464

TP. P. 1hooq  
(I.) Olivier



To The Municipal Manager at the Overstrand, Hermanus.

I totally object to the application put forward to you by The White Rabbit in Mitchell Street.

There is an enormous noise factor already from those premises every night they are open with Mitchell Street used as a race track and the thumping music I get in my property.

I wrote to you objecting on the 15<sup>th</sup> October 2019 about the same property with Objections.

My details are. Vanessa Prior. 22 Mitchell Street, Erf 702.

[collect@global.co.za](mailto:collect@global.co.za). 0825691767. 0283123422.

I bought the property in 1993

We need to upgrade the CBD not trash it with more bars and noise.

People live in Mitchell street the White Rabbit side.

I OBJECT TO THE WHITE RABBIT APPLICATION.

(Hand delivery to the municipal offices 11/2/2020/

*Vanessa Prior*  
Vanessa Prior

FILE NO:	21 10347 ✓
	Nathall
SCAN NO:	HNC 10347
COLLABORATOR NO:	1382481

TP

11 FEB 2020

TP- P. Ahear  
(H. Olivier)

34/35

Loretta Gillion - Vanessa Prior



**From:** Vanessa Prior <collect@global.co.za>  
**To:** Loretta Gillion <lpage@overstrand.gov.za>  
**Date:** 17/02/2020 11:49 AM  
**Subject:** Vanessa Prior

Hello. Another hysterical letter from me with objection to everything White Rabbit has planned. The proposal hardly mentions Mitchell Street which has a lot of residential homes and apartments in it. Mitchell Square ? Where is it on your plans/ or is it just the White Rabbit parking area? If the municipality could do something about the terribly car racing down Mitchell Street, it would buffet some of the sound noise. I have been asking for a road hump at Dirkie Uys and Mitchell since the Checkers building was erected. Every where else in Hermanus gets help with this but not Mitchell Street.

- I TOTALLY OBJECT TO THE EXPANSION OF WHITE RABBIT.
- I TOTALLY OBJECT THE THEIR TIME OF OPERATING
- I TOTALLY DO NOT BELIEVE IN THE EMPLOYMENT THEORY.
- I TOTALLY DO NOT BELIEVE IN THEIR 'LIMITED RESIDENTIAL' IDEA.
- I bought my property in 1993. We desperately need to upgrade the CBD not trash it

I would also like to see the plans for High Street which is due to start the upgrade in May. My property goes through from 15 High Street to 22 Mitchell street.

Vanessa Prior, 22 Mitchell Street (Erf 702). collect@global.co.za.. Box 28 Postnet X Hermanus 7200. 0825691767. 0283123422

FILE NO:	EF 10317 ✓
	Nathalia
SCAN NO:	HNC 10317
COLLABORATOR NO:	1381997

20 FEB 2020

Loretta Gillion - ERF 10347 - 17 Long Street, Hermanus (White Rabbit)

**From:** "Brigitte Sabbe" <bsabbe@hermanus.co.za>  
**To:** <loretta@overstrand.gov.za>  
**Date:** 31/01/2020 03:01 PM  
**Subject:** ERF 10347 - 17 Long Street, Hermanus (White Rabbit)  
**Attachments:** BUQ10636.MP4



TP. n. / heard  
(H. Olivier)

Dear Loretta,

**RE: ERF 10347 - 17 Long Street, Hermanus (White Rabbit)**

See attached video clip of the noise coming from the White Rabbit which was sent to me from a tenant who lives in an apartment at 24 Long Street and this was taken from his balcony. We own the property ERF 5664 Hermanus where there are 6 apartments at that building.

I am not opposing the concept of a nightclub in the area, but the noise limit needs to be controlled as there are residents living close by and I have received complaints from them in the past.

My concern is that as soon as the tenant of White Rabbit receives his license to operate the premises as a nightclub then it will be difficult to control especially if there are live shows and concerts.

How will you mitigate this situation?

Regards,

Brigitte Sabbe  
RITCARLO INVESTMENTS (PTY) LTD

FILE NO:	Cl 10347
	North Cliff
SCAN NO:	01
COLLABORATOR NO:	1380382

TP

TOWN & REGIONAL PLANNERS  
STADS & STREEKSBEPLANNERS



Town and Regional Planners  
Stads- en Streeksbeplanners

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

Tel: (028) 313 1673  
Fax / Faks: (028) 312 1351  
Email: planactive@hermanus.co.za

YOUR REFERENCE: 10347HNC  
OUR REFERENCE: PA19034

22 MAY 2020

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

FOR ATTENTION: MRS. HANNEEN VAN DER STOEP

Sir,

TP: R. Aheat  
(H. Olivier)

FILE NO:	CF 10347 ✓
	North Cliff Hermanus
SCAN NO:	HNC 10347
COLLABORATOR NO:	141 3348

COMMENTS ON OBJECTIONS: ERF 10347 HERMANUS: PROPOSED CONSENT USE

Your letter dated 26 March 2020 with enclosed comments/objections refer. Our further e-mail correspondence requesting an additional 30 days to provide our comments also refers. Subsequently our request for the extension of the commenting period with an additional 30 days was granted and lapses on the 29<sup>th</sup> of May 2020.

A total of 8 objection letters were received. We would like to make use of the opportunity to comment on the comments and objections received. Our comments on the objections area as follow:

**1. COMMENTS ON THE OBJECTIONS**

The objections (in **bold print**) and our comments (*italic print*) thereon can be summarised as follow:


**1.1 Objections received from the Hermanus History Society (represented by Dr Robin Lee).**

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

John Mc Lachlan: Ndip (Town Planning) Tech Witwatersrand; MSAPI Nr. 10908; SACPLAN Tch. 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

1.1.1 The cottage presently standing on the site is one of the few remaining sites in the Hermanus CBD that is recognisably part of the town's heritage. Until recently, it was the location of The Book Cottage (previously of Harbour Road). The ample space at the rear of the site is undeveloped and would presumably be used for the "live shows and music concerts" contemplated in the application. The music and other noises will inevitably reach several streets in the vicinity. There are private residential properties in these streets.

As discussed in our motivation report Erf 10347 Hermanus is situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is also earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009). Please refer to the abstract below from the Heritage Survey Report:

Hermanus House	10347	Hermanus 19 Long Str 34.25° 09.22' 19 14' 26.72"	3B	Architectural/ aesthetic: typical, period example with some alterations incl extended eaves overhang. Surviving small pane front sash windows. Interior appears to be intact. Contributes to streetscape in terms of scale & overall envelope mass	
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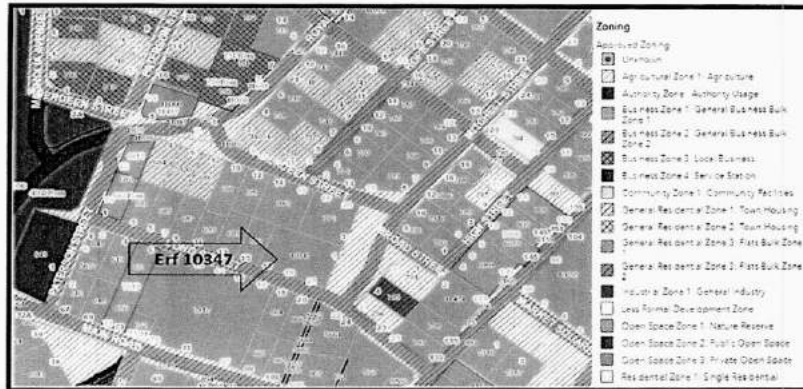
The 3B Grading Criteria and management implications are tabled as follow:

	Intrinsic Significance	Associational Significance	Contextual Significance
GRADE 3B	<ul style="list-style-type: none"> <li>Historical fabric is partially intact (past damaged is reversible)</li> <li>Some evidence for historical layering</li> <li>Some elements of construction are authentic</li> <li>Fabric dates to an historical period in the evolution of a place</li> <li>Typical or good example of a type and form</li> <li>Fabric illustrates an historical period in the evolution of a place</li> <li>Fabric illustrates the key uses and roles of a place over time</li> </ul>	<ul style="list-style-type: none"> <li>Some association with an historic person or social dynamic</li> <li>Some association with historic events or activities</li> <li>Some association with the uses or roles of a place over time</li> <li>Some association with public memory</li> <li>Some association with living heritage</li> </ul>	<ul style="list-style-type: none"> <li>Contributes significantly to the historical, visual-spatial character of a place</li> <li>Contributes significantly to the quality of setting of a Grade 3A heritage resource.</li> </ul>
Grade 3C Buildings/Precincts	Heritage resources of local contextual value for social, historical and/or aesthetic reasons.	Local Authority HRS	<ul style="list-style-type: none"> <li>Conserve wherever possible.</li> <li>Retain historical fabric wherever possible (exterior only)</li> <li>Conserve and enhance contribution to overall character and streetscape (predominantly public/private interface)</li> <li>Demolition could only be considered if appropriate adaptive reuses cannot be established.</li> </ul>

The application however mainly constitutes the change of land use and no physical changes to the existing structures or to the existing buildings on the subject property. We however do not anticipate any heritage issues with our proposed application. The intention is only to allow occasional live entertainment mainly to fit in with festivals that are held throughout the year in Hermanus.

With reference to the festivals other local businesses also intend to generate extra income from these festivals as it is a clear mechanism for local businesses to boost their income during the yearly festivals.

Cognisance should be taken of the fact that Erf 10347 Hermanus is located within an area consisting of primary business uses within the CBD of Hermanus. The owners of the erven being used for residential purposes have knowledge of the fact that their properties are located within a CBD (as seen below). Hermanus has grown exponentially and our CBD has expanded. It is but a question of time before all the erven that still have a single residential use within the CBD will be used for business related uses in the future.



As discussed in the motivation report, the owner has appointed Professional Sound Engineers to ensure that live shows have the minimum impact possible on the residential properties in the vicinity. Unfortunately, performing artists could make use of amplified sound equipment that could exceed the noise limits as prescribed in the Noise Impact Assessment by Mackenzie Hoy Consulting Acoustics Engineers. It is therefore proposed that when hosting an event with performing artists entertaining patrons outside, that the live entertainment will stop at 22:00pm. Please note that live entertainment shows will not occur every weekend, but occasionally and during festivals. There will also be local and solo artists performing that will provide live entertainment without making use of amplified equipment i.e. acoustic guitar, saxophone etc. When artists entertain patrons outside, the owner of the establishment will adhere to all recommendations from the professional sound engineers with regards to the permissible noise levels, that will ensure that the performance will have the least impact on the property owners in the area, especially the properties with residential uses. The intention is however to accommodate the majority of the shows within the buildings to ensure minimum noise pollution.

1.1.2 The Society believes that permitting the activities mentioned in the application will inevitably lead to further damage to an important building from the town's

heritage and constitute an unacceptable imposition of noise and inebriated customers on businesses in the vicinity, and residents in Aberdeen Street and Hope Street, at least.

*The owner of the White Rabbit Restaurant on Erf 10347 Hermanus leases the subject property from Mr E.R. Schimmer and Mrs. B.U. Riedelsheimer. Mr Clive Gildenhuys, owner of White Rabbit cannot make any physical changes to the existing building on the subject property without the consent of the owners. Changes can also not be made without building plan and heritage approvals. There would be major consequences as the building is situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). It would also be a requirement from the lessee that the building be maintained in a good state of repair.*

*It is also clear that businesses in the area (with the exception of Restaurants) are already closed for the day and week when the White Rabbit starts to operate and therefore the proposed consent use as per the application will not have any impact on the businesses in the area. As previously mentioned, the owner has appointed a Professional Sound Engineer, and a Noise Impact Assessment was compiled. The owner intends to apply the findings of the mentioned report and will adhere to the recommendations with the exception of live entertainment being conducted outside during festivals that will not continue later than 22h00 at night.*

**The History Society further objects to this (and any other application for consent use) in the CBD. The public participation phase of the long-delayed revitalisation of the CBD is not complete, and no formal plan exists to provide guidelines for changing the consent use. The Department of Town Planning has never clarified why it continues to advertise applications for changes in consent use when there is no plan to define what are and what are not, acceptable criteria for proposing such changes.**

**Reasons for comment: this is the fourth application in the past nine months for similar consent use of ordinary commercial properties for entertainment purposes and (in the other cases) betting and gambling purposes that must inevitably result in public nuisances and make the promised revitalisation of the area yet more challenging. The Hermanus History Society is gravely concerned at the number of applications.**

*The Revitalisation Plan for the Central Business District is a mechanism for proposals that are planned, for the future. The application that is lodged is not in terms of the Revitalisation Plan for the*

*Central Business District but Chapter 4, Section 16(2)(o) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2015. The municipality cannot refuse land use applications on the basis that the Revitalisation Plan for the Central Business District is not approved. The proposed application is in line with the principles of SPLUMA and LUPA. The proposed application is also in line with the Spatial Development Framework for the Overstrand area.*

*Please take note of the following:*

*The Hermanus CBD Regeneration Framework described the area where Erf 10347 Hermanus is located as Mitchell Street Square. Please refer to the abstracts below from the Hermanus CBD Regeneration Framework for easy reference pertaining to the area in question.*

*Internationally, spatial planning professionals have timelessly agreed that the efficient use of land needs to be compatible with the social well-being and healthy environment objectives. Therefore, concepts such as densification, urban growth management and the **mixing of land** uses have become popular in the process towards achieving these universal goals.*

***Diverse environments** provide a variety of opportunities, experience and choice. The more varied a place, the more valued because of the individual qualities that make it distinctive from other places.*

*Activity should be **concentrated in core areas** and important **nodes** and provide a cluster of complementary but **diverse set of uses**. This provides people with choices and promotes walking between destinations.*

**Overall Framework:**

Establish a new **CBD heart** at Mitchell Street square including a new **mixed use** development, structured parking and public space and road upgrades.

Develop High Street into a pedestrian priority street that connects the new retail complexes at Station Square to Mitchell Street

**Mitchell Square Redevelopment:**

*Main Ideas:*

*Mitchell Street Square is strategically located within the centre of Hermanus CBD.*

*It sits at the junction of several pedestrian networks and links to a number of public and civic amenities such as the cliff walk, Market Square, Civic and Municipal Precinct, Taxi rank and Commercial nodes along Long, High and Mitchell street.*

*The development of Mitchell Street square has the potential to become the heart of Hermanus CBD as a vibrant public amenity for both locals and visitors to the town. The Mitchell Street development proposal accommodates the surface parking lot within structured parking levels within the new development, as a result the Mitchell Street Square will be released for the development of a high quality public square with ground floor activation with new business / cafe / restaurant opportunities. This proposed intervention is a key investment into the public environment in the core of the CBD, knitting together key destinations and pedestrian routes along High, Mitchell and Long Streets.*

*Retain existing heritage buildings*

*Reuse as cafe / hospitality space.*

*With reference to the above abstract from the Hermanus CBD Regeneration Framework it is clear that the proposed consent use can be accommodated within these guidelines. The proposed place of entertainment is in line with the proposals as it also falls within the hospitality spectrum of land uses.*

*Please take note that our client will do his utmost best to ensure that the White Rabbit establishment will not create a nuisance, that the sound will be contained and that ill-behaved patrons will not be tolerated. A well-managed establishment will therefore be to its own advantage. Having a negative impact on surrounding land uses related to the tourism industry will therefore also be detrimental to the success of White Rabbit. It is therefore essential that the proposed nightclub be well managed and that they take the surrounding land uses of the area into consideration.*

## **1.2 Casper Mareem property owner of 6 Hope Street Hermanus**

**1.2.1 Since last year they have changed the way they are conducting their business and the noise levels have increased substantially and affect the quality of my life. The area is no longer peaceful and quiet, instead there is loud music and the reverberations of the bass of a big sound system. It disturbs my sleep and keeps me awake at night.**

*The owner has disclosed that he has used the premises for live entertainment purposes of which some of the events were held legally with an events licence.*

*The proposal had been discussed with Mrs. Hanneen van der Stoep before submission and the owner had the proposed site plan amended in order to have the least impact on the surrounding property owners. The mentioned site development plan accompanied our application. A noise impact study was completed for the venue and the information obtained by the study was taken into consideration in order to mitigate noise measures before submitting the application for a nightclub and a venue for live entertainment.*

**1.2.2 The White Rabbit has attracted a sordid clientele which behave badly. As a result, the drug dealers now drive and walk around looking for deals. I have seen deals going down in front of my house. I do not want those kinds of people in my suburban neighbourhood. It offends me.**

*The owner of White Rabbit takes the operation of his business very seriously and will ensure that the nightclub is properly managed inside and outside during operational hours and that drunk behaviour and loitering will not be tolerated. White Rabbit cannot be held accountable for unlawful activities taking place in public areas within the CBD area that also accommodates a number of other pubs/bars and restaurants. Unlawful behaviour within the premises and within the parameters of where their patrons park will not be tolerated.*

*Security personnel will be appointed to ensure the safety of patrons. Should any unlawful activity take place the local Police Station (SAPS) will be contacted to assist the security personnel on site to address any issues that may evolve.*

**1.2.3 The Hermanus Old Town is a very special neighbourhood. Because of its unique historical architecture, it distinguishes it from other villages, it was a fisherman's village. The Overstrand Municipality cannot allow businesses to operate which would allow this special character to disappear.**

*The objection refers to the heritage history of the subject property and has already been discussed. Please refer to point 1.1.1. above.*

**1.2.4 The Hermanus Old Town was traditionally where the fishermen lived. It was a residential area. And today most of the fishermen's cottages are still lived in by residents, who have lived here for years, It is not true to assume that the neighbourhood is largely commercial, it is not, In addition, many new flats have been**

built which has further increased the residential population in the village. The residents have the right to enjoy the peace and tranquillity and safety of their homes.

*With reference to the Zoning Map of the CBD area (under point 1.1.1) it is safe to make the following statement: All the erven south-east of Hope Street, south-west of Dirkie Uys Street, Main Road (south-east) and extending Hope Street to Main Road (south-west) have a Business Zone 1, Bulk Zone 1 zoning with the exception of Erf 795 Hermanus that is used as a parking area for the surrounding business erven and has a zoning of General Residential Zone 3. Please refer to the aerial photograph below depicting the existing parking area.*



1.2.5 The recent Overstrand Municipal Draft Spatial Development Framework proposes an increase of residential dwellings in the Hermanus Old Town. A nightclub is therefore contradictory to the proposal. Most of the businesses which do operate in Hermanus Old Town are quiet and coexist well with the residents. They are open during working hours. And allow the residents to enjoy the peace and quiet after hours.

*The above-mentioned statements received from the objector is out of context. We concur with the statements made in our motivation report that read as follow:*

*In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for business purposes. The business zoning of the subject property will be retained after the proposed nightclub and bar are established on the subject property.*

*With reference to the Overstrand Growth Management Strategy the subject property falls within Planning Unit 13 that consists of the Hermanus CBD. Residential densification is proposed for this planning unit to create a mixed land use area. Being a business node and the fact that the business zoning will be retained the proposed growth management strategy has no relevance to the proposed land use change.*



*With the proposal, the above mentioned forward planning documentation applicable to the Hermanus CBD, the proposed land use change will not have a negative impact on the surrounding businesses as the proposal constitutes the establishment of a Nightclub and bar within this planning unit. Therefore, the proposed consent use application falls within the prescribed guidelines for the specific area of Hermanus.*

**1.3 Edward Nathan Sonnenberg's Inc on behalf of Ms. D. Myburgh, Erf 740 Hermanus.**

**1.3.1 In respect of the earlier application (Consent use application to establish 5 slot machines) we lodged our client's comment/objection indicating that in respect of that application our client did not raise an objection for the consent use to accommodate the 5 slot machines, but our client objected to the fact that noisy, live entertainment both inside and outside the premises was unlawfully occurring and intimated that she objected to any consent use in respect of operating the establishment known as White Rabbit as a night club with live music. The White Rabbit has in the past held live music events apparently utilising the open back garden of the subject property,**

which events have generated loud noise well into the early hours of the morning causing a noise nuisance and disturbance to our client, her guest house establishment and her guests. Your Ms van der Stoep is aware of these unlawful events and has engaged in email correspondence with our client regards thereto.

Our client has been advised to resort to lodging complaints with the South African Police Services (SAPS) if such noise nuisance occurs which is of cold comfort to our client bearing in mind that the SAPS do not have the capacity to enforce the Provincial Noise Regulations. On the other hand, the Municipality should and could enforce its Zoning Scheme in terms of the provisions of Chapter 10 of the By-Law. In the email correspondence between Ms van der Stoep and our client, she indicated to our client that the Municipality would only be able to act if an unlawful event would occur. This would be tantamount to acting after the horse has bolted and would be too little too late in order to protect our client's, and her guest's rights.

*As discussed in our motivation the live entertainment will only operate occasionally and not later than 22h00 at night. The owner of White Rabbit indicated that mitigating measures will be taken to ensure that the noise levels will not be a disturbance to surrounding residential property owners. Recommendations were set out in the Noise Impact Report by Mackenzie Hoy Consulting Acoustics Engineers. The owner intends to adhere to these recommendations mentioned in the Noise Impact Assessment in order to comply with the proposals.*

We, as the applicant cannot comment on behalf of the municipal official as we do not have insight in all the facts with regards to correspondence between the objector and the mentioned official.

Our client discussed the proposed matter with Ms. Hanneen van Der Stoep and it was advised at the time that an application for consent use was required.

1.3.2 Our client was told by Ms van der Stoep that the White Rabbit was notified that they did not have the correct zoning for live music events and that they need to apply for consent use for a place of entertainment in order to hold such events. Despite not having the correct zoning rights, the White Rabbit continued to arrange / advertise and hold live music events in complete disregard for the rights of including those of our client. Examples taken off the White Rabbit Facebook page of these live music events as well as a picture of the rear structure of the premises constructed to accommodate these events, are enclosed in Annexure "B" The last page of this annexure relates to an upcoming live music event to be held on 11 April 2020. This is the Saturday of the Easter weekend when our client instructs us that the guest house will be fully occupied.

**Note that the event is advertised as lasting from "14h00 tot laat" This event will be completely unlawful as this consent use application will not have been finalised by then. This again demonstrates the operators of White Rabbit's complete disregard to compliance with the law and to our clients and her guests' rights.**

*This event was organised even though the land use rights were not in place. The owner anticipated that he would have had an approval by then for the proposed consent use for live entertainment. Please note that this event did not take place. The event was supposed to start during the day and not commence beyond 22:00.*

**1.3.3 We are also instructed that Ora de Wet, the occupier of Erf 738, situated at No. 1 Hope Street and marked in pink on Annexure "A" hereto; was told by the operator of the White Rabbit, Clive Gildenhuis, to stop complaining about the noise emanating from his live music events as she was making things difficult for him. He intimated to her that he should be entitled to run his business as he pleases. Our client has recently ascertained that Ora de Wet has placed her property on the market citing the continual noise nuisances from the White Rabbit as the main reason therefor.**

*Mr. Clive Gildenhuis took note of the complaints that were received from Mrs. Ora de Wet regarding the noise aspect and decided to discuss the matter with her. His intentions were to remedy the situation. Mr. Gildenhuis was invited into Mrs. de Wet's home where they discussed the matter. He conveyed that he is not always at the establishment and that it is being run by a manager. Mr. Gildenhuis provided Mrs. De Wet with his personal phone number in order for her to contact him directly should she have a problem in order for him to deal with the matter immediately. According to Mr. Gildenhuis he never intimidated her.*

*Mrs. Ora de Wet's son, who resides with her frequently visited the White Rabbit. According to Mr. Gildenhuis and his manager, Mr. de Wet would enjoy himself at the White Rabbit and when leaving late at night he would make a nuisance of himself. He would then request that the volume of the music be turned down as he is going home. Both Mr. and Mrs. de Wet would phone the establishment requesting that the volume of the music be turned down and that was subsequently done. The last time Mr. de Wet contacted the White Rabbit to turn down the volume was on the 30<sup>th</sup> of November 2019. A happy Christmas message then followed on the 25<sup>th</sup> of December 2019. Sometime after that Mr. de Wet had a dispute with the bar personnel and due to his unorderly behaviour he was later banned from the White Rabbit.*

*Mr. Gildenhuys is a reasonable man and he has always acted on complaints immediately and dealt with it to the satisfaction of the complainants without intimidating them. At the date of this letter we could not find any evidence of Mrs. de Wet's property being on the market or that it has been sold. This statement by the objector is therefore questionable.*

1.3.4 It is clear that in order to legitimise its use of the property the operators of the White Rabbit have sought to obtain the necessary consent use to enable them to operate a night club and live music events at their establishment in so doing and recognising that the live music and the operation of a night club will constitute a noise nuisance to persons in the position of our client. The applicant procured a noise impact assessment from Mackenzie Hoy Consulting Acoustics Engineers hereinafter referred to as ("the report"). The report is dated 24 May 2019 and we note from the copy submitted with the application that it is still marked "DRAFT" The reason for this is not readily apparent.

Our client's comments on the noise impact assessment are as follows:

- It is noted that on the night the measurements were taken, (17th May 2019) the noise levels with both the venue entrance doors closed and the outdoor area doors closed, the level of noise emanating from the venue constituted a disturbing noise. In other words, the noise levels exceeded that permitted in terms of the Western Cape Noise Control Regulation's 2013.

*As discussed under point 1.3.1 of this document the Noise Impact Assessment was done on the 17<sup>th</sup> of May 2019. The study was done to determine if the noise generated is exceeding the allowable decibels. As stated in the Noise impact assessment it was clear that on the night of the assessment that the noise that was generated exceeded the allowable decibels and that's precisely why the professional sound engineer made recommendations in the report for the owner of White Rabbit to guide him to adhere to the laws of the Western Cape Noise Control Regulations, 2013.*

- It was unclear to us whether on the night the measurements were taken (17 May 2019) there was a live music event or whether the night club was functioning. From what was advertised on the White Rabbit's website, it would appear that some sort of event was taking place to attract patrons. See Annexure "C" hereto. While it is noted that the special was running only between 7 and 8 pm, it may have had the effect of attracting more patrons than would otherwise have been the case on those two evenings.

We raised a number of queries with Mackenzie Hoy Consulting Acoustic Engineers one of which was whether Friday night 17 May 2019 was an ordinary Friday night at the establishment or whether there was a special event taking place. The response from the expert was to the effect that they did not know but seems clear from Annexure "C" hereto that there was an event taking place at the venue that evening.

*The 17<sup>th</sup> of May 2019 was a Friday Night. The White Rabbit had "Happy Hour" from 19:00 to 20:00. This is a common occurrence in the pub industry. The sound engineers were called out to convey their measurements on the busiest day of the week, hence Friday, 17 May 2019. The Sound engineers were in control of the sound equipment and tested the noise volumes by turning the volume to the maximum to conduct their tests. There was no event held on the specific day other than the "Happy Hour" where certain liquors were sold at a discounted price from 19:00 to 20:00.*

- If the venue would operate as a night club, and the venue doors do not remain closed, the level of the disturbance noise would be even higher. Table 1 to the report demonstrates that with the doors open, the noise levels are significantly higher. In this regard, we raised as a query with the expert whether the team testing the noise levels on the night in question observed any of the patrons milling around on the pavement outside the premises as young people usually do at night clubs. The answer we received was that "it's hard to say who is a patron and who not". While this may be so, the obvious inference to be drawn by this response is that there were people around on the pavement, such a case, we would expect the venue doors to be open as this is the usual behaviour of young people attending these kinds of night spots, in such event the disturbing noise levels would be exacerbated, as table 1 clearly demonstrates.

As indicated, Table 1 to the expert's assessment records that the noise levels with the venue doors open were significantly higher than the measurements taken with the doors closed. With the doors closed the noise levels caused by the amplified music constituted a disturbing noise. With the venue doors open, the noise was significantly higher, and it is for this reason that the expert recommends as one of the mitigating measures that the entrance doors both to the venue and to the garden area be kept closed at all times. However, it may be very difficult for the operators of the White Rabbit to implement such measures as patrons come and go and the doors to the garden area will frequently be opened when those patrons get served in that area, such a mitigating measure is therefore hardly effective.

A further mitigating measure suggested by the expert is the installation of a tamper-proof loudspeaker management system to ensure that noise from the venue does not exceed 57.0 dBA on the "Property projection plane". In accordance with the regulations of a "property projection plane" means a vertical or horizontal plane, whichever is applicable on a boundary line of a premises defining a boundary of the premises in space. Our client assumes that this means on the outer boundary of the White Rabbit premises. What is not clear from the report is what the noise levels would be at the neighbouring residential sites if this was adhered to.

Our client also considers significant that measurements were taken on a night that the music event was taking place at the establishment. To accommodate such events, our instructions are that the outside area is filled to capacity and the live band usually performs from a stage that is constructed in the garden area.

Clearly, noise levels will be significantly higher during these events. It is noted that notwithstanding the expert's recommendations that no amplified music be permitted the outdoor areas of the venue and that the existing powered loudspeaker at that outdoor venue must be removed, the Motivation Report states that the outdoor events will not continue beyond 22h00 in the evening taking into consideration the residential properties located in the vicinity. The Motivation Report suggests that professional sound engineers will be appointed to ensure that the outdoor shows have a minimum impact on the residential properties in the vicinity but goes on to state "unfortunately, the performing artists will make use of amplified sound equipment that could exceed the noise limits prescribed, for this reason the proposal is that these events stop at 22h00. This proposal is at variance with the applicant's own expert and should not be countenanced by the Municipality under any circumstances.

*The White Rabbit is located within the heart of Hermanus's CBD where there are a number of restaurants and pubs situated in the vicinity. It is extremely difficult to differentiate between milling patrons outside the White Rabbit and general public coming from or going to surrounding restaurants and pubs.*

*With reference to the noise levels that escape from the building when doors are opened for patrons to enter or leave the establishment or when food or drinks are served outside will be mitigated once an approval has been obtained. It is proposed that the kitchen be moved to the adjoining building situated directly west of the White Rabbit bar area, on the same property.*

*The serving of drinks to patrons making use of outside seating will also be rerouted. Subsequently the noise from the night club will be much better contained inside the building.*

*The owner has already spent a lot of time and effort to install an upgraded sound system that provides a much better sound quality that is more manageable to be contained in the building itself. The owner will also continue to investigate and implement new sound technology as technology develops. Automated self-closing doors to and from the nightclub will be installed. The possibility of a set of 2 doors at the rear exit / entrance will also be investigated to ensure that when waiters and waitresses and patrons enter or exit the night club that a set of doors will always be closed.*

*Mr. Gildenhuis is also willing to have another sound impact report conducted, once approval has been obtained and alterations have been made, to contain the noise and to comply with the outcome of the recommendations of the initial sound report.*

*With reference to live entertainment shows held at the premises – they are limited and not a weekly occurrence. Only 3 live shows were held of which the last one was on 27 December 2019. This show did not carry on beyond 22h00 that night.*

*It should also be noted that Mr. Gildenhuis intended to apply for an events license at the Overstrand Municipality for the shows that took place, but it was advised that he applies for a consent use for a place of entertainment. He was also advised that a short term events license will not be granted. Mr. Gildenhuis did what was required from him and a consent use application was lodged.*

*Due to the fact that Mr. Gildenhuis was advised that short term events licenses will not be granted he decided to make it part of the application to include the provision for outside live entertainment even though the sound engineer's report stated that no amplified sound be used outside the building. We have included it in the application due to the fact that Hermanus hosts a number of festivals during the year. This would give the owner the opportunity to make provision for outside entertainment only during these festivals. It is not proposed that this is a weekly occurrence but only a few shows spread throughout the year. Mr. Gildenhuis has agreed that when shows are held outside that the sound will be projected away from the permanent residences and that these shows will not continue beyond 22h00 at night.*

*Because it will be difficult to contain the noise within the boundaries of the site when the outside area is used to host an artist a mitigating measure is proposed by means of a time limit on the duration of the show as mentioned above. These shows will be limited, and the number of patrons*

*will also not exceed the approved number of people that they may accommodate as per the Fire Department's approval to ensure the safety of patrons.*

*Mr. Gildenhuys will do his utmost best to work within reason with adjoining residents not to cause a nuisance.*

**1.3.5 You are well aware that our client lodged an objection for a similar application in respect of an establishment known as The Mock Turtle Night Club on Erf 702, 3 Mitchel Street Hermanus under your reference 702 HNC; 2977/2019. Which has been withdrawn.**

**Erf 702 is the adjacent property to the subject property of this application, and we have marked same in blue on Annexure "A". Our client's objection in respect of the Mock Turtle application, we provided detail of how that application would breach a number of the planning instruments operative in the area. The same considerations would apply in respect of this application.**

*We, as the applicant, believe that all applications should be evaluated on its own merit. The proposed application shows potential and is in line with important policies such as the SDF. It is clear that the Overstrand Municipal area (especially Hermanus) experiences problems as a lot of businesses are leaving the central business district as a result of low business opportunities. Although there are residential properties situated within the CBD it is clear that the business zoning of properties are more dominant. It is clear that more and more property owners within the CBD intend to create even more business opportunities (a recent rezoning application is on Erf 11054 Hermanus). It is clear that the proposal will attract people to the CBD which can create business opportunities for other property owners to create their own opportunities. The proposed night club will create opportunities for other business owners that trade after normal trading hours (after 5pm).*

**1.3.6 While the Mock Turtle application impacted the heritage area of Aberdeen Street, we are instructed that many of the properties in Long Street are of heritage status and indeed from some of the photographs set out the Motivation Report. This is quite apparent. However, the Motivation Report is misleading where it states in paragraph 3.3 that land uses that surrounds the subject property is general businesses: take-aways shops, offices, public roads and public parking areas and a few General Residential zoned properties". As we demonstrated in the objection filed in respect of the Mock Turtle application there are a number of guest houses and properties of**

a residential nature in the surrounding neighbourhood of which would find the activities which a night club and live music venue would allow, to be irreconcilable with their interests.

*The objection refers to the heritage history of the subject property and has already been discussed.*

*Please refer to point 1.1.1. above.*

1.3.7 It is significant that in the table set out at the end of paragraph 3.3 of the Motivation Report when listing the properties with a zoning in the area with their estimated distance from the subject property of the application, that our client's property, Erf 740 is approximately 130 m from the subject property, is not even listed. In view of our client's comments/objection to the previous application dealing with the 5 slot machines, this omission was probably by design. Having regard to the close proximity of a number of residential properties to the White Rabbit premises, it places the assertion that "Surrounding properties are zoned for business purposes, restaurant and pub uses" in paragraph 3.2 of the Motivation Report into some doubt. In addition, the assertion in paragraph 3.3 of the Motivation Report that land uses "that surround the subject property is general businesses, shops, offices, public roads, public parking areas and a few General Residential zoned properties" misleading. A number of the general residential zoned properties in the area are operating as guest houses including our client's Vishuis guest house. And these are not even mentioned in the report.

*It is clear that not all the properties in the vicinity are listed in the table as per our motivational report. The property of the objector was not intentionally left out of the table. It is mentioned by the objector that Erf 740 Hermanus is approximately 130m away from the subject property, Erf 10347 Hermanus and the properties that we have listed in the table indicating the distances vary from ±90m to ±230m. Which means that the distance of 130m from the subject property falls within the threshold that was covered in the table. There are properties situated closer to the White Rabbit that did not submit any objections to the proposed application, which means that they don't experience any problems from the subject property at all. A number of 141 additional notices have been sent out during the public participation process and only 8 objections have been received. It is clear that the proposal is only a problem to some of the property owners within the vicinity of the White Rabbit.*

1.3.8 In the chapter dealing with Hermanus Central in the Overstrand Spatial Growth

Management Strategy \ Report (October 2010), the subject property falls within the area identified as Panning 13: It is stated in this report that Planning Unit 13 consists of the Hermanus CBD which is a heritage area and is mostly used for business purposes with limited number of permanent residential units" (emphasis supplied).

The report goes on to recommend that "given that this area is an economic area it will subsequently form part of mixed use developments being residential developments on top of the business buildings", it is envisaged in the report that this proposal can potentially contribute to 1242 additional units at a gross density of 30.5 dwelling units per hectare.

*The above-mentioned statement from the objector is quoted out of context. We concur with the statements made in our motivation report that read as follow:*

*In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for business purposes. The business zoning of the subject property will be retained after the proposed nightclub and bar are established on the subject property.*

*With reference to the Overstrand Growth Management Strategy the subject property falls within Planning Unit 13 that consists of the Hermanus CBD. Residential densification is proposed for this planning unit to create a mixed land use area. Being a business node and the fact that the business zoning will be retained the proposed growth management strategy has no relevance to the proposed land use change.*

The proposed use by the White Rabbit of its rented premises as a place of entertainment for a night club and live music events, within this area would not fit in with this growth strategy. Such use by the White Rabbit would detract from the growth strategy as potential buyers of any newly created residential opportunities within the area would not want to be disturbed by the noise and behavioural patterns of the patrons of the facility and therefor our client contends, unlike the applicant, that the proposed consent use is directly relevant and would contravene this growth strategy.

The statement in paragraph 3.8 of the Motivation Report that the "Proposed growth management strategy has no relevance to the proposed land use change" is therefore clearly wrong. So too, is the statement, also contained in paragraph 3.8 of the Motivation Report that "the proposed consent use application falls within the



*With reference to the abstract above is it clear that Erf 10347 Hermanus is indeed located in the centre of the CBD.*

1.3.9 In terms of the Overstrand Municipal Wide Spatial Development Framework (SDF) which was formally adopted by the Municipality on 27 October 2006 and incorporated into the Overstrand Integrated Development Plan for 2006/2007, the following aspects are highlighted:

In Volume II: Development Strategy of the SDF in dealing with Business and Economic Development policy, Statement 21.2 states, inter alia that "business/commercial related land uses should be confined to the core urban areas (central business district) and secondary/lower order nodes. The infiltration of business/commercial uses into residential areas or the periphery of the CBD, should be avoided, unless beneficial to local residents (emphasis supplied) Policy Statement P21.7 is to the effect that "home-enterprises and house shops should be permitted in residential areas, provided that the uses will not impact on the well-being of residents in the neighbourhood" (emphasis supplied).

The owners of the surrounding properties and in particular the properties in close proximity to the subject property which includes our client's guesthouse, have a constitutional right to an environment "that is not harmful to their health or well-being (Section 24 of the Constitution of the Republic of South Africa, 1996). The concept of "wellbeing" has been decided by our Courts as having a low threshold. So, for example, in the case of Hichange Investments (Pty) Ltd Cape Produce Co (Pty)LTD t/a Pelts Products & Others Lid Others 2004 (2) SA 393 (E), the Court found that the well-being of workers in a property adjacent to a tannery would be negatively impacted by the bad odours emanating from the open tannery.

Residents in the surrounding properties as well as guests of the guesthouses will certainly be negatively impacted by the noise and other disturbances emanating from the White Rabbit which, as this application states, is a late-night venue as it stays open until 2 am. At present, most of the businesses in the surrounding properties close at 17h00 and there is thus no disturbance to residents and guests in guesthouses of the surrounding properties. Being allowed to conduct live music events in this context would be viewed by our client and the surrounding residential property owners as being a "public nuisance".

The statement therefore in paragraph 3B of the Motivation Report that "the proposed land use change will not have a negative impact on the surrounding businesses as mitigating measures will be put in place is therefore rejected by our client. On the contrary, our client contends that the proposed activities associated with a night club and live music events within the existing premises most certainly have a negative impact on her and her guests in much the same way that has happened in the past when live music events have been conducted from the subject property, The live music events attract large crowds of young people and therefore it is not only what happens inside the premises that matters. It is what inebriated young adults get up to outside in the streets around the premises that matters.

Experience has shown that inebriated young adults get involved in bad behaviour, fights, vehicles doing wheelies and drug trading in the surrounding streets. This kind of behaviour is typical in the area outside most night clubs and bars. In regard to loud music events which have been conducted at the subject property, no real attempt appears to have been made to contain the noise within the premises. On the contrary, these events appear to have been held in the open back garden of the premises; thus, exacerbating the problem.

During the previous live music events, the manner in which the White Rabbit traded totally disregarded the rights of the neighbouring residents including our client and, in this way,, most definitely infringed our clients and her guests' constitutional right to an environment that is not harmful to their well-being.

Under the heading "Urban Conservation Districts" the following statement appears: "Protecting the urban heritage provides an attractive incentive for tourism development and related investment in the urban area". The fact that there are 9 number of guesthouse/bed and breakfast establishments in the area bears this aspect of the SDF out.

One of the Local Spatial Development in the SDF is to maintain the unique village character of Greater Hermanus- This finds application in the Land use proposals at the Local Planning Level (LPL) with LPL 6 suggesting that "high density residential uses should be promoted within the CBD area" and LPL 8 promotes the protection and management of heritage resources aimed at, inter alia including 'the fine-grained urban form and positive house-street relationships of the village precinct" and, in regard to the core historical area of Hermanus, retaining "its fine grained urban form and positive

streetscape qualities" and "its historical fabric and activities relating to the role of the town as an early 20th century holiday and tourist destination".

Amongst the recommendations in this section of the SDF is the recommendation to "concentrate business uses and promote high density residential uses within the central business district of Hermanus town".

For all the above reasons, to allow consent use for the operation of a night club and to hold live music events on the subject property would be tantamount to breaching the SDF.

*The above-mentioned statements received from the objector is out of context. We concur with the statements made in our motivation report that read as follow:*

*In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for business purposes. The business zoning of the subject property will be retained after the proposed nightclub and bar are established on the subject property.*

*With reference to the Overstrand Growth Management Strategy the subject property falls within Planning Unit 13 that consists of the Hermanus CBD. Residential densification is proposed for this planning unit to create a mixed land use area. Being a business node and the fact that the business zoning will be retained the proposed growth management strategy has no relevance to the proposed land use change.*

*With the proposal, the above mentioned forward planning documentation applicable to the Hermanus CBD, the proposed land use change will not have a negative impact on the surrounding businesses and that the proposal constitutes the consent use to establish a night club and live entertainment within the planning unit. Therefore, the proposed consent use application falls within the prescribed guidelines for the specific area of Hermanus.*

*The objector makes the following statements:*

- o *that "business/commercial related land uses should be confined to the core urban areas (central business district) and secondary/lower order nodes.*
- o *The infiltration of business/commercial uses into residential areas or the periphery of the CBD, should be avoided, unless beneficial to local residents".*
- o *"home-enterprises and house shops should be permitted in residential areas, provided that the uses will not impact on the well-being of residents in the neighbourhood".*

*With reference to the above statements our comments are as follow:*

- o *With this application is it proposed that the business / commercial enterprise is confined to the core areas of the CBD, where Erf 10347 Hermanus is situated and as motivated in our comments under section 1.2.5 above.*
- o *Erf 10347 Hermanus is located within the centre of the Hermanus CBD and not the periphery. Therefore business/commercial uses infiltrating into residential areas or the periphery of the CBD is avoided and not applicable to this application*

*Erf 10347Hermanus is not located within a residential area but located within the centre of the Hermanus CBD.*

1.3.10 We have referred to the existing SDF but are aware that the Municipality has published in January 2020 a new Draft SDF. While this is not in force at present, it is clear from the proposed SDF that the Municipality considers that the historic CBD continue to be protected by an area Heritage Protection Overlay Zone as it is recognised that it is of unique value. The use of the subject premises as a night club and a venue for outdoor live music events denigrates from this ideal. In dealing with the objective to maintain the Municipalities National and International Tourism Market, the proposed SDF proposes to encourage and facilitate the development of high-quality tourism and heritage related infrastructure heritage buildings where appropriate and in this way ensure the inclusion and enhancement of tourism. The consent use application, for all the reasons set out above, will impact negatively on our client's establishment which, as we have mentioned, sees repeated visits by international tourists. Allowing the consent would be in direct contravention of this proposed policy.

*The application was submitted on the 9<sup>th</sup> of December 2019 and therefor the SDF (2006) is still applicable to the proposed application.*

1.3.11 Under the heading ("Local Spatial Development and Growth Management Principles" paragraph 5.8.3. 1 of the proposed SDF, it is stipulated that conservation of cultural heritage resources, including the character of the historical fishing/holiday areas of Hermanus and the number of buildings of historical architectural and social value should be promoted. Allowing a night club in the historical centre of the CBD runs contrary to this principle.

*As discussed under point 1.1.1. the proposal does not propose any physical changes to the existing structures on the subject property. Therefor the proposal does not interfere with the heritage status of the subject property. It is important to understand that after approval of the application at hand, the existing structure will still be in its original form as the owner of the White Rabbit facility fully understands the consequences if any changes are made to the original building without the necessary applications and approval especially from Heritage Western Cape.*

**1.3.12 In paragraph 3.10 of the Motivation Report the applicant suggests that the consent use application to conduct a night club and live events at the subject property is consistent with the Hermanus CBD Regeneration Framework. While it is clear that the Mitchell Square area is identified for regeneration and redevelopment the framework suggests that the redevelopment of Mitchell Square has the potential to become the heart of the Hermanus CBD as a vibrant public amenity for both locals and visitors to the town. While the framework does suggest ground floor activation with new business/café/restaurant opportunities, it does not suggest the establishment of night clubs and venues for live music events which will impact negatively as we have shown herein on the heritage nature of the CBD and on establishments such as our clients. To suggest therefore, as the application does, that the proposed consent use can be accommodated within the frameworks guidelines and that the proposal is in line with the recommendations, is denied by our client.**

*As mentioned before, the Hermanus CBD Regeneration Framework described the area where Erf 10347 Hermanus is located as Mitchell Street Square. Please refer to the abstracts below from the Hermanus CBD Regeneration Framework for easy reference pertaining to the area in question.*

*Internationally, spatial planning professionals have timelessly agreed that the efficient use of land needs to be compatible with the social well-being and healthy environment objectives. Therefore, concepts such as densification, urban growth management and the **mixing of land** uses have become popular in the process towards achieving these universal goals.*

***Diverse environments** provide a variety of opportunities, experience and choice. The more varied a place, the more valued because of the individual qualities that make it distinctive from other places.*

*Activity should be **concentrated in core areas** and important **nodes** and provide a cluster of complementary but **diverse set of uses**. This provides people with choices and promotes walking between destinations.*

**Overall Framework:**

*Establish a new CBD heart at Mitchell Street square including a new **mixed use** development, structured parking and public space and road upgrades. Develop High Street into a pedestrian priority street that connects the new retail complexes at Station Square to Mitchell Street*

**Mitchell Square Redevelopment:****Main Ideas:**

*Mitchell Street Square is strategically located within the centre of Hermanus CBD. It sits at the junction of several pedestrian networks and links to a number of public and civic amenities such as the cliff walk, Market Square, Civic and Municipal Precinct, Taxi rank and Commercial nodes along Long, High and Mitchell streets.*

*The development of Mitchell Street Square has the potential to become the heart of Hermanus CBD as a vibrant public amenity for both locals and visitors to the town. The Mitchell Street development proposal accommodates the surface parking lot within structured parking levels within the new development, as a result the Mitchell Street Square will be released for the development of a high-quality public square with ground floor activation with new business / cafe / restaurant opportunities. This proposed intervention is a key investment into the public environment in the core of the CBD, knitting together key destinations and pedestrian routes along High, Mitchell and Long Streets.*

*Retain existing heritage buildings*

*Reuse as cafe / hospitality space.*

*With reference to the above abstract from the Hermanus CBD Regeneration Framework it is clear that the proposed consent use can be accommodated within these guidelines. The proposed nightclub and bar are in line with the proposals as it also falls within the hospitality spectrum of land uses.*

1.3.13 It is clear from Annexure "D" hereto that there are a number of properties surrounding the subject property that are used for (residential purposes. We have marked these properties with a red dot on Annexure "C".

There are also a number of village type pubs in the surrounding area, namely, Tipples in Mitchell Street, Bojangles on the Main Road and Jack's Bar between High Street and the Main Road There is also a restaurant/pub called Puzzles in High Street. These establishments do not play loud music and are quiet village type pubs.

The position regarding the White Rabbit is different. This establishment has also begun to operate as a night club playing loud music to attract patrons.

The property in which this establishment is situated is not authorised to operate as a night club. Written complaints have been submitted by local residents to the Municipality and with the SAPS regarding the noise disturbance.

Your Ms. van der Stoep confirmed to our client that the establishment did not have the requisite zoning rights and that her department needed to address this issue. Over and above this, and as indicated on Annexure "D" there are other establishments such as Barney's Sports Bar (which is constantly acting in conflict with the neighbouring residents) and a number of restaurants in the area including Barefoot Cook, Tosca's, The Cuckoo Tree, Rossi's Italian, Tullip, Oskars, Betty Blue, The Fishermans Cottage, Embers, Fabio's and The Eatery. None of these restaurants have created any noise problems for our client and the guests of her guesthouse. Further there are a number of other restaurants as can be seen marked on Annexure "O".

*The objector confirms above that there are a number of established bars / pubs situated in the area. This is the reason for our earlier comments pertaining to noise, misbehaving patrons in public areas etc. Cognisance should be taken of the location of these bars / pubs in the vicinity of which patrons also make use of public areas within the CBD such as roads, sidewalks and public parks. Noise is also generated at these establishments.*

*To make a statement that it is only patrons from White Rabbit that are misbehaving in public areas and that the noise is deriving from White Rabbit only is speculation and cannot be confirmed. As mentioned in our comments earlier, the owner has gone through great lengths to ensure that the proposed nightclub does not cause to be a nuisance and that the sound will be contained within the prescribed limits.*

*Patrons will not be allowed to bring in or exit the premises with any alcoholic beverages.*

*White Rabbit also has cleaning staff that keeps the inside and outside areas clean for the duration of their trade. After trading hours, the management of the White Rabbit also ensures that the area outside the nightclub and across the street are cleaned.*

**1.3.14 Section 66(1) of the By-Law sets out the general criteria for the consideration of this application. For the purposes of this objection, we have dealt with the applicability of the Municipality's SDF and other planning policies that have been issued to guide**

decision making. In regard to the planning principles referred to in Chapter 6 of the Provincial Land Use Planning Act No. 9 of 2015 (LUPA), our client notes the rather limited submissions contained in paragraph 3.11 of the Motivation Report. In regard to the principle of "spatial justice", our client has no comments. In regard the principle 'spatial sustainability', our client disagrees with the contentions set out in the Motivation Report.

*The guidelines with reference to "spatial justice", refer to the need to redress the past apartheid spatial development imbalances and aim for equity in the provision of access to opportunities, facilities, services and land. In the broadest sense, it seeks to promote the integration of communities and the creation of settlements that allow the poorest of the poor to access opportunities. In a spatially just settlement, opportunities and access are provided to those whose historical access and opportunities have been impeded by the practice of apartheid spatial planning. Land development procedures must include provisions that accommodate access to, and facilitation of, security of tenure and the incremental upgrading of informal areas. With reference to the above guidelines we have mentioned in our motivation report that spatial justice is not applicable to this application.*



*Spatial sustainability essentially refers to a sustainable form of development. A part of this means promoting less resource consuming development typologies that promote compaction, pedestrianisation and mixed-use urban environments which allow for the development of a functional public transport system and space economy. A spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.*

*The proposed nightclub and bar will be accommodated in an established business area. The proposed application will have no impact on the conservation worthy areas of the Hermanus CBD. Spatially the land use will be in keeping with the business character of the surrounding area that consists of restaurants, pubs / bars and shops.*

- **Firstly, to the extent that activities may be conducted from the subject property, it is not correct that this application will have no impact on the conservation worthy areas of the Hermanus CBD. We have indicated above how the proposed use of the premises as a night club with live music both inside and outside impact negatively on the heritage resources in the area and how it will impact negatively on the**

surrounding landowners including our client's right to an environment that is not harmful to their well-being.

*Erf 10347 Hermanus is situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009) but no major alterations are proposed for the existing structure that will be used to accommodate the proposed nightclub and bar. The structures on Erf 10347 has a 3B grading. Please refer to the abstract below from the Heritage Survey Report.*

Hermanus House	10347	Hermanus 19 Long Str 34 25' 09.22" 19 14' 26.72"	3B	Architectural/ aesthetic: typical, period example with some alterations incl extended eaves overhang. Surviving small pane front sash windows. Interior appears to be intact. Contributes to streetscape in terms of scale & overall envelope mass	
Hermanus House	10347	Hermanus 17 Long Str 34 25' 09.06" 19 14' 26.18"	3B	Architectural/ aesthetic: typical, period example with some alterations. Street facade contains substantially intact surviving historic period detailing. Contributes to streetscape in terms of scale, envelope mass & public/private street interface.	

**Grade 3B**

This grading is applied to buildings and/or sites of a marginally lesser significance than Grade 3A; and such marginally lesser significance militates against the regulation of internal alterations. Such buildings and sites may have similar significances to those of a grade 3A building or site, but to a lesser degree.

Like Grade 3A buildings and sites, such buildings and sites may be representative, being excellent examples of their kind, or may be rare, but less so than Grade 3A examples: as such they should receive less stringent protection than Grade 3A buildings and sites at local level and internal alterations should not be regulated (in this context).

*The application mainly constitutes the change of land use.*

*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 consent use application will not have a negative impact on the heritage value of the subject property or the greater area of the Hermanus CBD area.*

- Secondly, the rather glib statement that "spatially the land use will be keeping with the business character of the area that consists of general businesses, take-aways, shops, offices, public roads and public parking areas and limited residential properties" is superficial. The statement fails to deal with the heritage resources in the surrounding areas in particular, Section 59(2)(a)(vi) as LUPA sets out, as part of

the spatial sustainability principle that land development must be promoted "in locations that are sustainable and limit urban sprawl" and that "result in communities that are viable".

From the analysis set out by us above, our client disputes that these planning principles have been adequately considered by the applicant. It is clear from our analysis that allowing consent use for a night club with live music and live music events on the subject property, is unsustainable and will render some of the surrounding land uses as unviable. Guests who have used our clients guesthouse are predominantly visitors from overseas who post unfavourable reports on various sites such as TripAdvisor and this may well lead to a substantial fall-off of business not only for our client's establishments, but other establishments the area as identified on Annexure "D" hereto.

Tourism has, and remains, Hermanus' major economic activity and the sustainability of the tourism industry may be severely prejudiced if consent use for a place of entertainment for a night club with live music and live music events is allowed into the quieter and more quaint area of the CBD that we have described above.

*As already mentioned, spatial sustainability essentially refers to a sustainable form of development. A part of this means promoting less resource consuming development typologies that promote compaction, pedestrianisation and mixed-use urban environments which allow for the development of a functional public transport system and space economy. A spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.*

*It should be noted that our client has done his utmost best to ensure that White Rabbit will not create a nuisance, that the sound will be contained and that ill-behaved patrons will not be tolerated. Upmarket bars, pubs and nightclubs are also dependent on tourists visiting Hermanus. A well-managed establishment will therefore be to its own advantage.*

*Having a negative impact on surrounding land uses related to the tourism industry will therefore also be detrimental to the success of White Rabbit. It is therefore essential that the proposed nightclub be well managed and that they take the surrounding land uses of the area into consideration.*

- **Thirdly, the Motivation Report does not deal at all in paragraph 3.11 with the planning principles in Section 59(2)(b) of LUPA. In this subsection provision is made that "the**

sustained protection of the environment should be ensured by having regard to", inter alia, provincial heritage and tourism resources and the economic potential of the relevant area. Our client contends that the consent use applied for on the subject property would infringe these planning principles.

*The objection has already been discussed. Please refer to point 1.1.1 and 1.3.14 above*

- **Fourthly, if one considers the provisions in Section 59(3) of LUPA dealing with the planning principle of efficiency, then it is clear that none of the categories making up this principle are even addressed. The allegation in paragraph 3.11 of the Motivation Report that the proposed night club will be easily accessible to the locals and tourists because there is ample parking available does not resort under any of the principles set out in Section 59(3)**

*With reference to the objections received it is clear that White Rabbit does not compromise the sustainability of the surrounding restaurants. A well-managed night club will attract more visitors to the CBD, that will be beneficial to the surrounding businesses. If the nightclub is not properly managed it will not only be detrimental to the surrounding land uses but also its own sustainability. White Rabbit is therefore obliged to be well managed for its own benefit and the benefit of the surrounding businesses by attracting people to the CBD of Hermanus. The proposed night club will also attract more people to the area which can help with crime as more people will be visible in the area.*

- **Finally, our client agrees that the spatial resilience planning principle set out in Section 59(5) of LUPA does not find application in this application. However, in regard to the planning principle embodied Section 59(4) relating to the principles of good administration for the reasons set out in our analysis above, we would encourage the decision maker to find that this application exacerbate negative financial social and environmental impacts and that it does not amount to an appropriate utilisation of the subject property. Section (54)(g) and (i).**

As discussed in our motivational report the principle of good administration is very important to our company. We are committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation.

All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016.

1.3.15 In conclusion of the objection from Edward Nathan Sonnenberg's Inc on behalf of Ms D. Myburgh Erf 740 Hermanus, the following is requested:

- Our client, as a directly interested and affected party objects to this application for and the reasons submitted above and in particular for the negative impact that the proposed night club with live music and live music events will have on her and her establishment
- the event that this application referred to the Municipal Planning Tribunal (MPT) for determination, we advise that our client wishes make an oral representations to the Tribunal and we therefore request the administrator to advise us advance of the date of the MPT hearing so that we can ensure that 14 days prior thereto we can request in writing to make a representation at the hearing as envisaged by Section 77(3) of the By-Law.
- in order for us to ensure that such representation is apposite, we request that prior to the 14 day cut off period, a copy of the planning report to the MPT be made available to us so that we can consider any aspects thereof that require our clarification on our client's behalf at the hearing.

*We take note of your above request that is conveyed to the Overstrand Municipality for their comments in this regard.*

**1.4 Maria Grazia and Wolfgang Steiner, Erf 781 Hermanus**

1.4.1 The centre of Hermanus is not only a business zone but also a pleasant and practical residential area for many inhabitants, not a predominant business area (many side streets).

*The objection refers to the heritage history of the subject property and it has already been addressed under point 1.1.1. and 1.1.3 above.*

1.4.2 We have already a few noisy places in town, also in the Mitchell Street with very

unpleasant traffic problems, car racing at night, loud high-tuned motorcycles, loud music, drunken people, which causes us trouble and disturb our sleep at night. (We have already complained with a letter a couple of years ago). We are about 6 months a year in Hermanus and chose this place as a beautiful place by the ocean, with wonderful art galleries, nice shops with a remarkable choice of handicrafts, practical location in a town with access to all facilities. We do not want the town to become loud, noisy and maybe dangerous.

*This objection was already addressed earlier in this document under point 1.2.2.*

**1.4.3 I am sure that the rules you describe, will not be followed once the business has begun, the music will be too loud, the control will not work, also it will disturb very much the many nice adjacent restaurants. And probably until 2,00 at night (do not tell me that a night club stops the music at 10,00 !).**

*As discussed under point 1.2.2 and 1.3.13. in this document the owner takes the management of his business very seriously and is determined to make a success of the night club. It is proposed that live entertainment (to be held outside) will end 22h00 at night. The proposed night club will trade for longer hours and that is why recommendations were made in the Noise Impact Assessment in order for the proposed night club to adhere to the sound regulations. The objector cannot assume that the owner of the White Rabbit will not adhere to the rules as it can jeopardise the success of his business and opportunity to create an income for himself. It was also already discussed that the proposal can create an opportunity to neighbouring restaurants to grow their businesses.*

**1.4.4 And do not emphasize the employment possibilities, some waiters, two barmen, two cooks, one manager and some Striptease girls.**

*As the proposal will not be able to create job opportunities for a lot of people it will still create an opportunity to someone to provide for their family. The proposed night club and live entertainment will help a number of people to generate an income to provide for their families. The owner intends to use the workers from the local community, and this will help some of the local community members to enhance a better livelihood and better lifestyle.*

**1.4.5 The whale coast mall is not the only place we want to shop, as retired people we enjoy very much not having to drive all the time we have to buy something. There must be other alternatives to make the town more and more interesting. The rooms could be used for art schools, meetings, conventions etc.**

*The above comment is not relevant as the proposal does not entail to close any of the existing shops in the CBD of Hermanus, residents within the CBD will still be able to make use of shops in the CBD. The proposed night club and live entertainment will not have any impact on the existing shops and shopping hours of the local residents.*

**The events you are listing Whale Festival, wine, and food festival, FYNARTS FESTIVAL, are events which only last a few days and do not impact continuously the pleasant a peaceful atmosphere in town (lively enough). The night club cannot be compared with these events it will be a permanent noise source, and an amenity which MOST citizens in town DO NOT NEED OR WANT.**

*The intention is to be a part of the yearly festivals by means of creating opportunities within the venue that will be in line with general yearly festival programs that are known in Hermanus. The intention was never to compare the festival themes and the proposed nightclub as it is two totally different types of entertainment.*

**1.4.6 A multipurpose space, for exhibitions, occasional markets (Easter, Christmas....) could be established, or concert rooms, for small groups and classical music. You can find a property outside town for a night club and the owner can provide transportation to and from such a place. And sufficient parking lots.**

*We appreciate all the business proposals that are mentioned by the objector, but the owner of the White Rabbit already has a practical proposal at hand. We are not sure if the objector has noticed that the CBD has turned into a ghost town and the proposal can help to attract local and international visitors to the CBD and help grow the local economy. The owner does not need to find another location as the White Rabbit is perfectly located for business.*

**1.5 Graham McPherson owner of Erf 737 Hermanus**

**1.5.1 Our property (Erf 737) was acquired in 1996. We bought the property because it is**

situated in a quiet, residential and heritage area within walking distance of shops and restaurants. The fisherman's cottages (3 & 5 Hope Street) were established approximately 120 years ago. My wife and I are almost 80 years old and often have our three granddaughters (aged 10 to 15 years) to stay over weekends and holidays. If the Municipality is promoting this area of Northcliff as a residential area with a mix of restaurants, cafes and bookshops etc., I fail to see how the Municipality could allow the establishment of a night club so close or within this quiet residential area where families with children of all ages live.

*The objection has been discussed in detail under points 1.1.1 to 1.1.3, 1.2.4, 1.3.11 and 1.3.13.*

**1.5.3 The objector strongly objects to the establishment of a night club (entertainment rights) at the White Rabbit Pub and Grill but have no objection to the restaurant itself.**

*The establishment of a night club has been motivated in detail in the motivation report that was attached to the application. Some of the other objectors have also raised some points that are in conjunction with the points Mr Graham McPherson mentioned and have been commented on earlier in this document.*

**1.5.4 I respectfully request the Municipality not to approve their application to run an entertainment business (night club) at this location.**

The application cannot be rejected by the municipality just because the objector finds the application unsuitable. The application should be evaluated thoroughly and follow due process. According to the motivation and comments on the objections at hand the application will have a little negative impact and therefor can be supported.

**1.6 Mr N.M. Shaw the owner of Erf 760 Hermanus**

**1.6.1 I am the owner of Erf 760 Hermanus, situated at 17 Mitchell Street, Hermanus, and will be severely impacted by it if the change of use is allowed. I object to the Application for Consent use being allowed based on the following: The proposed change in use of Erf 10347 will impact on my peaceful use and enjoyment of my property. We are retired and live full time on the property.**

There are many residents in this area and the Applicant's averment that Erf 10347 is in an area where there are only businesses located is simply not true as many properties in Mitchell and adjacent Long, High, Dirkie Uys, Aberdeen St and Hope Street are residential. The Applicant conveniently only lists the few restaurants and bars in the area but none of the residential properties like the houses, flats in Long Street and other accommodation in Long, High, Dirkie Uys, Aberdeen St and Hope and Mitchell Streets.

The noise and activity during the night that will be generated (and is already being generated) will disturb the peace, possibly bring more crime to the area and change the tranquil atmosphere. An entertainment license will allow them to play loud music, until 2.00am; hold music concerts and festivals; run a strip joint, etc. Businesses operate in many properties in the area, but these are mainly shops and offices which close by 17:00 where after the area is quiet and residential.

According to the recently published guidelines by the Overstrand Municipality the central area is planned to be for combined business AND residential use. The object being to densify the central area (like many/most overseas countries).

The densification will of course come from the residential sector and allowing a loud and usually rowdy business in the middle of this seems to directly contradict what is desired. What concerns me also is the fact that they are already trading, as if they have the requisite rights, demonstrates that they have a disregard for the law. In other words, they won't stick to the parameters of the consent use rights. There have been many complaints from residents.

*It is clear from the above objection from Mr. B.M. Shaw that the reasons for the objections are all similar to the ones that were raised as per the above and that were previously addressed. It is clear that the main issues were mentioned again like the noise that will be generated from the proposed establishment, crime and the fact that the establishment is already trading. All of the aforementioned issues have already been addressed in this document.*

**1.7 Venessa Prior - Erf 702 Hermanus (we believe this is the incorrect Erf number provided by the objector).**

Mrs. V. Prior also raises issues like the residential character in the CBD, noise, crime and the high-speed car races in Mitchell Street. The objector also states that she does not believe in the employment theory and the operating times.

*All the issues that are mentioned above have been raised by the other objectors and have been addressed in detail.*

**1.8 Brigitte Sabbe on behalf of RITCARLO INVESTMENTS (PTY) LTD ERF 5664 Hermanus**

**According to the objector they have submitted a video that indicates the amount of noise that is generated from the premises of White Rabbit. The objector however is not opposed to the night club as long as the noise that is generated is controlled. The objector also has a concern that as soon as the proposal will be approved that it would be more difficult to control especially with the live show and concerts.**

*We as the applicant cannot comment on the video as we did not receive any footage. We can however confirm (as discussed previously) that a professional sound engineer has compiled a Noise Impact Assessment and the owner intends to adhere to the recommendations set out in the Noise Impact Report in order to comply with the Western Cape Noise Control Regulations, 2013.*

*In conclusion it is clear that the owner of White Rabbit has gone through a lot of mitigation measures before the application for a consent use to establish a night club and occasional live entertainment was submitted to the Overstrand Municipality. The above comments that were received from the general public have been addressed in detail and we believe that the positive impacts outweighs the negative.*

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

Yours faithfully



John Mc Lachlan

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR CONSENT USE: ERF 10347, NORTHCLIFF**

Electricity : In order  
Water : In order  
Sewer : In order  
Stormwater : In order  
Roads and traffic : In order

**Conditions:**

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
4. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;
5. that stormwater be allowed to discharge through Erf 10347, Northcliff, unobstructed;
6. that any additional and / or extended vehicle entrances will be for the owner's account;
7. that no on-street parking be allowed.

  
DENNIS HENDRIKS  
SENIOR MANAGER:  
ENGINEERING SERVICES

  
DATE