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**PORTION 229 OF FARM 575, BENGUELA COVE, OVERSTRAND MUNICIPAL AREA:
AMENDMENT OF SITE DEVELOPMENT PLAN: MESSRS WRAP ON BEHALF OF
BENGUELA COVE INVESTMENTS (PTY) LTD****HBENG 229/575 (2948/2019)****H Olivier****(028) 313 8900****Hermanus Administration****20 October 2020**

1. EXECUTIVE SUMMARY

An application was received on 2 February 2019 from Messrs WRAP on behalf of Benguela Cove Investments (Pty) Ltd on Portion 229 of Farm 575, Benguela Cove for the amendment of the Site Development Plan (SDP) in terms of Section 16(2)(l) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 to accommodate the new water play park, large wooden decking and seating area.

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Benguela Cove is a wine estate with residential plots, a hotel site, agricultural land, private roads, private open spaces, nature areas and also a Special Zone erf. The Special Zone erf (Portion 229 of Farm 575) was created to accommodate Tourism Businesses which include a wine cellar, restaurants, wine tasting and other tourist related facilities. The applicant also applied for some additional uses such as market stalls and a place of entertainment that was partially approved in early 2019. The land owner also constructed a water play park and some wooden decking for which they did not apply, hence this application to legalize these structures.

4. SUMMARY OF APPLICANT'S MOTIVATION

- The application is to permit a water play park, large wooden decking and seating area.
- The water play park and deck were to cater for the needs of clients to make the facility more welcoming for families with children.
- The new structures are visually appealing, enhance the ambiance of the entire estate area and are in harmony with the prevailing upmarket architectural style.
- There will be no deviation from the Special Zone SZ-2 parameters.
- The new uses/structures are ancillary and subservient to other uses on the subject property, and therefore no additional parking is required (309 parking bays are provided and sufficient for all activities).
- Electricity is provided to the site by Eskom.
- None of the existing structures which the application is made for, as indicated on the SDP, require additional water.
- The property is connected to the existing sewer network.
- It is not projected that the new structures/activities will generate additional traffic.

- The new activities will enhance the attractiveness of the restaurant and wine tasting and provide employment opportunities, enhancing the economy.
- The blend of facilities on the erf helps promote intercultural interaction on the property.
- The water play park and decking are compatible with the prevailing tourism/restaurant character.
- An increase in genteel clients ensures additional surveillance on the property.
- No heritage impact.
- Conditions of approval will ensure land use rights of surrounding property owners will not be deprived.
- The structures are not visually intrusive or deprive Benguela Cove residents of any land use rights.
- The agricultural land and private open spaces around the site would help that the new activities will not interfere with the peace and comfort which residents enjoy.
- The application is in line with the PSDF, SDF, IDF and OMGMS.
- If the application is tested in terms of the common law principle of reasonableness, it is the opinion that the merit and scale of the land uses is such that it would not deprive residents' rights of occupation and wellbeing.

Planning Principles:

Spatial Justice

Work opportunity will be created for mostly previously disadvantaged.

Spatial Sustainability

The application promotes mixed uses which are related to the tourism industry, which again promotes a functional space economy.

Efficiency

The new structures/activities promote the optimal utilization of space, energy, infrastructure and resources.

Spatial Resilience

The application is in line with forward planning policies.

Good Administration

The Overstrand Municipality followed a good administrative process, advertising to the public and informing other effected spheres of government of the application.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Notices	Yes	3 June 2019	12 July 2019
Ward Councillor	Yes	3 June 2019	12 July 2019
Total letters of support	NONE		
Total letters of objection	TWELVE (12)		
Was public participation undertaken in accordance with Section 46 - 50 of			Yes

the By-Law on Municipal Land Use Planning?	
Was the application processed correctly (if no, elaborate below):	Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)	Yes

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

Name	Date received	Summary of comments
Fire Department	12/06/2019	Must comply with SANS 10400.
Engineering Services	7/08/2019	See Annexure H.
Environmental Branch	21/11/2019	See Annexure I.
Western Cape Government : Transport & Public Works	25/06/2019	See Annexure J.
Telkom	10/07/2019	See Annexure K.
Waste Management	2/07/2019	No objection.
Building Department	4/06/2019	No objection.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Twelve (12) letters of objection were received from surrounding property owners, including from the Benguela Cove Estate Homeowners Association (HOA). See Annexure D.

The applicant was also granted an opportunity to respond to the objections received, and is attached as Annexure E.

Objections were received from the following parties / individuals:

- J Viljoen
- M & R Diessner
- CS McCarthy
- V & IM Buchholz
- M & S Prew
- R & J Chopamba
- Anneli van Zyl Attorneys obo Karl & Sarah Properties (Pty) Ltd
- N Buchholz

- Anneli van Zyl Attorneys obo K Oswald-Diesel
- DECA Consulting (E Schoeman)
- Leyson Construction (R & L Southin)
- Tommy Brummer Town Planners obo the Austen Dundas Family Trust

The objections can be summarised as follows:

1. Non-compliance with Benguela Cove Constitution

- *The consent of the association as well as the urban and architectural review control committee should have been obtained for the application, but BCI did not do so.*
- *From heading “20. Voting, 30. Dealing with common property”, “31. No subdivision or rezoning and not more than one dwelling”, “32. Building standard rules and aesthetic approval” “4. Membership” in the BCE it is derived that 75% support is required to change the constitution, and that Benguela Cove Lagoon Owner Association, with special resolution has mandate in terms of common property to allow building, improvements or enhancement other than that shown on the approved layout plan, and it is interpreted also the amendment of the SDP. The urban and architectural review control committee then has the mandate to allow the approval of building plans of any structures, improvements, alterations, etc. The same process is argued for any departure approvals.*
- *31.1 lists the extent of facilities on the commercial land area, and it is deemed appropriate in terms of Clauses 4.6.2 and 32.1 that consent of the association has to be obtained to alter or expand the listed facilities.*
- *Recommend the Overstrand Municipality to reject the application until the internal protocols are followed.*

Applicant’s response

- Voting – The contents under the voting heading only pertain to the process regarding internal decision making and has no relevance to the submitted proposal.
- The property is not common property and is excluded from the definition of common property. Therefore, the HOA consent is not required.
- The application is not for a subdivision or rezoning and not more than one dwelling; therefore the HOA consent is not required.
- The new structures are below a height of 1m, therefore approval in terms of the National Building Regulations and Building Standards Act is not required. The HOA consent is therefore not required.
- This application does not include the transferring of a property therefore point 4.6.2 in the Constitution which relates to building works can only be evoked before a property is transferred.

Town Planner’s response

- The comments from the objectors and applicant are noted.
- It is noted that a legal person submitted an objection in this regard on behalf of two (2) property owners in Benguela Cove, the opinion was, however not substantiated by such legal person.

- The HOA appointed a Town Planning Consultant who provided an opinion on the interpretation of the constitution and that the owner of the property had to obtain the HOA and the architectural review committee's approval for the application. The applicant's town planning consultant however does not concur with this opinion.
- With the previous similar application for departure and amendment of the SDP, the same debate was raised, but the chairman of the HOA did then provide a comment, which was based on the opinion of the Benguela Cove Estate HOA's attorney at that time, that the owner of Portion 229 of Farm 575 did not need the HOA's consent for the Municipality to consider such application. (See attached as Annexure M)
- The same HOA now obtained an opinion from a Town Planning Professional which states the HOA consent is required prior to council taking a decision on the planning application.
- Considering the Special Zone requirements applicable to Portion 29, it is indicated that if changes are made on the site, a SDP must be submitted to the Municipality for approval.
- It also states that all building plans relating to development on the site should be considered and approved by the Architectural and Review Committee, which performs their function on behalf of the HOA.
- The applicant is of the opinion that if structures are lower than 1m, no building plan submission is required, and is of the opinion that it is not a requirement for the structures being applied for. Additional comment was requested from the Municipality's Building Department to provide their opinion if the submission of the building plans was a requirement for the water play park and decking. It was confirmed by the Building Department that building plan submission was required for the mentioned structures.

Considering the above, the water play park, large wooden deck and seating area is in line with the zoning of the erf. The opinion of the planning consultant of the HOA that the HOA must consent to the SDP amendment are noted, but not supported. Various clauses are quoted in his response trying to prove such consent is a requirement, but no mention is made of "Clause 16. Commercial Unit" in the Constitution. This clause states that the developer reserves a right to further amend the rules relating to the Commercial Component, once such component has been built.

In a comment received from the HOA's lawyer in 2018, with regard to an application for amendment of the SDP, this clause was also prominently quoted (attached as Annexure M). After receiving the lawyers comment the chairman of the HOA then indicated the HOA Trustee Committee did not need to comment/provide consent for an amendment to the SDP based on the constitution. It is therefore not clear how the comments of the town planning consultant contradict a previous opinion from the HOA lawyer.

The fact is however, that as indicated above, the developer will have to submit a building plan for the structures that were illegally constructed. Such building plan will have to be considered and approved by the Architectural and Review Committee on behalf of the HOA, and therefore the HOA is not excluded from the process, and were even provided opportunity to provide comment on the application for the amendment of the SDP.

The opinion that the HOA had to consent to the amendment of the SDP is therefore not supported, but the opinion that the building plans be submitted and be approved by the architectural review committee is supported.

2. Impact on Environments

- ***Benguela Cove is a protected nature reserve. The chemicals from the waterpark will affect marine life.***
- ***More noise will chase away bird species.***
- ***Is an EIA not required?***

Applicant's response

- No listed activities in terms of NEMA are triggered, thus no authorization is required.
- Water from the water play park is not discharged into the lagoon, but treated on-site, therefore have no impact on marine life.

Town Planner's response

- The applicant addressed the concern regarding water of the pool possibly impacting on marine life in the lagoon.
- The Municipal Environmental Department was consulted and did not indicate that any EIA listed activities will be triggered. Their response was as follows: "*The construction and operation of the water play park does not trigger any NEMA EIA listed activities. Water is recycled in the system and no discharge is taking place within the estuary. The site is still within the "Special Zone" as it was approved in the ROD issued to Benguela Cove*".

3. Engineering Services

- ***The water play park will use additional water, considering the De Bos Dam is at the low level of 48%, clearly such plans should not be approved.***
 - ***Report was obtained from DECA Consulting Engineers who indicated, that considering the impact, the following documents need to be upgraded:***
 - ***Services Report concerning Benguela Cove Estate and the SDP for Portion 229 of Farm 575 – DECA Consulting Engineers, 8 June 2016***
 - ***Calculation of development contribution levies – DECA Consulting, 2017***
 - ***Services agreement between Overstrand Municipality and Benguela Cove Investments (Pty) Ltd – DECA Consulting Engineers, 2017***
- The above-mentioned documents should be amended to reflect the latest services requirements at Benguela Cove Estate.***

Applicant's response

- The De Bos Dam level has raised from 37,7 to 48,1% in one week, so water levels are increasing. Residential stands in Benguela Cove can also have pools, it is unclear why the subject property should then be denied.
- Due to the small scale of the water play park, it is not required to amend the services report.

- Additional development levies are only applicable when additional land portions are created, which is not the case. The new facilities would lead to a small increase in property value, and when the Municipality upgrade their valuation roll, additional rates will have to be paid by the owner.
- The amendment of the Service Agreement between the Overstrand Municipality and Benguela Cove Investment (Pty) Ltd would only be required if the nature of additional land uses necessitates it.

Town Planner's response

- The comments of the objectors and the applicant were duly considered.
- The comments of DECA Consulting Engineers was forwarded to the Municipal Engineering Services Department to comment on the consultant's opinion. The Municipal Engineering Services Department indicated that the proposed additional land uses will not have a meaningful impact on municipal services, including water supply. The Engineering Services Department also note that additional land uses are "ancillary and subservient" to the restaurant, and therefore not the main reason guests visit the site. Their final opinion is that there is no legal basis to charge additional bulk levies or to amend the Services Agreement. (See Annexure J.)

4. Misrepresentation

- ***The estate was sold as a quiet exclusive estate, but the water play park would create noise, which would ultimately impact on property values.***
- ***Submitting selected bits of development as separate SDP's is an attempt not to fully disclose the final development and does not enable Council to assess the potential impact.***

Applicant's response

- The water play park, wooden decking and seating area are all primary rights on the property, and considering the scale thereof is not visually intrusive and in harmony with the existing character. No additional development rights are therefore unlocked.

Town Planner's response

- The Municipality cannot comment on claims of how a development was marketed to potential buyers and can purely consider the zoning rights applicable to the property.
- The applicant did not comment on the claim of submission of separate applications to amend SDP's as an attempt to not fully disclose the final development.
- It is to be noted that while the application for departure and SDP amendment was in process for proposed market stalls and place of entertainment, the property owner constructed the water play park and deck area. Acting on complaints of residents, a notice was sent to the property owner to address the illegal situation. An application for the amendment was then submitted in February 2019, while the one (1) application was still in process. This was an attempt of the landowner to legalize the activities, and the fact that two (2) applications were being considered at the same time on the same property was duly indicated in this application. Considering the scale of this application, it was also not considered

of such a magnitude that the previous application had to be withdrawn and a totally new one had to be submitted.

- Also note that the first application was already finalized in March 2019, and that it was only partially supported, limiting impact even more. Also note that no appeals were submitted against such application by Benguela Cove residents or the HOA.

5. Use of existing facilities in the absence of approval building plans

- ***No building plans for the water play park, wooden deck and other amenities have been approved by the Municipality, therefore the facilities are being used "at risk". The use should therefore be discontinued.***
- ***Were unaware structures were illegal and used it.***

Applicant's response

- The property owner appointed consultants to start a process to legitimize the wooden deck, water play park and seating area, showing sincere intent to comply with regulations, therefore there is no need for cessation of the activities by the Municipality.

Town Planner's response

- The concerns are duly noted and the actions of the land owner are not condoned.
- The landowner comments are also duly noted.
- The Municipal Building Control Branch is aware of the situation. The Building Control Branch indicated that no notice was served because a Town Planning Application was lodged. Building Control Branch believes that the best solution to rectify unauthorised structures is to allow for the regularisation thereof by submitting a building plan application. The submission of the Town Planning Application is part of the process to regularise the unauthorised work.

6. Security

- ***The area next to the putt-putt course where people can park provides them access to the estate, with no security.***
- ***No proper additional surveillance and vehicles are entering to the residential stands.***
- ***Can mitigating conditions be imposed to increase security?***

Applicant's response

- There are security entrances into the residential part of the estate, and the additional surveillance by guests has a positive impact on the security of the area.
- Guests to the private golf course and water play park do not roam into Benguela Cove.
- Only guests to the residential erven and those on guided tours are allowed into the residential areas, and is all screened at the security gate.
- The possible deployment of more security guards within the development should be raised at the complex meetings.

Town Planner's response

- The issue of security around the Special Zone II erf was not addressed in the original planning approval for Benguela Cove Development.
- The matter of security is an in-house matter which the developer, HOA and residents will have to resolve. Portion 229 of Farm 575 was always earmarked for commercial activities, and therefore if there were never any conditions in the original land use approvals or contracts between the developer and residents that a fence or wall be created around the Special Zone erf, it should then have been expected that there could be some flow of visitors into the vineyards. The hotel site down at the lagoon would also always have been open to the public, and this means some form of access to the public should have been expected.
- Although the residents' concerns regarding security are understood, this is an in-house matter.

7. Contradicting information (visitors and parking)

- ***It is motivated in the report that no additional parking is required. However, later in the report it is stated the uses will attract "additional genteel clients". There will thus be implications for additional traffic and noise generation, and provide additional parking for such clients.***

Applicant's response

- The wooden deck and water play park is an attempt by the property owner to attract more guests to the restaurant. The restaurant already provides sufficient parking in terms of the Special Zone Zoning.

Town Planner's response

- The objection regarding parking is duly noted.
- Additional motivation was originally requested from the applicant regarding what the increase in visitors would be to the new facility, to determine parking. The applicants indicated no additional increase was expected.
- Although the objectors' concern regarding parking is duly noted, it would be very difficult to allocate a parking ratio to, for example a wooden deck, as the existing grass area also could have catered for security. Ultimately it is the opinion some sort of ratio should be applied to the water play park.
- The other factor which is not considered and for which parking was earmarked on the SDP, was only partially approved. The previous partially approved application would mean that the marquee tent area of 134m², for which twenty (20) parking bays were allocated and also approximately half of the area that had to be used for market stalls, which totals to approximately 1729m² (eighty (80) stalls) for which sixty nine (69) parking bays had to be allocated, approximately thirty four (34) parking bays are not required anymore. A total of approximately fifty four (54) less parking bays would thus be required.
- The final SDP submitted dealing with the stalls and place of entertainment rights provided a total parking bays on the property and only approximately two hundred and fifty seven (257) would be reserved at this stage, and forty eight (48) would still be available for additional parking.
- Considering the above, there is sufficient parking on-site, but it is the opinion that additional parking be required for at least seven (7) parking bays of the parking ratio of 4 bays/100m² is used (calculated only for the water play park).

- Further, it is to be noted that the wine cellar parking also had to be provided at a ratio of 4 bays/100m², which is excessive, but had to be applied due to the Special Zoning. It is therefore not foreseen that a shortage of parking will occur for the approved activities on the erf.
- It is also to be noted that the Department of Transport and the Engineering Department support the application.

8. Impact on existing character and rights

- ***Increase noise and light pollution, impacting on the peaceful and tranquil ambiance.***
- ***Any live entertainment should be inside the building.***
- ***Outside speakers at the putt-putt course with loud music create noise.***
- ***Open air music events were held even after the Municipality's April 2019 approval.***
- ***The floodlights at the putt-putt course abstract wildlife such as bats and night birds.***
- ***Tourist facility appears to take a character of an amusement park.***
- ***Water play park would lead to increased noise.***
- ***Open areas around the play area does not actually act as a buffer, but promotes the distribution of sound.***
- ***Lack of noise barriers and absence of restricting operating hours makes problem of noise worse.***
- ***Following mitigating conditions proposed:***
 - ***Requirement for a noise barrier installation around the water play park, deck and seating area, including golf course to contain noise generation.***
 - ***Additional large tree planting along the eastern boundary of the tourist facility.***
 - ***Clear times of operation restricting operating hours of the water play park and associated facilities (outside deck and seating area).***
 - ***The issue of additional parking must be addressed.***
 - ***A final SDP must be provided showing all changes, which must again be advertised for comment.***

Applicant's response

- The open space and agricultural component act as a buffer to minimize noise impact created at the seating area, water play park and wooden deck.
- The one (1) objector indicates he is concerned that the water play park will lead to screaming kids disturbing tranquillity. Considering the fact that the water play park already exists, it is clearly not a disturbance.
- No live entertainment or marque tent forms part of this application.
- The putt-putt course has already been approved by the Municipality and this is not an animal conservation area.
- With the approval of the previous application for markets and a place of entertainment, the approval limited the extent of the application and stipulated mitigating measures to limit impact.
- The one (1) objector commented: "*the impact of the existing non-approved structures on the existing commercial development at Benguela Cove Estate is from a tourism perspective, generally considered to be aligned with the town planning criteria that is relevant to the property*".

Town Planner's response

- The comments of the objectors and applicant are duly noted.
- The greatest concerns are noise and lack of noise banners, impact of floodlights and also concern about operating hours.
- These same concerns were raised in the previous application for market stalls and also place of entertainment, and it is the opinion that these concerns were duly addressed by limiting the scale of activities and mitigation measures.
- The concerns regarding noise pollution are not unfounded, and it is considered as a major issue for the residents in Benguela Cove who indicated that they bought into a development with a peaceful and tranquil ambiance. Recommendations are made that the owner should create noise barriers, plant more trees and limit operating hours (including for the putt-putt course).
- The applicant's consultant's response is that there is sufficient open area around the site to buffer noise impact, and that the putt-putt course has already been approved.
- The applicant also quoted the one (1) objector's statement that the new activities are in line with tourism activities as allowed in terms of the town planning rights.
- It is clear that the residents do not support the activities the owners of Portion 229 of the Farm 575 are proposing on the erf, as they feel it would negatively impact their lifestyle. The Municipality was, however not involved in the marketing of the development, and can only consider the application in terms of the zoning rights of the property. As then clearly indicated in the comment of a professional town planner providing a response on behalf of the HOA, the activities is in line with the zoning rights.
- In terms of the Special Zone II zoning, the Municipality must consider a SDP for new development on the site to ensure there is sufficient parking, etc. It is also used to see if it will trigger environmental processes, if services are available, and if it would impact the entrance onto the R43. All these issues form part of the consideration of the SDP. The SDP submission is however not to apply for new uses, not usually allowed on the property.
- Considering the above, if all the above-mentioned criteria is complied with, the Municipality could stipulate some mitigating conditions.
- Ultimately the activities being applied for are in line with the approved zoning, and this must be considered when claims of impact on existing character and rights are debated.
- The Municipality must also be reasonable towards the landowner and also the residents. Although these two (2) parties are divided in their opinions, the Municipality must still make a decision that would address both parties' concerns/expectations. It is therefore the opinion that some conditions can be stipulated to address concerns regarding noise and floodlights (and operating hours to a certain extent) of the new activities. This will be discussed in more detail under the Evaluation heading.

9. Non-compliance with By-Law

- ***The Site Development Plan submitted was not too scale or dimensioned, therefore Council cannot approve the SDP.***

Applicant's response

- No comment provided.

Town Planner's response

- The applicant did not provide any comment.
- The Benguela Cove commercial development is an existing development, and this application is only for a water play park, wooden deck and seating area. All the structures have already been constructed, therefore, the scale of the activities is visible on site.
- The plan submitted is not to scale, but in the legend the size of the "proposed marque tent" and "stalls market area" are indicated, and the areas are also clearly indicated on the plan, providing some form of scale to a person evaluating the SDP.
- Also note that plans are reduced in size to send to the public, and a scale on a plan would not serve a purpose in such regard.
- It is the opinion that the SDP contained sufficient information to consider the impact thereof.
- This office will request a scale copy of the SDP for approval as a condition of approval of this application is approved. No additional public participation process is foreseen for a new SDP at this stage.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

9. MUNICIPAL ASSESSMENT OF COMMENTS

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 Benguela Cove Wine Estate was planned in such a manner to create a mixed-use development, providing for residential, agricultural and commercial activities that mainly are directed at tourism. It also provides for environmental sensitive areas closer to the lagoon to ensure the environment is protected. This application relates more to the impact of the different land uses on one

another and will therefore be considered under desirability to try to determine where the balance in terms of land use is.

Efficiency

The Benguela Cove Wine Estate was developed in such a manner to cater for a specific up-market residential market. The Special Zone erf was created to provide some facilities to serve the community, but it was also created to act as a tourism node for visitors to the region or residents in the region. It is thus reasonable that the owners of the Special Zone erf see potential to create more activities on the site to cater for the wider community.

Spatial Resilience

The Special Zone erf, making provision for tourism business, makes provision for a mixture of land use to ensure that a wider spectrum of land uses can be allowed to provide the site some spatial resilience.

The water play park ($\pm 150\text{m}^2$), wooden deck and seating area are primary uses and are considered subservient to the main wine cellar, restaurant, etc. activities.

Good Administration

All landowners within Benguela Cove and the HOA were informed of the application. Although the application took some additional time to finalize, it was considered necessary to obtain additional input from some municipal departments to make an informed decision.

A good administrative process was thus followed.

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

Same as Point 10.2 above.

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

Consistent with the Spatial Development Framework and the Overstrand Municipal Growth Management Strategy, 2010.

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

N/A

10.6 Impact on Municipal engineering services

This is a private development that has its own internal services. The Engineering Services Department indicated their support for the application, and it is therefore the opinion that existing services within the development and also external bulk services of the Municipality have sufficient capacity to deal with the additional pressure created by the application.

It must also be noted that the HOA obtained a comment from DECA Consulting who indicated that a Services Report concerning Benguela Cove, calculation of Development Contribution levies and the Services Agreement between the Overstrand Municipality and Benguela Cove (Pty) Ltd must be

updated/amended. The applicant did not support the comments. The Engineering Services Department however indicated that it is not a requirement for this application that the Services Agreement between the Municipality and Benguela Cove have to be amended.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

Portion 229 of Farm 575 has a Special Zone, providing for tourism business. The Special Zone II was created to provide for tourism business to cater for locals and tourist, and can allow land uses associated with tourism.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12. THE DESIRABILITY OF THE PROPOSAL

The Benguela Cove Wine Estate was approved as a mixed-use development providing for low-density residential erven, a hotel site, nature areas, private open spaces, agricultural land and also a Special Zone portion (Portion 229), created for tourism business activities. The Special Zone portion serves the Benguela Cove Estate, but was also created to increase tourism in the area, thereby serving a wider community.

The Special Zone II erf has been developed with a wine cellar, wine tasting, restaurant, tourist shops and also a mini-golf course with restaurant. It is to be noted that place of entertainment rights were approved only in the restaurant and wine cellar for weddings, other functions and live acts/music, and also for forty (40) market stalls only to be placed in the court yard.

It is also to be noted that when this application was submitted, the place of entertainment and market stalls were not yet approved, but due to the illegal construction of the water play park and wooden deck, the land owner had to submit the application as an attempt to legalize the structures.

At this stage there is some conflict between the owners of Portion 229 and the HOA and residents. This can clearly be seen in the comments/objections received.

The objections and responses thereon were discussed in detail. Therefore only matters pertaining to requirements of submission to the HOA, services requirements and contracts, approval of building plans, parking provision, and impact on the character of the surrounding character will be elaborated on.

As previously indicated in this report, an application for the amendment of a SDP is only to measure the impact of additional development on property, in line with additional development rights (uses), to see if there are sufficient services, road infrastructure, parking, etc. to serve such expansion. Such application relates more to an increase in scale, not to land uses not allowed in terms of a property's zoning.

The issues pertaining to the character of the area and the expectations of residents were discussed in this report. It is noted that two (2) town planning consultants commented on the application on behalf of objectors, and the compatibility of the water play park and wooden deck and seating with the property's existing zoning was not questioned. The impact of the new activities on the expected rights of residents was, however motivated in detail. Increase in traffic and increased noise are the greatest factors that could impact the character of the area and "quality of life of residents".

The Benguela Cove Development is unique, in that it is a low density residential development, surrounded by agricultural land and nature areas, also providing for a commercial component that must cater for Tourism Business opportunities for residents of Benguela Cove Estate, residents of the Greater Hermanus area and also tourists alike. The Tourism Business site was not only created to serve the residents of Benguela Cove Estate, and as with the case with any commercial development, the aim is to develop facilities to attract business.

References to impact on character of previously approved buildings, structures and uses also does not form part of this application, as previous SDP's and departure applications were considered and already approved. The concerns regarding traffic impacting the character of the area is also not supported. An increase in traffic over time as the Special Zone erf developed further was to be expected by residents, and the support of the Department of Transport and the Municipal Engineering Department indicates existing road infrastructure can handle the possible increase in traffic.

The concerns regarding parking does have some validity, because it is foreseen that the water play park could increase numbers of guests to the site, which then could require additional parking. It must however be considered that due to limiting the approval for place of entertainment and market stalls in March 2019, less parking bays would be required for such facilities and forty eight (48) parking bays are still available. Special Zone II parking provision is four (4) parking bays for 100m² GLA for a tourism business area, and it relates to approximately seven (7) new parking bays required at most for this application. This means that sufficient parking bays can be provided on-site, which would ensure no overflow parking would be created onto agricultural land and possibly impacting the character of the area.

The concerns regarding impact of noise on the character of the area does have some validity, and the owner of the commercial site does have some responsibility to control noise pollution to some extent. The water play park area is created for smaller children and it is safe to say it would create more noise than a restaurant, wine cellar or the outside restaurant with putt-putt course. It is noted that vegetation and trees have been planted around the water play park, but to ensure more noise dampening, a landscape plan specifically designed to address noise control would be advisable.

A concern from the HOA was that there are service contracts between the developer (owner of Portion 229 of Farm 575) and the HOA that should be updated with the new development, and also a Service Agreement of the development with the Municipality. It is to be noted that the Municipal Engineering Services Department indicated their support for the application. The additional comments were requested regarding the concerns about their Service Agreement and they indicated that due to the subservient role of the water play park, no additional bulk

service levies are required and the Service Agreement does not have to be upgraded / amended.

The other concern of the objectors that no building plans were submitted for the water play park and wooden decking, is a valid concern. It was confirmed by the Municipal Building Control Department that building plans must be provided for the structures.

The most difficult matter pertaining to this application is to what level the HOA should be involved in the consideration and approval of this application. This was also duly discussed under the consideration of objections.

The Municipality cannot take responsibility to police the Constitution of Benguela Cove Estate or provide opinions over the interpretation of such document. The Municipality is also not involved in Service Agreements and levies between the developer and the HOA.

Having said the above, Portion 229 of Farm 575 is a member of the HOA. It also obtains access over the private road maintained by the HOA. All previous building plans on the said portion were also duly approved by the HOA. It is also to be noted that with the application for the market stalls and place of entertainment, the chairman of the HOA indicated that they however did not have to provide their consent for such town planning application, and it was therefore duly involved in such process.

In this application, the HOA's planning consultant and other objectors are of the opinion that the HOA should provide their consent for this application. Although this office note the HOA's opinion that this application involves the amendment of the service contract with the developer, such opinion is not supported by the applicant (who is also the developer). It is fair to say that this concern by the HOA cannot only be ignored and should be addressed by the two (2) parties.

Although it is not supported that the HOA should provide their consent for the SDP amendment, structures have already illegally been constructed by the applicant, which does require building plan approval. It is therefore the opinion that the approval of the Architectural and Review Committee (on behalf of the HOA) is required for such building plans, as they must consider the aesthetics of all buildings/structures in the development, as was done with all previous building plans.

In terms of the Regulations of the Special Zone II zone, it is also stipulated that a Site Development Plan must be submitted to Council for consideration for all amendments on the site. It is further stipulated that all building plans should be approved by the Architectural Review Committee.

Therefore, should this application be considered, the applicant should submit building plans to the HOA for consideration by the Architectural Review Committee, and update any service contracts with the HOA, if so required. This will be stipulated as a condition of approval, and will have to be done within a specific time frame. It is also to be recommended that the applicant submit a Landscape Plan to the municipality, to address ways to limit noise. These conditions should then be complied with within a limited time period, considering the fact that the water play park and wooden deck is already constructed. If there is non-compliance, the approval will lapse.

It is the opinion that should the above-mentioned mitigation measures be stipulated, the concerns of the HOA and other objectors would be addressed, and also the noise concerns to a certain extent.

13. RECOMMENDATION

1. that the application in terms of Section 16(2)(l) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015 (By-Law) for amendment of the Site Development Plan applicable to Special Zone II site on Portion 229 of Farm 575 to accommodate a water play park and wooden deck, **be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
 - (a) that Building Plans for the structures be duly approved by the Benguela Cove Estate Home Owners Association (HOA) and a letter from the HOA confirming service and levy contract have duly been addressed, be submitted to the Municipality within three (3) months of the date of the approval letter;
 - (b) that a Landscape Plan be submitted to the Municipality, duly approved by the HOA, addressing specifically a noise control barrier and be submitted to the Municipality within three (3) months of the date of the approval letter;
 - (c) that any alterations or work required to comply with conditions (a) and (b) above, be complied with within six (6) months of the final approval date of this application;
 - (d) that in terms of the "Noise Control Regulations" promulgated under the Environmental Conservation Act, 1989 (Act 72 of 1989) the music volumes emanating from the premises at all times be controlled in such a manner that it adds less than 7dB(A) to ambient noise;
 - (e) that building plans be submitted to the Building Department for approval;
 - (f) that should it be necessary to provide any additional ablution facilities due to the additional people visiting the site, it be provided to the satisfaction of the Building Department;
 - (g) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
 - (h) that adequate provision be made to manage the behaviour of patrons and protection of surrounding properties;
 - (i) that a scaled Site Development Plan be provided to the Municipality, clearly showing parking required and parking provided, the size of the water play park and wooden decking to the satisfaction of the Senior Manager: Town- and Spatial Planning;
 - (j) that all conditions in the Services Report (attached as Annexure H), be complied with.
 - (k) that all the conditions of the Western Cape Government : Transport & Public Works (attached as Annexure J), be complied with, and

- (l) that all the conditions of Telkom (attached as Annexure K), be complied with.
2. that the applicant and objectors be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above decision.

14. REASONS FOR RECOMMENDATION

- ❖ With the specific conditions of the approval, the Benguela Cove Home Owners Association (HOA) will be provided the opportunity to consider building plans for the applications and also ensure that any service contracts and levies between the developer and HOA be duly addressed.
- ❖ The property has a potential to be used for tourism related businesses.
- ❖ Some of the objections were valid concerns, whilst the applicant also has some reasonable expectations to utilize the property for expanded tourist business uses. Mitigating conditions would create the balance to protect both parties' interests.
- ❖ All relevant municipal and state departments support the application.
- ❖ In terms of comments received from municipal and state departments, no concerns were raised regarding availability of services or traffic impact.
- ❖ The submission of a Landscape Plan indicating a noise barrier to immediate residents, would mitigate such concern and help protect the character of the surrounding low-density residential component.
- ❖ The applicant had to submit this planning application, whilst another planning application was being considered on the site, due to the illegal construction of some structures. This fact was however clearly indicated in this application, and considering that the previous application for place of entertainment and market stalls was significantly scaled down in the approval thereof. The process followed and information provided was sufficient to consider this application.
- ❖ At this stage three hundred and five (305) parking bays are provided for in terms of the approved SDP, and only two hundred and fifty seven (257) parking bays are required at most. This provides for forty eight (48) additional parking bays, of which approximately only a maximum of seven (7) would be required for the water play park.
- ❖ The SDP submitted did not indicate a scale, but considering the fact that the structures exist, the 10m building line is clearly shown on the plan and the size of the market stall areas and place of entertainment areas were provided on the SDP. The SDP was sufficient to consider the application.
- ❖ The objectors did not provide substantial proof that it is a requirement that the HOA had to provide their consent for the application for the amendment of the SDP. All owners and the HOA also duly were provided the opportunity to partake in the public participation process and objections were duly considered.

15. ANNEXURES

- Annexure A: Locality Plan
 Annexure B: Motivation Report
 Annexure C: Site Development Plan
 Annexure D: Objections
 Annexure E: Applicant's response to objections
 Annexure F: Copy of Special Zone parameters

- Annexure G: Copy of Constitution
Annexure H: Services Report
Annexure I: Municipal Environmental Branch
Annexure J: Western Cape Government : Transport & Public Works
Annexure K: Comments: Telkom
Annexure L: Additional comments received from municipal departments – Building- and Engineering Branches in response to objections received
Annexure M: Home Owners Association response to previous application for the SDP amendment

SIGNATURES**AUTHOR**


Name: **H OLIVIER**
SACPLAN Reg No: **B/8128/2004**
Signature: _____
Date: _____

REGISTERED PLANNER

Name: **H VAN DER STOEP**
SACPLAN Reg No: **A/1708/2013**
Signature: _____
Date: _____

ANNEXURE A

Plan 1: Locality Plan Portion 229 of Farm Afdaks Rivier 575

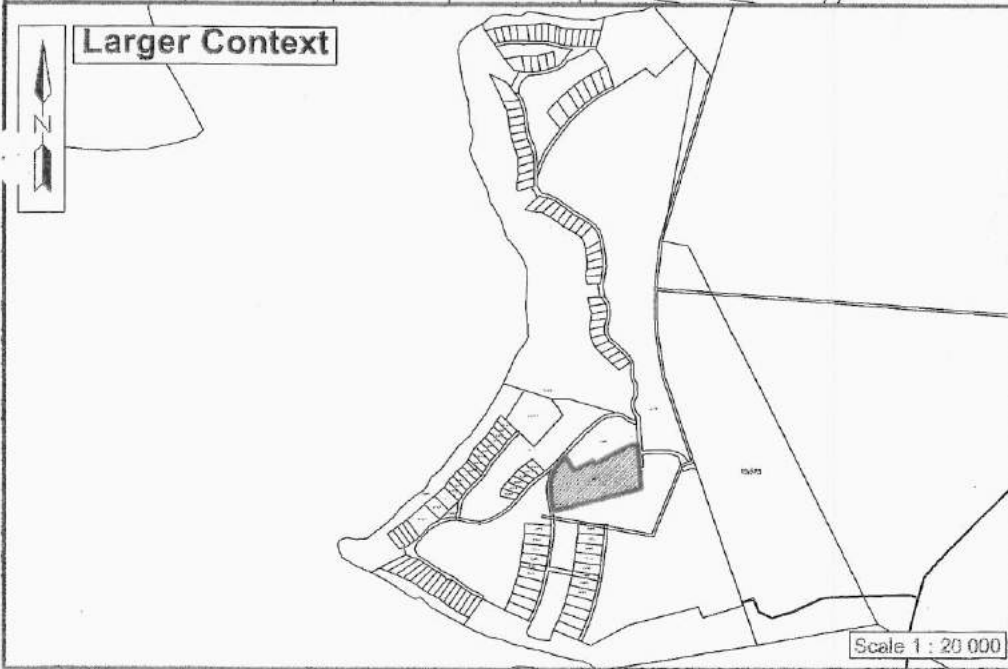
 Portion 229 of Farm Afdaks Rivier 575

File number: 19/019

Plan prepared by: Reathle Jankie

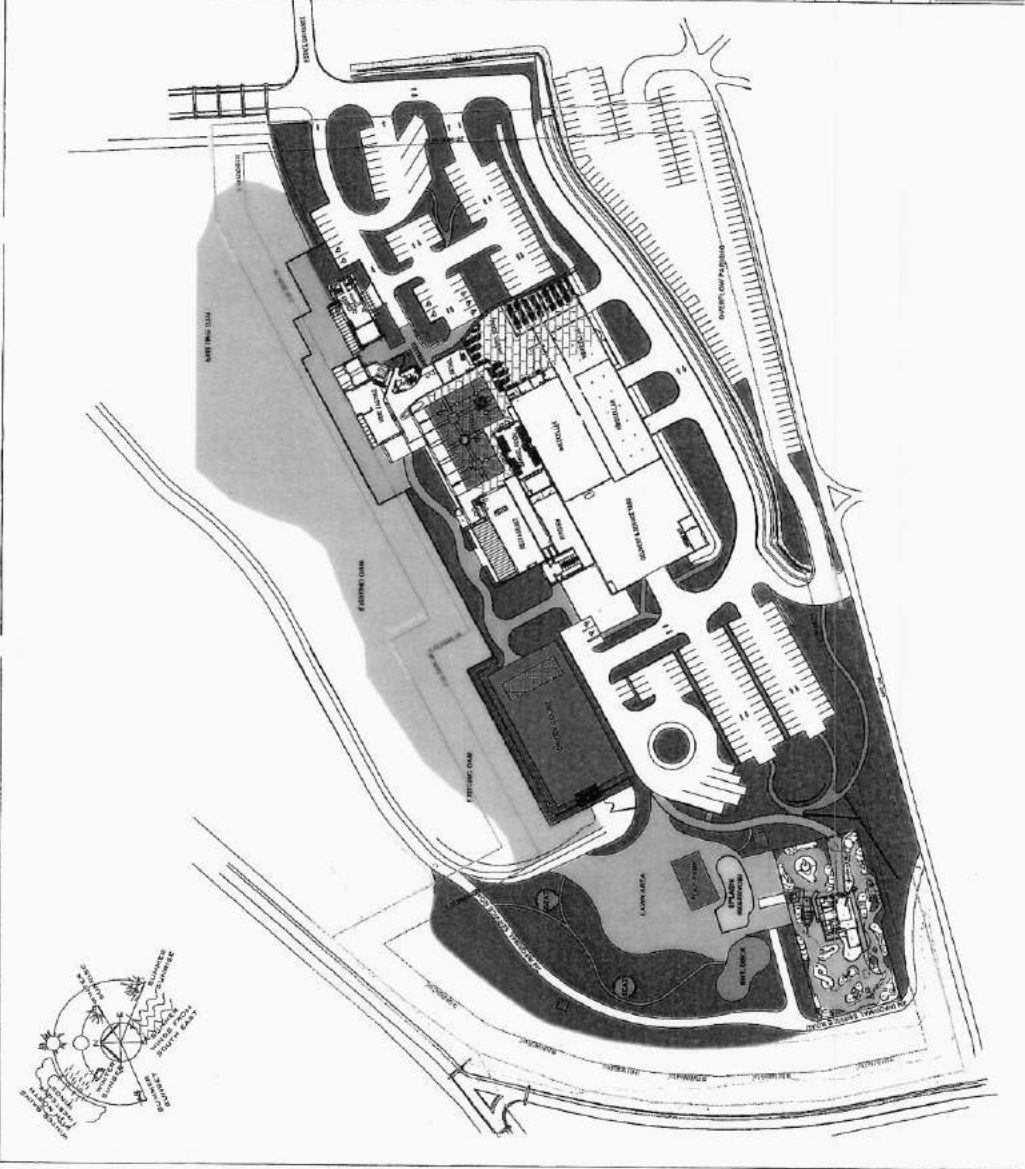
All distances are approximate
and subject to a survey


WRAP



Plan 3: SDP Portion 229 of Farm Afdaks Rivier 575 Caledon

	TREES		WATER FEATURE
	PLANTING		PAVING
	LAWN		RETAINING WALL
	ARTIFICIAL LAWN		LATERITE
	SWI CHANNEL		PROPOSED MARQUEE
	PROPOSED MARKET		PROPOSED DRIVE
	APPLICATION WHICH IS IN PROCESS 125M²		APPLICATION WHICH IS IN PROCESS 130M²



ANNEXURE B

NIS
File number 19 019
Plan prepared by: Rendelbeke Joubert
City of Cape Town: Eben Paal & Associates; and
J.D.V. Landscape Studio
All distances are approximate
and subject to a survey





EXECUTIVE SUMMARY

2. ABBREVIATIONS

OMZS	Overstrand Municipality Zoning Scheme, 2013
SDF	Overstrand Municipality Spatial Development Framework, 2006
OM	Overstrand Municipality
OM By-Law	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015
SPLUMA	Spatial Planning and Land Use Management Act, 2013
LUPA	Land Use Planning Act, 2014
PSDF	Western Cape Provincial Spatial Development Framework 2014
IDP	Overstrand Municipality Integrated Development Plan
IDF	Integrated Development Framework 2014
DEADP	Western Cape Department of Environmental Affairs and Development Planning
SDP	Site Development Plan
BCHOA	Benguela Cove Home Owners Association
BCI Pty (Ltd)	Benguela Cove Investments Pty (Ltd)
BCE	Benguela Cove Estate

3. DEFINITIONS PERTINENT TO THIS PROPOSAL

Amendment of an SDP	Applying for an existing SDP, which has been approved to be amended, to either, depict existing, or proposed buildings and land uses.
Urban fabric	Refers to the physical aspect of urbanism, emphasizing building types, thoroughfares, open space, frontages, and streetscapes but excluding environmental, functional, economic and sociocultural aspects.

4. SUMMARY OF STATUS QUO PROPERTY DETAILS

Applicant	WRAP (Wright Approach Consultancy)
Registered owner	Benguela Cove Investments Pty (Ltd)
Farm extent	5,3815 ha
Title deed	T32226/2006
Restrictive conditions	None
Applicable zoning scheme	OMZS
Current land use	Restaurant, gift shop, wine cellar wine tasting facility, pirate golf course, water play park and large wooden decking- and seating area.
Current zoning	Special Zone (SZ-2)

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EXECUTIVE SUMMARY

5. SUBMITTED APPLICATION: (REFERENCE: PTN 229 OF 575, HBENG (3817))

An application pertaining to the subject property was submitted by WRAP in November 2017 for the following:

- **Amendment of the site development plan** in terms of Section 16(2)(l) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015;
- **Departure** from the provisions of Special Zone SZ-2 to allow for a market in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015; and
- **Departure** from the provisions of Special Zone SZ-2 to allow for a place of entertainment in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.

The application is currently being processed by the OM and a decision pertaining to the subject application will be taken in due course. The submission of this town planning application for the amendment of a SDP is therefore running concurrently with the submitted town planning application.

6. BACKGROUND

The owner of the subject property erected the following structures (refer **Plan 3**) on the subject property:

1. Water play park;
2. Large wooden decking area; and
3. Seating area.

The purpose of this application is to confer appropriate land use rights which permit the above buildings and land uses. The application for the amendment of the SDP is proposed to accommodate the existing buildings and land uses. Should this application be approved, building plans will have to be submitted to the OM Building Control Department for approval.

Proposal rationale

The subject property currently has a pirate golf course (put-put) which is popular among children and adults. The parents of the children requested the property owner to also establish a water play park which has a lawn area and a deck to cater for the needs of the children. The property owner subsequently constructed the structures to make the existing restaurant and wine tasting facility more appealing to clients and to make the entire establishment more welcoming to families with children.

The constructed structures were also made to be visually appealing to the residents of BCE and to contribute to a contextually appropriate enhancement of the built environment of BCE. The pirate golf course which is located next to the existing structures is projected to enhance the ambience of the entire development, cater to the needs of current clients and attract genteel clients who will fit into the general make up of BC. The existing structures and the approval of this application is therefore projected to not only enhance the existing building in BCE but to also enhance the ambience of the entire estate area.

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7. BCE FABRIC

Benguela Cove Estate is one of the most upmarket areas in the Overstrand, characterized by a high quality of life and functional space economy. All buildings have modern architectural designs and building materials which are all in harmony with each other. The agricultural and open space land uses enhance the openness of the area and promotes easy movement of residents within the estate. The street frontages and offset of buildings from the street boundary are longer than on other residential properties in Hermanus and enhances the configuration of homes on the different erven. There is also a restaurant which offers a variety of up market meals and beverages which also caters for kids as there is a pirate golf course on the premises.

The existing buildings for which the subject amendment of an SDP is applied for, are in harmony with the prevailing up market architectural styling of the area (refer **Plan 3**) and add value the existing visual setting of BCE.

8. ZONING

The subject property is zoned Special Zone SZ-2. Herewith are the applicable development parameters of the subject property and it being be assessed how this proposal is aligned or deviate from these development parameters:

Use	Parameters	Proposal	Comply/deviate
Primary use	Tourism business, house of worship	Tourism business	Comply
Consent use	None	N/A	N/A
Land use restrictions			
Floor factor	0,75 = 4,0361 ha permissible	0,22	Comply
Coverage	50% = 2,6907 ha permissible	17,3%	Comply
Height	At most 8m or 2 storeys, provided that in the case of the winery, the maximum height shall be 14m.	The existing deck is lower than 8m.	Comply
Street building line	10m	No buildings encroach on the street building line.	N/A
Side building line	A minimum of 10m provided that council may lay down building lines in the interest of public health and safety or	No buildings encroach on the side building line.	Comply

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	to enforce any law or right.		
Parking	At least 1 parking bay per 25m ² of the total floor space provided that in the case of a "Place of Worship" 1 parking bay per 5 seats.	<p>Total GLA 5426m² which requires 217 parking bays. 309 parking bays are provided creating an excess of 92 parking bays.</p> <p>The marquee tent for which an application was submitted is currently being processed and will accommodate between 50 and 80 people requiring 20 parking bays.</p> <p>The market for which an application was submitted is currently being processed and is 1729m² requiring 69 parking bays.</p> <p>The existing buildings and land uses which are applied for in the amendment of the SDP do not require any parking in terms of the Special Zone requirements applicable to the subject property. This is due to the fact that the water play park and large wooden decking- and seating area are outbuildings which are ancillary and subservient to other uses on the subject property.</p> <p>There is therefore an excess of 3 parking bays.</p>	Comply

Additional definitions extracted from the Special Zone

- i. **Conference facility means** the use of a building for the hosting of conferences and can include committee rooms, auditoriums, dining rooms and on-site consumption of alcoholic beverages.
- ii. **Arts & crafts shop means** the use of a building or portion of a building where hand made goods are produced, displayed and sold to the general public;
- iii. **Tourism business means** the utilisation of a site and / or the buildings on the site for business activities, such as deemed by council as important to encourage the tourism trade and seen as relevant to the tourism trade and which are related to the tourism trade and includes restaurants, guesthouses, guest rooms, wineries, souvenir shops, tourist information centres, antique shops, arts and craft shops, art galleries, interior decorators, travel bureaus and conference facilities.

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9. SERVICES

All services in the proposed development are intended to be off the grid and the proposals will herewith be elucidated.

9.1 Electricity

The subject property is connected to the Eskom electricity network. The proposed land uses will therefore use the electricity available on the property.

9.2 Water

Potable water on the subject property is received from the Fisherhaven Reservoir. None of the existing buildings for which the amendment of the SDP is applied for require potable water. The status quo with regards to water will therefore remain unchanged.

9.3 Sewage

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

9.4 Traffic impacts, parking access and other transport related considerations

There is an existing road network on the subject property and there are 309 parking bays available. The town planning application which has been submitted and which runs concurrent with this application, illustrates that there are 306 parking bays required which means that there is an excess of 3 parking bays on the property.

The water play park and large wooden decking- and seating area are used by guests who visit the restaurant/wine tasting facility on the subject property and is therefore not projected to attract any additional parking, apart from that which the restaurant currently attracts.

10. NEED AND DESIRABILITY

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

Element consideration	for	Motivation of the Impact of the approval and Implementation of this proposal.	Impact Positive or Negative
Economic impact		The water play park and large wooden decking- and seating area, enhance the attractiveness and popularity of the existing restaurant and wine tasting facility. The existing buildings therefore enhances the economic viability of the subject establishment and is	Positive

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	projected to enhance the need for additional labour in the future which is a positive economic impact, considering the unemployment rate prevalent in the area.	
Social impact	The subject restaurant, wine tasting facility, water play park and large wooden decking- and seating area, attracts genteel clients from different socio-cultural backgrounds and promotes intercultural interaction on the subject property. The existing buildings and land uses on the subject property contribute towards creating social cohesion on the subject property and the approval of this proposal will facilitate this positive process which is currently underway.	Positive
Scale of the capital investment	The substantial amount of money which the property owner has invested in the subject property illustrates the commitment of the property owner towards enhancing the prevailing architectural character prevalent in BCE.	Positive
Compatibility with surrounding uses	This existing water play park and large wooden decking- and seating area is ancillary and subservient to the prevailing tourism/restaurant character which is prevalent on the subject property and can be regarded as a compatible land use.	Positive
Impact on safety, health and wellbeing of the surrounding community;	<p>Considering that the water play park and large wooden decking- and seating area attract additional genteel clients to the subject property, this leads to additional surveillance on the subject property. This surveillance enhances the safety and wellbeing of the visitors to the subject establishment and other residents in BCE.</p> <p>There are no noxious land uses which occur on the subject property and the health of the surrounding community will therefore not be compromised on.</p>	Positive
Impact on heritage	The existing buildings on the subject property do not have a heritage value, and the approval of Heritage Western Cape is not required.	Positive
Whether the imposition of conditions can mitigate an adverse impact of the proposed land use	<p>The imposition of conditions of approval on the subject proposal is essential as it will ensure that the land use rights which surrounding property owners enjoy are not deprived.</p> <ul style="list-style-type: none"> • That all signage have to comply with the Overstrand Municipality By-Law on Signage; • That all development parameters in the applicable Special Zone and other title deed restrictions be 	Positive

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	<p>complied with. This will ensure that the scale of the subject development remains within reasonable bounds;</p> <ul style="list-style-type: none"> • That building plans be submitted to the Building Department for approval as that will ensure that building is designed in accordance with prescribed legislation; • That all prescripts of the fire department be complied with to ensure that the subject building does not become a fire risk to the occupant as well as clients; • That all land uses on the subject premises not interfere with the peace, comfort or become an unbearable nuisance to surrounding property owners; and • That all other relevant legislation be complied with. 	
<p>Aspects which impact on quality of life (including views, sunlight, privacy, visual impact, character)</p>	<p>The deck which has been constructed is not in any way visually intrusive and will not deprive any resident of BCE of any land use rights which are enjoyed.</p> <p>The subject property is also surrounded by a private open space and the agricultural area of BCE. The openness immediately adjacent to the subject property is a buffer for other residents of BC and will ensure that the minimal sound will be audible from the water play park and large wooden decking area and seating area, will not interfere with the peace and comfort which residents enjoy.</p>	<p>Positive</p>

11. SPATIAL PLANNING POLICIES

The PSDF, SDF, IDF and OMGMS were perused and the existing buildings do not contradict any of the spatial planning policies which pertain to the subject site.

12. COMMON LAW

Common law dictates that a property owner may not use his/her land in such a way as to interfere with the rights of others, particularly neighbours (sic utere tuo ut alienum non laedas). A nuisance occurs when a land use interferes with a neighbour's or communities health, wellbeing or comfort in the occupation of his/her land. There must however be evidence of material interference and the complainant must not be oversensitive.

The test applied is one of reasonableness. In other words, would a reasonable man who is the neighbour or public believe that a water play park and large wooden decking- and seating area, which is contextually appropriate and complies with provisions of the Special Zone,

complain about the land uses. In other words, would the existing land use for which an application is submitted, negatively affect the wellbeing of the neighbours or the public in the occupation of their land? Considering the merits and scale of the land uses which are applied for, a reasonable person would not be deprived of his/her right of occupation and wellbeing should this application be approved. The water play park and large wooden decking- and seating area, applied for are not noxious land uses which are project to deprive any resident in BC of any land use rights which are enjoyed.

13. PLANNING PRINCIPLES

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

Spatial Justice

Refers to the need to redress the past apartheid spatial development imbalances and aim for equity in the provision of access to opportunities, facilities, services and land. The additional employment opportunities relating to maintenance and cleaning created at the water play park and large wooden decking- and seating area, mostly benefit the previously disadvantaged. This allows employees who were unemployed to earn an income which enables access to opportunities, quality services, facilities and housing possible due to the additional income stream. This will therefore enable the subject development, the operation thereof and approval of this proposal to contribute to addressing spatial development imbalances caused by apartheid spatial and land use planning.

Spatial Sustainability

Spatial sustainability in the context of land use planning means promoting mixed use environments which allow for a functional space economy to flourish. The land uses on the subject property which are related to the tourism industry, promote a functional space economy and there is a complementary mix of tourism related land uses. The approval of this proposal will therefore enable the functional space economy on the subject property to flourish.

Efficiency

Efficiency refers to the need to create rural areas that optimise on the use of space, energy, infrastructure, resources and land. The water play park and large wooden decking- and seating area, promotes the optimal utilisation of space, energy, infrastructure, resources and land on the subject property while being in harmony with the valued architectural character and styling of the subject site.

Spatial Resilience

This proposal is not in conflict with any spatial resilience development proposals for the subject site highlighted in the PSDF, IDF, SDF and OMGMS. The land use/economic diversification on the subject property will therefore make the established commercial enterprise on the subject property to be able to absorb economic and environmental shock in a timely and efficient manner.

**MOTIVATION****Good Administration**

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



EVALUATION AND CONCLUSION

14. EVALUATION AND CONCLUSION

The following is a synopsis of the essential elements that make this proposal viable and practical:

Application

Amendment of a site development plan to accommodate the water play park and large wooden decking- and seating area.

BCE fabric

The existing buildings for which an amendment of the SDP is applied for contribute to the enhancement of the prevailing BCE fabric.

Zoning

- The water play park and large wooden decking- and seating area are primary rights on the subject property, encourage the existing tourism industry and are all primary rights and also comply with the definition of an outbuilding;
- The permissible coverage is 50% and the existing deck has increased the existing coverage to 17,3%;
- The deck is lower than 8m;
- No building lines are encroached upon; and
- There are 306 parking bays required and 309 parking bays are available on the property.

Services availability

Service	Availability yes or no
Electricity	Yes
Water	Yes
Waste	Yes
Sewage	Yes
Access and egress	Yes

Desirability

Element for consideration	Motivation	Impact Positive or Negative
Economic impact	The increased viability of the restaurant and wine tasting facility brought about by the water play park and large wooden decking- and seating area has a positive economic impact.	Positive
Social impact	The intercultural interaction of genteel clients on the subject property is a positive social impact which is enhanced by the water play	Positive

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EVALUATION AND CONCLUSION

	park and large wooden decking- and seating area, contributes to social cohesion.	
Scale of the capital investment	The scale of the capital invested on the subject property illustrates the commitment of the property owner towards contributing to the aesthetically appealing built environment of BCE.	Positive
Impact on safety, health and wellbeing of the surrounding community;	The additional surveillance of genteel guests on the subject property can be regarded as enhancing the safety, health and wellbeing of the residents of BCE.	Positive
Impact on heritage	No heritage sensitive areas will be impacted upon.	Positive
Whether the imposition of conditions can mitigate an adverse impact of the proposed land use	There are several conditions of approval which are proposed which can guarantee that the subject proposal does not deprive surrounding property owners of land use rights which are enjoyed.	Positive

Spatial planning policies

The approval of this proposal is not in conflict with any spatial planning policies.

Planning Principles

Policy	Motivation	Compliance Yes or No
Spatial Justice	The approval of this proposal will enable the activities which occur on the water play park and large wooden decking- and seating area to continue to contribute to addressing spatial development imbalances caused by apartheid planning.	Yes
Spatial Sustainability	The use of the water play park and large wooden decking- and seating area are aligned with the principles of spatial sustainability.	Yes
Efficiency	This proposal promotes the efficient use of the subject erf.	Yes
Spatial Resilience	This proposal is aligned with the spatial resilience policy proposal which pertain to this site.	Yes
Good administration	The OM has a credible history of promoting good administration in the processing of land use applications.	Yes

WRAP

RECOMMENDATION

15. RECOMMENDATION

This motivation report has illustrated that existing water play park and large wooden decking- and seating area are aligned with the prevailing architectural character and styling of BCE.

Considering the above, it is recommended that the following be **approved**:

- **Amendment of a site development plan** to accommodate the existing water play park and large wooden decking- and seating area in terms of Section 16(2)(l) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.

File 19/019

Portion 229 of Farm Afdaks Rivier 575 Caledon
February 2019
Page 19

ANNEXURE D 1/118

Loretta Gillion - Objection to the Application for the Amendment of the Site Development Plan of Portion 229 of the Farm 575, Afdakrivier

From: Jean Viljoen <jean.viljoen@outlook.com>
To: "loretta@overstrand.gov.za" <loretta@overstrand.gov.za>
Date: 11/07/2019 11:42 PM
Subject: Objection to the Application for the Amendment of the Site Development Plan of Portion 229 of the Farm 575, Afdakrivier
Attachments: 02_Interactive-report-dated-11-July-2019.pdf



TRAThead
 CHolivier?

Good Day,

I would like to comment on the application for amendment of the site development plan of Portion 229 of Farm No 575, Benguela cove, Hermanus.

My Details:

Full Name: Jean Marcel Viljoen
Address: 5 Cape Willow, Hemel en Aarde Estate, Hermanus, 7200
Cell no: 082 592 0661
Email: jean.viljoen@outlook.com

FILE NO:	Ph229/575
	Benguela
SCAN NO:	VILJOEN
COLLABORATOR NO:	1302120

My Interest in the Application and reason to comment:

I am the owner of Erf 116 Benguela Cove (Portion 116 of Farm No 575) where I plan to build my permanent home.

Close to the site development plan in the application.

Comments:

I object to the processing and approval of the Application for the Amendment of the Site Development Plan of Portion 229 of the Farm 575, Afdakrivier. The objection is based on the following:

1. Non-compliance with the Constitution of Benguela Cove Estate

Benguela Cove Investments (Pty) Ltd (hereinafter referred to as BCI) is the developer of the Benguela Cove Estate and the owner of Portion 229 of the Farm 575, Afdakrivier, and the Company is as such also a member of the Benguela Cove Estate Home Owners Association.

The Estate and its Home Owners Association is governed by a formal Constitution, which requires from the members of the Association to follow specific procedures concerning particular matters. In the instance of the application to amend the Site Development Plan of Portion 229, BCI should have approached the Association as well as the Urban and Architectural Review Control Committee to obtain consent for the matter(s) in question, but BIC did not do so.

The clauses of the Constitution that require from BCI to obtain the various consents are, amongst other information, outlined in the attached report by Interactive Town & Regional Planning dated 10 July 2019.

2. Impact on the Environment:

a. Benguela Cove is a Water Scarce Area:

15 JUL 2019

file:///C:/Users/loretta/AppData/Local/Temp/XPgrpwise/5D27C963HermanusMunpos... 2019/07/15

Running a water park uses a large amount of water. Surely it is not a good idea to do this in a water scarce area.

According to the Application, in section "9.2 water", it states that water is received from the Fisherhaven reservoir.

The Fisherhaven reservoir gets water from "De Bos Dam" (according to this document "OVERSTRAND MUNICIPALITY: WATER SERVICES DEVELOPMENT PLAN")

The Current Dam levels (from here):

De Bos Dam

Date: 8 July 2019

Current storage: **48.1%**

Storage level last week: 37.7%

After a huge amount of rain this Winter, we are still only on **48.1 %**. Surely we should not approve plans to operate a water park at **this level**.

- b. Benguela Cove is a protected nature reserve.
A waterpark uses a huge amount of chemical in water to keep it clean.
Surely this will affect marine and wild life in the area.

Additionally the noise will probably chase away many of the bird species in the area (who are typically sensitive to sound disturbances).

Has the necessary environment impact assessments been done ?

If so, please send me the impact assessment reports so that I can study them as I simply cannot believe this would be acceptable to the nature reserve site.

3. Misrepresentation

I bought into the estate because it was sold as an quiet exclusive estate. "the lowest density estate in south Africa".

I expected a quiet escape away from the noisy cities.

I am concerned about the noise disturbance of a fully operation water park full of playing and screaming kids.

I believe this will negatively impact my property value, since it's value is largely due to the area being a quiet, protected, isolated and exclusive nature reserve.

Sincerely
Jean Viljoen
082 592 0661



InterActive Town & Regional Planning
 PO Box 980
 Hermanus
 7200

Reference: Portion 229 of Farm Afdaks Rivier 575

Date: 11 July 2019

AMENDED SDP FOR PORTION 229 OF FARM AFDAKS RIVIER 575 CALEDON: EVALUATION AND COMMENTS/ PROPOSAL

1. Introduction

InterActive Town and Regional Planning was appointed by the Benguela Cove Estate Home Owners Association (BCEHOA) to investigate and evaluate the proposed SDP amendment for Portion 229 of Farm Afdaks Rivier 575, Caledon and to provide comments and proposals regarding the foreseen impacts of certain of the existing non-approved proposed structures on Portion 229 of the Farm Afdaksrivier 575, which is an integral part of the Benguela Cove Estate.

2. The request

This appointment originated from a notice received by the BCEHOA from the Overstrand Municipality regarding the proposed amendment of the Site Development Plan of the Commercial Land area within the Estate. The Commercial Land is owned by the developer of the Benguela Cove Estate, Benguela Cove Investments (Pty) Ltd, who is also a member of the Home Owners Association.



The adjacent areal photograph shows the status of commercial development (aerial photograph dated December 2018 obtained from Overstrand GIS Viewer):

Resulting from the aforementioned notice, the BCEHOA requested a professional opinion regarding the following:

- a. Do the two notices address different applications for the amendment of the SDP of the Commercial Land area, and are such applications perhaps running in parallel ?
- b. What are the physical and legal differences between the proposed new SDP and the one that was originally approved ?
- c. Does the proposed amendment of the SDP of the Commercial Land area conform to the Guidelines and Theme of the Estate as a whole ?
- d. The merits upon which an objection(s) can be lodged against the application(s) to amend the SDP of the Commercial Land area.
- e. Are the proposed amendment of the SDP and departures permissible in terms of the Constitution of the Benguela Cove Estate ?

3. Background - history of applications and amendments lodged

a. **Township Establishment 2004 (the original application)**

The first subdivision and rezoning approval of Benguela Cove Estate formed part of the township establishment which was approved in 2004 in terms of the Land Use Planning Ordinance, 1985 (Ord. 15 of 1985). This approval was subject to the conditions of the:

- Department of Economic Development, Environmental Affairs & Tourism (refer ROB),
- Department of Agriculture (refer consent to subdivide),
- Provincial Roads Department (refer requirements for access).

In addition to the conditions set by the above entities, a services agreement with the Overstrand Municipality, requirements relating to use of water from the Fisherhaven dam for irrigation purposes, sewerage arrangement from the Hawston treatment works and an agreement with the Department of Water Affairs & Forestry (DWAF), were included as conditions of approval.

The following zonings / land-uses, number of erven, areas and percentages of the subject areas were approved in the original application:

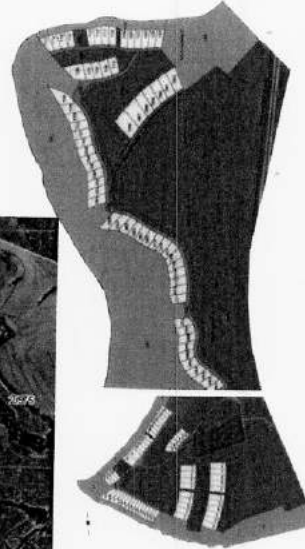
Zoning / Use	No of erven	Area (±ha)	%
Residential Zone V	1	2.6	1.2
Special Zone	1	5.38	2.6
Open Space Zone II	9	13.26	6.3
Open Space Zone III	8	61.96	29.5
Agricultural Zone I	2	89.93	42.8
Transport Zone I (Private Road)	1	5.90	2.8
Transport Zone II	1	2.48	1.2
Total	147	210.22	100

The layout of the original township establishment and its zonings and land-use, supported by a cadastral plan, are shown below:

The erf under discussion is Erf 126 as shown on the layout plan, but registered per the Surveyor General Plan as Portion 229 of Farm 575 Afdaks Rivier.

ZONING/USE	NOTATION			
	Erf no's	No of erven	Area (ha)	%
Residential Zone I	1 - 124	124	±28,71	13,85
Residential Zone V	125	1	±2,00	1,10
Special Zone	126	1	±5,38	2,56
Open Space Zone I	127 - 132	6	±12,26	6,47
Open Space Zone II	133 - 143	11	±61,94	29,45
Agricultural Zone I	144 - 145	2	±89,93	42,74
Transport Zone I (Private Road)	146	1	±5,90	2,83
Transport Zone II	147	1	±2,48	1,17
TOTAL		143	±210,22	100,00

According to the Overstrand Planning Department, a SDP of the development was only compiled some years later.



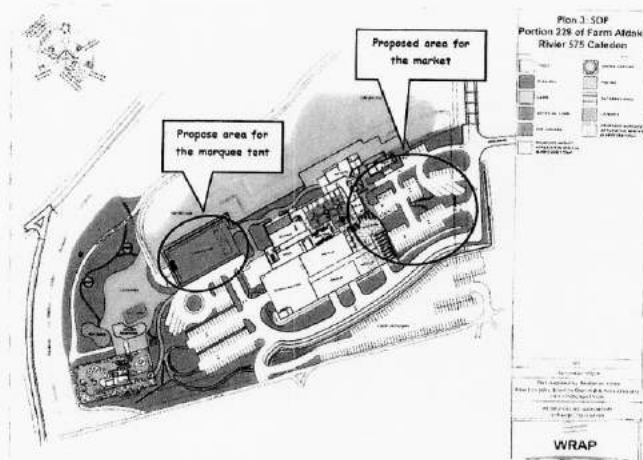
b. Amendment of the Site Development Plan and Departures for a "market" and "a place of entertainment" - 2018 (the second application- Refer to Annexure A)

Following the approval of the original application, a second application was submitted during November 2017 for the amendment of the Site Development Plan, with a departure to allow for "a market" and "a place of entertainment" as part of the existing restaurant, a section of a wine cellar as well as a marquee tent.

The second application was advertised for public comment during March 2018, with a date of closure for comments on 6 April 2018. According to the Overstrand Planning Department, the second application was approved in part more than a year later on 19 March 2019.

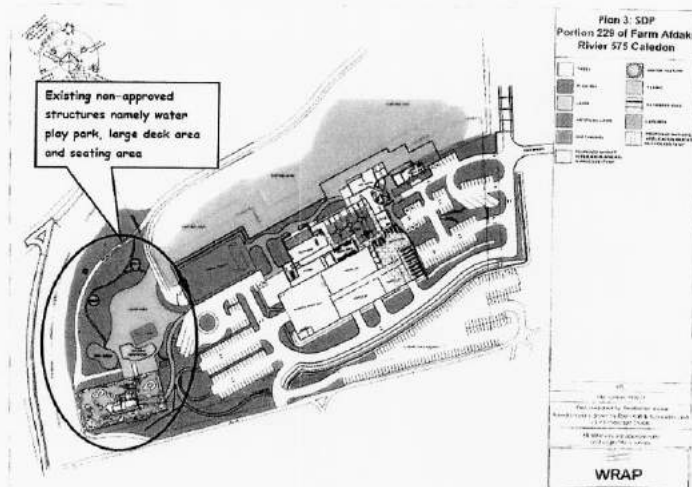
The Overstrand Planning Department confirmed that, as part of the resolutions for approval, the place of entertainment was restricted (mitigated) to include operations of the "place of entertainment" and "market" on the inside of building and the courtyard areas only. This implies that the areas proposed for "place of entertainment" and "market" outside the existing buildings and the courtyard, including the marquee tent, were not supported.

The location of the proposed "place of entertainment" and "market" area, which were not supported because it was located outside the perimeter of the existing building and courtyard areas, is indicated in the following plan:



- c. Amendment of the Site Development Plan to accommodate a water play park, wooden deck area and seating area- 2019 (the third application- Refer to Annexure B)

An application for an amendment of the site development plan to accommodate a water orientated play park, wooden deck area and seating area (enhancing the existing mini-golf course & splash pool area) was submitted in March 2019. The purpose of this application is to legalise these as-built features and uses on the property. This application, as at the date of this report, is open for public comments until 12 July 2019.



4. Internal Land-Use Management Instruments of the Benguela Cove Estate

The character of the Benguela Cove Estate is generally made up of the rights of the individual home owners, the intended architecture and the local environmental aspects, and these dynamics are predominantly managed and protected by means of the following legal documents:

- i. The Urban & Architectural Design Controls, March 2018, and
- ii. The Benguela Cove Home Owners' Association Constitution, updated 2018.

In the correspondence received from BCEHOA it was pointed out that the Estate's Constitution addresses matters concerning the sub-division and /or rezoning of land units within the Estate, and the following conditions in the Constitution are thus in question:

Heading- "20. VOTING"

- 20.7 Notwithstanding anything contained in this constitution, any resolution or the amendment of a resolution
- 20.7.1 which would have the effect of amending or repealing any part of this constitution, or
- 20.7.2 which would have the effect of amending or repealing paragraph 31 of this constitution which paragraph precludes subdivision or rezoning of the erven or the erection of more than one dwelling per erf, or
- 20.7.3 which would have the effect of amending or repealing paragraph 32 and 33 dealing with the Urban and Architectural Review Controls Manual the Architectural Controls, shall require a 75% (three quarters) majority of all Members entitled to vote before the resolution may be passed, which shall be known as a special resolution.

and

Heading- "30. DEALING WITH COMMON PROPERTY"

- 30.1 Neither the whole nor any portion of the common property shall be:
 - o 30.2.3 subjected to any rights, whether registered in the Deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof, or which allow for agricultural activities to be conducted similar in nature to the Agricultural Enterprise; or
 - o 30.2.4 built upon, improved or enhanced in value by the construction of buildings, erection of facilities or amenities, other than as contained in this constitution and in the approved layout plan, without the sanction of a special resolution of the Members of the Association.

and

Heading- "31. NO SUBDIVISION OR REZONING AND NOT MORE THAN ONE DWELLING"

- 31.1 No Member shall be entitled to subdivide or rezone his erf, it being noted that that Erf 228 has been zoned as the Hotel and Related Facilities Development, together with the Agricultural Enterprise, which shall enjoy a separate zoning status commensurate with its function as main farm complex for the cultivation, harvesting, processing and marketing of the produce of the agricultural property, together which the Commercial Component, being Erf 229,

comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial.

and

Heading- "32. BUILDING STANDARD RULES AND AESTHETIC APPROVAL"

- o 32.1 It is recorded that the Trustee Committee has appointed the Benguela Cove Urban and Architectural Design Review Committee which comprises of Ellis Associates Architects and two Members appointed by the Developer. In compliance with paragraph 4.6.2 above no owner or any erf shall be entitled to build on his erf or effect any improvements thereto or erect any structures thereon without the prior approval of the Urban and Architectural Review Control Committee, hereinafter referred to as UARCC..."
- o 32.2 No owner of any erf shall be entitled to alter any construction thereon or alter or vary the design or façade of his building, dwelling or improvements so constructed, without written approval of the said UARCC."

Paragraph 4.6.2 as referred to in the above reads as follows:

Heading - "4. MEMBERSHIP"

- "4.6 No Member shall be entitled to transfer an erf, unless a duly authorised representative of the Trustee Committee or the relevant party to which such function has been delegated has in writing consented to the transfer, and the following conditions of title are imposed, namely:
 - o "4.6.2 No improvements, alterations, restructuring, repairs or any building work of any nature shall be affected to the property, nor shall the access to the property be altered, without the prior written approval of the Association."

The "Association" means, as per the definition, the "Benguela Cove Lagoon Owners Association".

(As an informative footnote to the above extracts from the Estate's Constitution, it is stated that cognisance should be taken that "Rezoning" in terms of the Overstrand Municipal Planning By-Law (2015) means the change in zoning in relation to a particular land unit or units or portion of a land unit in terms of Planning Law).

The following is derived from the information provided above:

- The amendment of the Constitution requires 75% support of the members of the Association.
- The Benguela Cove Lagoon Owner Association, with a special resolution, has the mandate in terms of the common property to:
 - o Allow building, improvement or enhancement etc other than that shown on the original approved layout plan. The latter is interpreted to also include the SDP.
 - o The Urban and Architectural Review Control Committee (UARCC), as appointed by the Trustee Committee, has the mandate to allow the approval of building plans of any structure, including improvements and alterations to structures, and to vary the design or facades.

In consideration of the aforementioned, it can be argued that a change in land-use that requires a departure and consequent amendment of the (approved) SDP, should be subjected to the permission of the Members of the Benguela Cove Lagoon Owners Association and by passing a special resolution with the effect thereto.

5. Analysis of the third application (currently subject for Public comment) and the anticipated impact thereof

The impact of the legalisation of the water play park, wooden deck area and seating area (i.e. the existing non-approved structures) are to be analysed / measured against the existing approved rights of the property. The table below provides information on such analyses:

Planning Criteria	Parameters	The Proposal	Comments
Zoning- Primary Use	Special Zone SZ - 2 for Tourism Business and house of worship	A departure for a water play park, large wooden deck and seating area	All these uses are considered to be consistent with the zoning requirements of the Tourism definition. The impact of these additional uses is considered low.
Consent	None	n.a.	No application is made for any consent uses.
Floor Factor	0.75 = 4,0361ha	No additional covered floor area	The proposed structures do not add to the floor factor, coverage or height and is thus consistent
Coverage	50% = 2,6907ha	No additional coverage	
Height	8m or 2 storeys, provided for the winery 14m.	On ground level, deck lower than 8m	Consistent, apart from that the proposed structures do not trigger building line encroachments they are more than 10m away from any street and side boundary
Building Line	Street	10m	
	Side	10m	
Parking	1 parking bay per 25m ² of total floor space and in the case of a Place of Worship, 1 parking bay per 5 seats	No additional parking provided Required: = 217 Provided = 309 The above figure is applicable as the marquees tent and outside market area was not supported	The proposed uses do not require any parking and is thus consistent with the parking requirement.

With reference to the above, and given that the existing zoning of the subject property entails Special Zone SZ-2 with a Primary use for Tourism business and House of Worship, cognisance should be taken that the definition of tourism use in this application differs with that of the Overstrand Municipal Planning By-Law, 2015.

The definition for Tourism business, relevant to the application site on Portion 229 of the Farm 575 Afdaks Rivier, reads: "Tourism business means the utilisation of a site and/or the buildings on the site for business activities such as deemed by council as important to encourage the tourism trade and includes restaurants, guesthouses, guest rooms, wineries, souvenir shops, tourist information centres, antique shops, arts and craft shops, art galleries, interior decorators, travel bureaus and conference facilities.

The definition for "tourist facilities" in terms of the Overstrand Municipal Planning By-Law, 2015 "means amenities for tourists or visitors such as lecture rooms, restaurants, picnic areas, gift shops, cafés, restrooms, recreational facilities, animal parks (domestic or otherwise), but does not include a hotel or overnight facilities"

6. Conclusive Summary

The impact of the existing non-approved structures on the existing commercial development at Benguela Cove Estate is, from a tourism perspective, generally considered to be aligned with the Town Planning Criteria that is relevant to the property.

The comments provided in the table below are, however, provided in response to the request of the BCEHOA as denoted under section 2 of this document:

The questions	The answers
Do the two notices address different applications for the amendment of the SDP of the Commercial Land area, and are such applications perhaps running in parallel ?	<p>The notices are different applications and were running in parallel.</p> <p>The first notice related to a SDP amendment and departures for a (1) place of entertainment and (2) a market. These facilities were proposed to be accommodated in the existing restaurant, a section of a wine cellar as well as a marquee tent.</p> <p>According to the Municipality the place of entertainment and market were restricted to only the courtyard area and the inside of existing buildings, all as per the Municipal approval that occurred in part during March 2019.</p> <p>The second notice refers to a departure application to accommodate a (1) water play park, (2) large wooden deck and (3) seating area.</p>

<p>What are the physical and legal differences between the proposed new SDP and the one originally approved ?</p>	<p>The original approved SDP made provision for the Winery, Farm Stall, Chapel and Conference facility and, as mentioned here-above, the two new SDPs make provision for the following:</p> <p>Notice dated 2017 (1) place of entertainment and (2) a market</p> <p>Notice dated 2019 (1) water play park, (2) large wooden deck and (3) seating area.</p>
<p>Does the proposed amendment of the SDP of the Commercial Land area conform to the Guidelines and Theme of the Estate as a whole?</p>	<p>It is considered that the SDP for the commercial land is consistent with the zoning of the relevant portion.</p> <p>In the Constitution the Commercial component is acknowledged (Par 31) which has a zoning for "Special Zone SZ - 2" for Tourism Business and house of worship.</p> <p>The uses, subject to the application is considered consistent with the zoning. Therefore the proposed amendment of the SDP to include the water play park, large wooden deck and seating area is not considered a material change.</p>
<p>The merits upon which an objection(s) can be lodged against the application(s) to amend the SDP of the Commercial Land area.</p>	<p>The changes proposed are not considered material and is also considered to be aligned with the current zoning.</p> <p>Thus in terms of the proposed land-uses, it is not deemed valid that reasons for objection can be lodged.</p> <p>From a technical point of view it is mentioned that the property description of the land on the notice is incorrectly referring to Portion 229 of the farm no 575, Benguela Cove, Hermanus. The correct description is Portion 229 of the farm no 575, Afdaks Rivier.</p> <p>From experience it is known that the local authority would argue that, although the description is incorrect, the general understanding read together with the report, will not be material in nature and as such the matter would be dismissed.</p>

<p>Are the proposed amendment of the SDP and departures permissible in terms of the Constitution of the Benguela Cove Estate ?</p>	<p>From a town planning point of view: If the Benguela Cove Lagoon Owner Association and the Architectural Review Control Committee have provided their written approval in respect of the proposed amendment of the SDP, then it would be considered permissible.</p> <p>This opinion is motivated as follows:</p> <p>Clause 4.6.2 reads: <i>No improvements, alterations, restructuring, repairs or any building work of any nature shall be affected to the property, nor shall the access to the property be altered, without the prior written approval of the Association."</i></p> <p>"Association" in the above clause (as per definition) means the <u>Benguela Cove Lagoon Owner Association</u>, which is the body that is mandated to represent all individual home owners within the Estate, and which is compelled to execute the requirements of the Constitution to the satisfaction of the individual home owners.</p> <p>Clause 32.1 reads: <i>"..... In compliance with paragraph 4.6.2 above no owner of any erf shall be entitled to build on his erf or effect any improvement thereto or erect any structure thereon without the prior written approval of the Urban and Architectural Review Control Committee, hereinafter referred to as UARCC, as hereafter set out."</i></p> <p>From clauses 4.6.2 and 32.1 it is evident that no material changes to any building, structure or part of the existing development may take place without the involvement and consent of the Association, which includes the Architectural Review Committee.</p> <p>Clause 31.1 reads: <i>"...the Commercial Component, being Erf 229, comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial."</i></p> <p>Clause 31.1 lists the <u>extent</u> of the facilities of the Commercial Land area, and it is deemed appropriate in terms of Clauses 4.6.2 and 32.1 that the consent of the Association have to be obtained to alter or expand the listed facilities. Furthermore, following such consent, the Association should be mandated through a Special Resolution, as warranted by Clause 20.7, to amend clause 31.1. so that it reflects a complete listing of the facilities of the Commercial Land area.</p>
--	--

The development proposal as reflected in the amendment of the Site Development Plan (SDP) as described in this document, can be seen as an enhancement of the commercial development side of the Benguela Cove Estate, and it is not likely to affect the character of the non-commercial side of the Estate (Refer the scale and limited extent of the proposal for the (1) water play park, (2) large wooden deck and (3) seating area).

Notwithstanding the aforesaid, it is recommended that the BCEHOA should ensure that the necessary protocols are followed to ensure compliance with the clauses of the Constitution that pertain to consents for alterations and/or further development.

In the light of the above it is recommended that the Overstrand Municipality reject the application until the said protocols are followed.

Andre Wiehahn Pr Pln A/927/1996

14/118

229
Loretta Gillion - PORTION 2 OF THE FARM 575, AFDAKSRIEVER, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR THE AMENDMENT OF THE SITE DEVELOPMENT PLAN

From: Martin Diessner <martin.diessner@gmail.com>
To: Loretta Gillion <lpage@overstrand.gov.za>, Henk Olivier <holivier@overstrand.gov.za>
Date: 12/07/2019 09:38 AM
Subject: PORTION 2 OF THE FARM 575, AFDAKSRIEVER, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR THE AMENDMENT OF THE SITE DEVELOPMENT PLAN
Cc: Robyn Diessner <robyn.diessner@gmail.com>
Attachments: 02_Interactive-report-dated-11-July-2019.pdf; 04_DECA-report-dated-11-July-2019.pdf



The Diessner Family Trust
 2 Norton Dingle Drive
 7806 Constantia
 Cape Town
 Owner of consolidated erven 575/171 and 575/172 (now era 575/246) in the development Benguela Cove

TRATheart
 (H Olivier)

Cape Town, 12th of July 2019

Attention:
 Loretta Gillion <lpage@overstrand.gov.za>
 Henk Olivier <holivier@overstrand.gov.za>

Via email from:
 Martin Diessner (martin.diessner@gmail.com)
 Robyn Diessner (robyn.diessner@gmail.com)
 On behalf of The Diessner Family Trust

FILE NO:	PTN 229/575 Benguela
SCAN NO:	DIESSNER
COLLABORATOR NO:	130211

PORTION 2 OF THE FARM 575, AFDAKSRIEVER, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR THE AMENDMENT OF THE SITE DEVELOPMENT PLAN – WRAP ON BEHALF OF BENGUELA COVE INVESTMENTS (PTY) LTD

Reference is made to the above matter and the notice received from your office in the same regard, and the following is placed on record formally.

The Diessner Family Trust (owner of 575/246) object to the processing and approval of the Application for the Amendment of the Site Development Plan of Portion 229 of the Farm 575, Afdaksvier. The objection is based on the following:

- 1. Non-compliance with the Constitution of Benguela Cove Estate**
 Benguela Cove Investments (Pty) Ltd (hereinafter referred to as BCI) is the developer of the Benguela Cove Estate and the

The Estate and its Home Owners Association is governed by a formal Constitution, which

15 JUL 2019

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requires from the members of the Association to follow specific procedures concerning particular matters. In the instance of the application to amend the Site Development Plan of Portion 229, BCI should have approached the Association as well as the Urban and Architectural Review Control Committee to obtain consent for the matter(s) in question, but BIC did not do so.

The clauses of the Constitution that require from BCI to obtain the various consents are, amongst other information, outlined in the attached report by Interactive Town & Regional Planning dated 10 July 2019.

2. Engineering Services

The attached report by DECA Consulting is self-explanatory insofar as the updating/amendment of certain engineering services

3. Use of Existing Facilities in the absence of Approved Building Plans

Based on the information that is contained in the attached report by Interactive Town & Regional Planning, it is the Association's understanding that building plans for the water play park, wooden deck and other amenities have as yet not been approved by the Municipality. The latter implies that Occupancy Certificates for these amenities could as yet not been issued, which means that the Public is using the amenities "at risk".

It then stands to reason that the use of the non-approved amenities should be discontinued formally until such time as the Municipality has approved the necessary building plans and issued Occupancy Certificates in accordance with the relevant sections of the Occupational Health and Safety Act.

I strongly believe that the applicant must follow due process, not only by complying with the requirements of the Benguela Cove constitution but also with the relevant Overstrand By-laws and the various Acts as mentioned in the attached documents.

In closing, I find it very disturbing that - according to the expert report - the applicant has commenced with business activities on erected structures that were built without even submitting building plans. We have taken our children to the play park and have paid an entrance fee and were unaware that those structures were not approved.

This type of attitude by the applicant is disrespectful towards the Overstrand Municipality and any law-abiding rates & tax payers, and should not be tolerated at all.

Once the applicant complies with regards to the abnormalities pointed out in the report, then I personally do not have any objection to them exploring their commercial activities - but it must be within the framework of the law.

It is trusted that the above is clear and that the Municipality would value and concede to the merits of this objection.

With kind regards

Martin & Robyn Diessner

Trustee of The Diessner Family Trust
Registered owner of 575/246 Benguela Cove

Attachment:

- Report by Interactive Town & Regional Planning dated 11 July 2019
- Report by DECA Consulting dated 11 July 2019

17/118



Our Contact Person: Mr E Schoeman
Your Contact Person: Mr M Diessner
Our Ref: Letters/Benguela Cove Estate/015

11 July 2019

The Trustees
 Home Owners Association
 Benguela Cove Estate
 R43 Main Road
 Overstrand Municipal District
 Western Cape

Attention: Mr Martin Diessner

Dear Sir,

BENGUELA COVE ESTATE HOME OWNERS ASSOCIATION: PROPOSED AMENDMENT OF THE EXISTING SITE DEVELOPMENT PLAN OF PORTION 229 OF THE FARM 575, AFDAKSRIVIER

The above matter has reference.

We have studied the documentation that you provided on 18 June 2019, and the report by Interactive Town & Regional Planning dated 11 July 2019. The documentation provided on 18 June 2019 comprises a notice by the Overstrand Municipality in respect of the proposed amendment of the existing Site Development Plan of Portion 229 of the Farm 575, Afdaksrivier, which is also referred to as the commercial property at Benguela Cove Estate. The report by Interactive Town & Regional Planning entails an assessment and evaluation of the information that pertain to the said Municipal notice and the proposed amendment of the Site Development Plan. Copies of the Municipal notice and Interactive report are attached hereto for ease of reference.

The amendment of the existing Site Development Plan of the commercial property at Benguela Cove Estate, in essence, proposes (a) the legalization of facilities that were constructed without formal Municipal approval, and (b) the addition of new facilities that are still to be constructed.

We have with the aforesaid in mind conducted an assessment of the existing documentation that addresses the bulk and internal engineering services of Benguela Cove Estate, and concluded that the following documents would have to be updated/amended to reflect the status quo of the proposed amendments to the Site Development Plan:

VILDRREDORP OFFICE | HERMANUS OFFICE
 26 Orkney Road/Beaufortweg 2209 | PO Box 124 Veldrand 6009 | 2 Postkoeke 421/Beaufortweg 7101 | PO Box 7371 Heringsbaai 6800
 TEL: +27 (0)33 510 2156 | FAX: +27 (0)33 524 5221 | E-MAIL: info@deca.co.za | TEL: +27 (0)27 312 4291 | FAX: +27 (0)27 313 2125 | E-MAIL: info@deca.co.za

CONSULTING SERVICES: CIVIL ENGINEERING | TRAFFIC ENGINEERING | TRANSPORT ENGINEERING | PROJECT MANAGEMENT

MEMBERS: L. B.U. 10007 | P.E. ENG. 17 | ENGINEERED BY: TECH. 2840 | REG. NO.: 18-10-1748-22

www.d-e-c-a.co.za

- 2 -

- (i) Services report concerning Benguela Cove Estate and the Site Development Plan for Ptn 2 of Farm 575, Afdakrivier – DECA Consulting, 08 June 2016.
- (ii) Calculation of Development Contribution levies – DECA Consulting, 2017.
- (iii) Services Agreement between the Overstrand Municipality and Benguela Cove Investments (Pty) Ltd – DECA Consulting, 2017.

The extent of the facilities and amenities at Benguela Cove Estate govern the content and context of the aforementioned documents, and it should therefore be updated/amended to reflect the latest services requirements at Benguela Cove Estate.

It is trusted that you will find the above in order. The undersigned and our Mr Engelbrecht hold themselves available should you and/or other entities wish to discuss any matter(s) that are addressed herein, in further detail.

Yours faithfully,
DECA Consulting



Pp
Pieter Engelbrecht Pr Tech Eng

Appendices: - Report by Interactive Town & Regional Planning dated 11 July 2019.
- Annexures A & B - Notices by Overstrand Municipality.



InterActive Town & Regional Planning
 PO Box 980
 Hermanus
 7200

Reference: Portion 229 of Farm Afdaks Rivier 575

Date: 11 July 2019

AMENDED SDP FOR PORTION 229 OF FARM AFDAKS RIVIER 575 CALEDON: EVALUATION AND COMMENTS/ PROPOSAL

1. Introduction

InterActive Town and Regional Planning was appointed by the Benguela Cove Estate Home Owners Association (BCEHOA) to investigate and evaluate the proposed SDP amendment for Portion 229 of Farm Afdaks Rivier 575, Caledon and to provide comments and proposals regarding the foreseen impacts of certain of the existing non-approved proposed structures on Portion 229 of the Farm Afdaksrivier 575, which is an integral part of the Benguela Cove Estate.

2. The request

This appointment originated from a notice received by the BCEHOA from the Overstrand Municipality regarding the proposed amendment of the Site Development Plan of the Commercial Land area within the Estate. The Commercial Land is owned by the developer of the Benguela Cove Estate, Benguela Cove Investments (Pty) Ltd, who is also a member of the Home Owners Association.

The adjacent areal photograph shows the status of commercial development (aerial photograph dated December 2018 obtained from Overstrand GIS Viewer):



Resulting from the aforementioned notice, the BCEHOA requested a professional opinion regarding the following:

- a. Do the two notices address different applications for the amendment of the SDP of the Commercial Land area, and are such applications perhaps running in parallel ?
- b. What are the physical and legal differences between the proposed new SDP and the one that was originally approved ?
- c. Does the proposed amendment of the SDP of the Commercial Land area conform to the Guidelines and Theme of the Estate as a whole ?
- d. The merits upon which an objection(s) can be lodged against the application(s) to amend the SDP of the Commercial Land area.
- e. Are the proposed amendment of the SDP and departures permissible in terms of the Constitution of the Benguela Cove Estate ?

3. Background - history of applications and amendments lodged

a. Township Establishment 2004 (the original application)

The first subdivision and rezoning approval of Benguela Cove Estate formed part of the township establishment which was approved in 2004 in terms of the Land Use Planning Ordinance, 1985 (Ord. 15 of 1985). This approval was subject to the conditions of the:

- Department of Economic Development, Environmental Affairs & Tourism (refer ROD),
- Department of Agriculture (refer consent to subdivide),
- Provincial Roads Department (refer requirements for access).

In addition to the conditions set by the above entities, a services agreement with the Overstrand Municipality, requirements relating to use of water from the Fisherhaven dam for irrigation purposes, sewerage arrangement from the Hawston treatment works and an agreement with the Department of Water Affairs & Forestry (DWAF), were included as conditions of approval.

The following zonings / land-uses, number of erven, areas and percentages of the subject areas were approved in the original application:

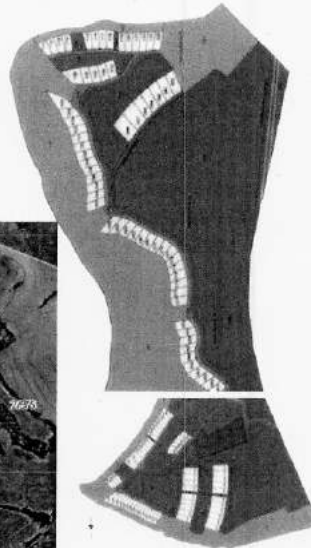
Zoning / Use	No of erven	Area (±ha)	%
Residential Zone V	1	2.6	1.2
Special Zone	1	5.38	2.6
Open Space Zone II	9	13.26	6.3
Open Space Zone III	8	61.96	29.5
Agricultural Zone I	2	89.93	42.8
Transport Zone I (Private Road)	1	5.90	2.8
Transport Zone II	1	2.48	1.2
Total	147	210.22	100

The layout of the original township establishment and its zonings and land-use, supported by a cadastral plan, are shown below:

The erf under discussion is Erf 126 as shown on the layout plan, but registered per the Surveyor General Plan as Portion 229 of Farm 575 Afdaks Rivier.

ZONING/USE	NOTATION			
	Erf (no.)	No. of erven	Area (Ha)	%
Residential Zone	1 - 14	24	528.71	13.63
Residential Zone -	123	-	42.40	1.10
Special Zone	126	-	45.38	7.58
Open Space Zone II	127 - 130	4	113.26	6.47
Open Space Zone III	136 - 143	8	461.95	29.46
Agricultural Zone -	144 - 145	2	489.93	42.78
Transport Zone I (Private Road)	146	-	45.99	7.83
Transport Zone II	147	-	42.48	1.17
(TOTAL)	-	43	2310.22	100.00

According to the Overstrand Planning Department, a SDP of the development was only compiled some years later.



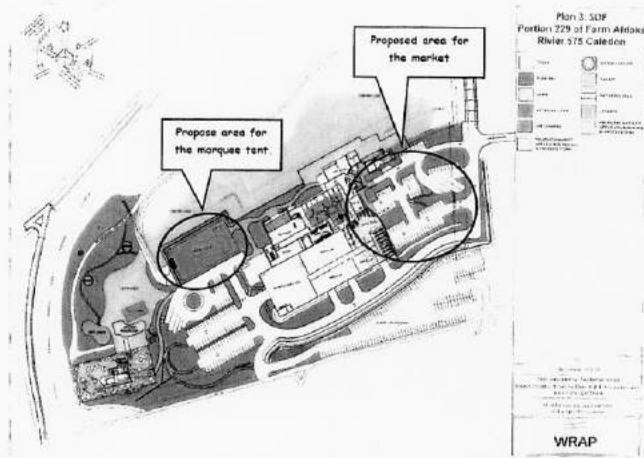
b. Amendment of the Site Development Plan and Departures for a "market" and "a place of entertainment" - 2018 (the second application- Refer to Annexure A)

Following the approval of the original application, a second application was submitted during November 2017 for the amendment of the Site Development Plan, with a departure to allow for "a market" and "a place of entertainment" as part of the existing restaurant, a section of a wine cellar as well as a marquee tent.

The second application was advertised for public comment during March 2018, with a date of closure for comments on 6 April 2018. According to the Overstrand Planning Department, the second application was approved in part more than a year later on 19 March 2019.

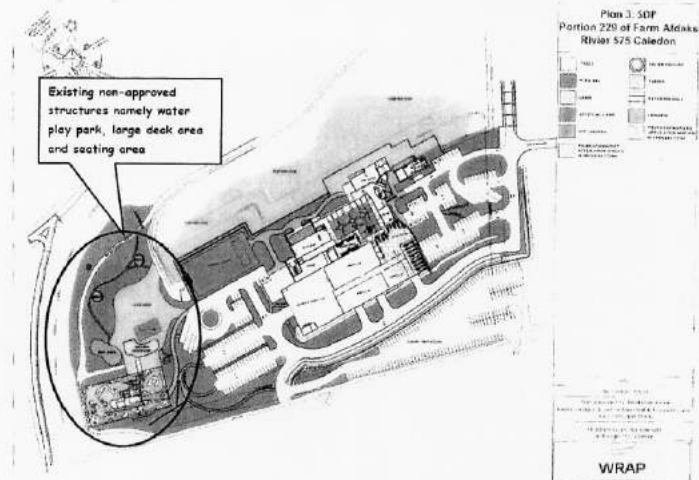
The Overstrand Planning Department confirmed that, as part of the resolutions for approval, the place of entertainment was restricted (mitigated) to include operations of the "place of entertainment" and "market" on the inside of building and the courtyard areas only. This implies that the areas proposed for "place of entertainment" and "market" outside the existing buildings and the courtyard, including the marquee tent, were not supported.

The location of the proposed "place of entertainment" and "market" area, which were not supported because it was located outside the perimeter of the existing building and courtyard areas, is indicated in the following plan:



c. Amendment of the Site Development Plan to accommodate a water play park, wooden deck area and seating area- 2019 (the third application- Refer to Annexure B)

An application for an amendment of the site development plan to accommodate a water orientated play park, wooden deck area and seating area (enhancing the existing mini-golf course & splash pool area) was submitted in March 2019. The purpose of this application is to legalise these as-built features and uses on the property. This application, as at the date of this report, is open for public comments until 12 July 2019.



4. Internal Land-Use Management instruments of the Benguela Cove Estate

The character of the Benguela Cove Estate is generally made up of the rights of the individual home owners, the intended architecture and the local environmental aspects, and these dynamics are predominantly managed and protected by means of the following legal documents:

- i. The Urban & Architectural Design Controls, March 2018, and
- ii. The Benguela Cove Home Owners' Association Constitution, updated 2018.

In the correspondence received from BCEHOA it was pointed out that the Estate's Constitution addresses matters concerning the sub-division and /or rezoning of land units within the Estate, and the following conditions in the Constitution are thus in question:

Heading- "20. VOTING"

- 20.7 Notwithstanding anything contained in this constitution, any resolution or the amendment of a resolution
- 20.7.1 which would have the effect of amending or repealing any part of this constitution, or
- 20.7.2 which would have the effect of amending or repealing paragraph 31 of this constitution which paragraph precludes subdivision or rezoning of the erven or the erection of more than one dwelling per erf, or
- 20.7.3 which would have the effect of amending or repealing paragraph 32 and 33 dealing with the Urban and Architectural Review Controls Manual the Architectural Controls, shall require a 75% (three quarters) majority of all Members entitled to vote before the resolution may be passed, which shall be known as a special resolution.

and

Heading- "30. DEALING WITH COMMON PROPERTY"

- 30.1 Neither the whole nor any portion of the common property shall be:
 - 30.2.3 subjected to any rights, whether registered in the Deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof, or which allow for agricultural activities to be conducted similar in nature to the Agricultural Enterprise; or
 - 30.2.4 built upon, improved or enhanced in value by the construction of buildings, erection of facilities or amenities, other than as contained in this constitution and in the approved layout plan, without the sanction of a special resolution of the Members of the Association.

and

Heading- "31. NO SUBDIVISION OR REZONING AND NOT MORE THAN ONE DWELLING"

- 31.1 No Member shall be entitled to subdivide or rezone his erf, it being noted that that Erf 228 has been zoned as the Hotel and Related Facilities Development, together with the Agricultural Enterprise, which shall enjoy a separate zoning status commensurate with its function as main farm complex for the cultivation, harvesting, processing and marketing of the produce of the agricultural property, together which the Commercial Component, being Erf 229,

comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial.

and

Heading- "32. BUILDING STANDARD RULES AND AESTHETIC APPROVAL"

- o 32.1 It is recorded that the Trustee Committee has appointed the Benguela Cove Urban and Architectural Design Review Committee which comprises of Ellis Associates Architects and two Members appointed by the Developer. In compliance with paragraph 4.6.2 above no owner or any erf shall be entitled to build on his erf or effect any improvements thereto or erect any structures thereon without the prior approval of the Urban and Architectural Review Control Committee, hereinafter referred to as UARCC."
- o 32.2 No owner of any erf shall be entitled to alter any construction thereon or alter or vary the design or façade of his building, dwelling or improvements so constructed, without written approval of the said UARCC."

Paragraph 4.6.2 as referred to in the above reads as follows:

Heading - "4. MEMBERSHIP"

- "4.6 No Member shall be entitled to transfer an erf, unless a duly authorised representative of the Trustee Committee or the relevant party to which such function has been delegated has in writing consented to the transfer, and the following conditions of title are imposed, namely:
 - o "4.6.2 No improvements, alterations, restructuring, repairs or any building work of any nature shall be affected to the property, nor shall the access to the property be altered, without the prior written approval of the Association."

The "Association" means, as per the definition, the "Benguela Cove Lagoon Owners Association".

(As an informative footnote to the above extracts from the Estate's Constitution, it is stated that cognisance should be taken that "Rezoning" in terms of the Overstrand Municipal Planning By-Law (2015) means the change in zoning in relation to a particular land unit or units or portion of a land unit in terms of Planning Law).

The following is derived from the information provided above:

- The amendment of the Constitution requires 75% support of the members of the Association.
- The Benguela Cove Lagoon Owner Association, with a special resolution, has the mandate in terms of the common property to:
 - o Allow building, improvement or enhancement etc other than that shown on the original approved layout plan. The latter is interpreted to also include the SDP.
 - o The Urban and Architectural Review Control Committee (UARCC), as appointed by the Trustee Committee, has the mandate to allow the approval of building plans of any structure, including improvements and alterations to structures, and to vary the design or facades.

In consideration of the aforementioned, it can be argued that a change in land-use that requires a departure and consequent amendment of the (approved) SDP, should be subjected to the permission of the Members of the Benguela Cove Lagoon Owners Association and by passing a special resolution with the effect thereto.

5. Analysis of the third application (currently subject for Public comment) and the anticipated impact thereof

The impact of the legalisation of the water play park, wooden deck area and seating area (i.e. the existing non-approved structures) are to be analysed / measured against the existing approved rights of the property. The table below provides information on such analyses:

Planning Criteria	Parameters	The Proposal	Comments
Zoning- Primary Use	Special Zone SZ - 2 for Tourism Business and house of worship	A departure for a water play park, large wooden deck and seating area	All these uses are considered to be consistent with the zoning requirements of the Tourism definition. The impact of these additional uses is considered low.
Consent	None	n.a.	No application is made for any consent uses.
Floor Factor	0.75 = 4,0361ha	No additional covered floor area	The proposed structures do not add to the floor factor, coverage or height and is thus consistent
Coverage	50% = 2,6907ha	No additional coverage	
Height	8m or 2 storeys, provided for the winery 14m.	On ground level, deck lower than 8m	Consistent, apart from that the proposed structures do not trigger building line encroachments they are more than 10m away from any street and side boundary
Building Line	Street	10m	
	Side	10m	
Parking	1 parking bay per 25m ² of total floor space and in the case of a Place of Worship, 1 parking bay per 5 seats	No additional parking provided Required: = 217 Provided = 309 The above figure is applicable as the marquees tent and outside market area was not supported	The proposed uses do not require any parking and is thus consistent with the parking requirement.

With reference to the above, and given that the existing zoning of the subject property entails Special Zone SZ-2 with a Primary use for Tourism business and House of Worship, cognisance should be taken that the definition of tourism use in this application differs with that of the Overstrand Municipal Planning By-Law, 2015.

The definition for Tourism business, relevant to the application site on Portion 229 of the Farm 575 Afdaks Rivier, reads: "Tourism business means the utilisation of a site and/or the buildings on the site for business activities such as deemed by council as important to encourage the tourism trade and includes restaurants, guesthouses, guest rooms, wineries, souvenir shops, tourist information centres, antique shops, arts and craft shops, art galleries, interior decorators, travel bureaus and conference facilities.

The definition for "tourist facilities" in terms of the Overstrand Municipal Planning By-Law, 2015 "means amenities for tourists or visitors such as lecture rooms, restaurants, picnic areas, gift shops, cafés, restrooms, recreational facilities, animal parks (domestic or otherwise), but does not include a hotel or overnight facilities"

6. Conclusive Summary

The impact of the existing non-approved structures on the existing commercial development at Benguela Cove Estate is, from a tourism perspective, generally considered to be aligned with the Town Planning Criteria that is relevant to the property.

The comments provided in the table below are, however, provided in response to the request of the BCEHOA as denoted under section 2 of this document:

The questions	The answers
Do the two notices address different applications for the amendment of the SDP of the Commercial Land area, and are such applications perhaps running in parallel ?	<p>The notices are different applications and were running in parallel.</p> <p>The first notice related to a SDP amendment and departures for a (1) place of entertainment and (2) a market. These facilities were proposed to be accommodated in the existing restaurant, a section of a wine cellar as well as a marquee tent.</p> <p>According to the Municipality the place of entertainment and market were restricted to only the courtyard area and the inside of existing buildings, all as per the Municipal approval that occurred in part during March 2019.</p> <p>The second notice refers to a departure application to accommodate a (1) water play park, (2) large wooden deck and (3) seating area.</p>

<p>What are the physical and legal differences between the proposed new SDP and the one originally approved ?</p>	<p>The original approved SDP made provision for the Winery, Farm Stall, Chapel and Conference facility and, as mentioned here-above, the two new SDPs make provision for the following:</p> <p>Notice dated 2017 (1) place of entertainment and (2) a market</p> <p>Notice dated 2019 (1) water play park, (2) large wooden deck and (3) seating area.</p>
<p>Does the proposed amendment of the SDP of the Commercial Land area conform to the Guidelines and Theme of the Estate as a whole?</p>	<p>It is considered that the SDP for the commercial land is consistent with the zoning of the relevant portion.</p> <p>In the Constitution the Commercial component is acknowledged (Par 31) which has a zoning for "Special Zone SZ - 2" for Tourism Business and house of worship.</p> <p>The uses, subject to the application is considered consistent with the zoning. Therefore the proposed amendment of the SDP to include the water play park, large wooden deck and seating area is not considered a material change.</p>
<p>The merits upon which an objection(s) can be lodged against the application(s) to amend the SDP of the Commercial Land area.</p>	<p>The changes proposed are not considered material and is also considered to be aligned with the current zoning.</p> <p>Thus in terms of the proposed land-uses, it is not deemed valid that reasons for objection can be lodged.</p> <p>From a technical point of view it is mentioned that the property description of the land on the notice is incorrectly referring to Portion 229 of the farm no 575, Benguela Cove, Hermanus. The correct description is Portion 229 of the farm no 575, Afdaks Rivier.</p> <p>From experience it is known that the local authority would argue that, although the description is incorrect, the general understanding read together with the report, will not be material in nature and as such the matter would be dismissed.</p>

<p>Are the proposed amendment of the SDP and departures permissible in terms of the Constitution of the Benguela Cove Estate ?</p>	<p>From a town planning point of view: If the Benguela Cove Lagoon Owner Association and the Architectural Review Control Committee have provided their written approval in respect of the proposed amendment of the SDP, then it would be considered permissible.</p> <p>This opinion is motivated as follows:</p> <p>Clause 4.6.2 reads: <i>No improvements, alterations, restructuring, repairs or any building work of any nature shall be affected to the property, nor shall the access to the property be altered, without the prior written approval of the Association."</i></p> <p>"Association" in the above clause (as per definition) means the <u>Benguela Cove Lagoon Owner Association</u>, which is the body that is mandated to represent all individual home owners within the Estate, and which is compelled to execute the requirements of the Constitution to the satisfaction of the individual home owners.</p> <p>Clause 32.1 reads: <i>"..... In compliance with paragraph 4.6.2 above no owner of any erf shall be entitled to build on his erf or effect any improvement thereto or erect any structure thereon without the prior written approval of the Urban and Architectural Review Control Committee, hereinafter referred to as UARCC, as hereafter set out."</i></p> <p>From clauses 4.6.2 and 32.1 it is evident that no material changes to any building, structure or part of the existing development may take place without the involvement and consent of the Association, which includes the Architectural Review Committee.</p> <p>Clause 31.1 reads: <i>"...the Commercial Component, being Erf 229, comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial."</i></p> <p>Clause 31.1 lists the <u>extent</u> of the facilities of the Commercial Land area, and it is deemed appropriate in terms of Clauses 4.6.2 and 32.1 that the consent of the Association have to be obtained to alter or expand the listed facilities. Furthermore, following such consent, the Association should be mandated through a Special Resolution, as warranted by Clause 20.7, to amend clause 31.1, so that it reflects a complete listing of the facilities of the Commercial Land area.</p>
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The development proposal as reflected in the amendment of the Site Development Plan (SDP) as described in this document, can be seen as an enhancement of the commercial development side of the Benguela Cove Estate, and it is not likely to affect the character of the non-commercial side of the Estate (Refer the scale and limited extent of the proposal for the (1) water play park, (2) large wooden deck and (3) seating area).

Notwithstanding the aforesaid, it is recommended that the BCEHOA should ensure that the necessary protocols are followed to ensure compliance with the clauses of the Constitution that pertain to consents for alterations and/or further development.

In the light of the above it is recommended that the Overstrand Municipality reject the application until the said protocols are followed.

Andre Wiehahn Pr Pln A/927/1996



TR A Theart
(H Olivier)

12 July 2019

Town Planning Division
Overstrand Municipality
P.O. Box 20
Hermanus
7200

Method of delivering this document:
Transmission via e-mail facilities to
loretta@overstrand.gov.za

Attention: Mr Henk Olivier

Dear Sir,

²²⁹
PORTION 2 OF THE FARM 575, AFDAKSRIVIER, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR THE AMENDMENT OF THE SITE DEVELOPMENT PLAN – WRAP ON BEHALF OF BENGUELA COVE INVESTMENTS (PTY) LTD

Reference is made to the above matter and the notice received from your office.

I am a homeowner in the Benguela Cove Estate and herewith state my objection.

1. Noise Pollution & Light Pollution

I am not opposed to the enhancement of the commercial development side of the Benguela Cove Estate, however I object to any noise pollution and light pollution. We purchased this property for the peaceful and tranquil ambiance that the estate offers and to be utilised as a family home where we spend weekends and holidays to relax and recharge. It would be extremely unfortunate if we had to endure noisy weekends on a permanent basis with bright spotlights at night.

Any live entertainment and events should be limited to inside the building only as even the marquee will not contain the noise emanating from such events.

I trust the above is clear and that the Municipality would value and take these points into consideration.

Cormack Sean McCarthy
Trustee: Iris McCarthy Family Trust
House 179, Benguela Cove
Mobile: 084 353 2888
Email: sean@sujean.co.za

FILE NO:	PTN 229/575
	Benguela
SCAN NO:	
	SEAN
COLLABORATOR NO:	
	1302094

TP 15 JUL 2019

**Volkhard + Ilse Marianne
Buchholz**

12th July, 2019



Overstrand Municipality
Town Planning
att. Mr Henk Olivier
16 Paterson Street

Hermanus, 7200

FILE NO:	PH 229/575 Benguela
SCAN NO:	ILSE
COLLABORATOR NO:	1302066

Dear Mr Olivier,

Ref.: Portion 229 of Farm 575, Afdaksvier
Proposed Amendment of Approval Site Development Plan - WRAP on behalf of Benguela Cove Investments (PTY) Ltd.

We refer to the above matter and the notice received from your office. The following is placed on record formally.

We are owners of plot and house 182 at Benguela Cove and writing to you to **comment and object** to the "Proposed amendment of approved site development plan" of portion 229 of farm no 575, Afdaksvier.

Reasons and Comments for our objection:

1. **Non-compliance with the Constitution of Benguela Cove Estate HOA.**
The Estate and its Home Owners Association is governed by a formal Constitution, which requires from the members of the Association to follow specific procedures concerning particular matters. In the instance of the application to amend the Site Development Plan of Portion 229, BCI should have approached the Association as well as the Urban and Architectural Review Control Committee to obtain consent for the matter(s) in question. BIC failed to do so.
In this regard we also refer to the attached report by Interactive Town & Regional Planning dated 10th July, 2019.
2. **Engineering**
We attach the report of DECA Consulting which is self-explanatory.
3. **Construction an use of not approved structures.**

Postbox 28
Kleinmond 7195
Telephone: 072 474 1 874

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15 JUL 2019

**Volkhard + Ilse Marianne
Buchholz**

The applicant has already build the structures and does offer it for public use. We are therefore of the opinion that this use of non-approved structures (amenities) should be discontinued formally until such time as the relevant authorities have approved the amendment and relevant plans.

4. Noise pollution

As home owners close to the portion 229 we have already experienced noise disturbance from the Golf Course (Put-Put). The applicant has outside speakers installed within the Golf Court (Put-Put) were loud music and sound effects are played which are a very disturbance depending of the wind direction.

Furthermore the applicant does not adhere to the restrictions defined in the approval of the Municipality of April 2019. He has still organised open air concerts and music events playing extremely amplified music (for instance 05-04.2019 and 09-04-2019) until long after midnight.

5. Light pollution

The applicant has installed floodlights in and around the Golf Course (Put-Put) which distracts wildlife such as bats and night birds during the night.

6. Change of character of Benguela:

When we purchased our property at Benguela Cove we gave consideration to the site development plan and the approved activities. Our purchase was based on this. The proposed amendment will again be a step in the direction to fundamentally change the character of the estate.

From our prospective we find it very disturbing that there are people like the owner of BCI doing whatever they want, ignoring rules without any consequences and punishment. As rates and taxpayers we expect and request to be protected against those attitudes.

Yours faithfully

Volkhard & Ilse Buchholz
Registered owner of 575/182 Benguela Cove

Enclose:
Report Interactive Town&Regional Planning
Report DECA Consulting

Postbox 28
Kleinmond 7195
Telephone: 072 474 1 874



Our Contact Person: Mr E Schoeman
 Your Contact Person: Mr M Diessner
 Our Ref: Letters/Benguela Cove Estate/015

11 July 2019

The Trustees
 Home Owners Association
 Benguela Cove Estate
 R43 Main Road
 Overstrand Municipal District
 Western Cape

Attention: Mr Martin Diessner

Dear Sir,

BENGUELA COVE ESTATE HOME OWNERS ASSOCIATION: PROPOSED AMENDMENT OF THE EXISTING SITE DEVELOPMENT PLAN OF PORTION 229 OF THE FARM 575, AFDAKSRIVIER

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We have studied the documentation that you provided on 18 June 2019, and the report by Interactive Town & Regional Planning dated 11 July 2019. The documentation provided on 18 June 2019 comprises a notice by the Overstrand Municipality in respect of the proposed amendment of the existing Site Development Plan of Portion 229 of the Farm 575, Afdakrivier, which is also referred to as the commercial property at Benguela Cove Estate. The report by Interactive Town & Regional Planning entails an assessment and evaluation of the information that pertain to the said Municipal notice and the proposed amendment of the Site Development Plan. Copies of the Municipal notice and Interactive report are attached hereto for ease of reference.

The amendment of the existing Site Development Plan of the commercial property at Benguela Cove Estate, in essence, proposes (a) the legalization of facilities that were constructed without formal Municipal approval, and (b) the addition of new facilities that are still to be constructed.

We have with the aforesaid in mind conducted an assessment of the existing documentation that addresses the bulk and internal engineering services of Benguela Cove Estate, and concluded that the following documents would have to be updated/amended to reflect the status quo of the proposed amendments to the Site Development Plan:

VILBERSDORP OFFICE 76 Van Oortwinne Vilbersdorp 8848 PO Box 199 Willemshoop 8848 TEL +27 (0)21 889 3715 FAX +27 (0)85 524 3723 E-MAIL info@deca.co.za	HEERMANUS OFFICE 7 Paarlou 50 Heeremans 7200 PO Box 1275 Heeremans 7200 TEL +27 (0)28 312 3290 FAX +27 (0)28 312 3325 E-MAIL info@deca.co.za
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CONSULTING SERVICES: CIVIL ENGINEERING | TRAFFIC ENGINEERING | TRANSPORT ENGINEERING | PROJECT MANAGEMENT

MEMBERS: DU PLOOY PW ENG | P ENG | DR ING | P ENG | DR ING | P ENG | REG NO: 98/06478/23

- 2 -

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- (iii) Services Agreement between the Overstrand Municipality and Benguela Cove Investments (Pty) Ltd – DECA Consulting, 2017.

The extent of the facilities and amenities at Benguela Cove Estate govern the content and context of the aforementioned documents, and it should therefore be updated/amended to reflect the latest services requirements at Benguela Cove Estate.

It is trusted that you will find the above in order. The undersigned and our Mr Engelbrecht hold themselves available should you and/or other entities wish to discuss any matter(s) that are addressed herein, in further detail.

Yours faithfully,
DECA Consulting



Pp
Pieter Engelbrecht Pr Tech Eng

Appendices: - Report by Interactive Town & Regional Planning dated 11 July 2019.
- Annexures A & B - Notices by Overstrand Municipality.



InterActive Town & Regional Planning
 PO Box 980
 Hermanus
 7200

Reference: Portion 229 of Farm Afdaks Rivier 575

Date: 11 July 2019

AMENDED SDP FOR PORTION 229 OF FARM AFDAKS RIVIER 575 CALEDON: EVALUATION AND COMMENTS/ PROPOSAL

1. Introduction

InterActive Town and Regional Planning was appointed by the Benguela Cove Estate Home Owners Association (BCEHOA) to investigate and evaluate the proposed SDP amendment for Portion 229 of Farm Afdaks Rivier 575, Caledon and to provide comments and proposals regarding the foreseen impacts of certain of the existing non-approved proposed structures on Portion 229 of the Farm Afdaksrivier 575, which is an integral part of the Benguela Cove Estate.

2. The request

This appointment originated from a notice received by the BCEHOA from the Overstrand Municipality regarding the proposed amendment of the Site Development Plan of the Commercial Land area within the Estate. The Commercial Land is owned by the developer of the Benguela Cove Estate, Benguela Cove Investments (Pty) Ltd, who is also a member of the Home Owners Association.

The adjacent areal photograph shows the status of commercial development (aerial photograph dated December 2018 obtained from Overstrand GIS Viewer):



Resulting from the aforementioned notice, the BCEHOA requested a professional opinion regarding the following:

- a. Do the two notices address different applications for the amendment of the SDP of the Commercial Land area, and are such applications perhaps running in parallel ?
- b. What are the physical and legal differences between the proposed new SDP and the one that was originally approved ?
- c. Does the proposed amendment of the SDP of the Commercial Land area conform to the Guidelines and Theme of the Estate as a whole ?
- d. The merits upon which an objection(s) can be lodged against the application(s) to amend the SDP of the Commercial Land area.
- e. Are the proposed amendment of the SDP and departures permissible in terms of the Constitution of the Benguela Cove Estate ?

3. Background - history of applications and amendments lodged

a. Township Establishment 2004 (the original application)

The first subdivision and rezoning approval of Benguela Cove Estate formed part of the township establishment which was approved in 2004 in terms of the Land Use Planning Ordinance, 1985 (Ord. 15 of 1985). This approval was subject to the conditions of the:

- Department of Economic Development, Environmental Affairs & Tourism (refer ROD),
- Department of Agriculture (refer consent to subdivide),
- Provincial Roads Department (refer requirements for access).

In addition to the conditions set by the above entities, a services agreement with the Overstrand Municipality, requirements relating to use of water from the Fisherhaven dam for irrigation purposes, sewerage arrangement from the Hawston treatment works and an agreement with the Department of Water Affairs & Forestry (DWAF), were included as conditions of approval.

The following zonings / land-uses, number of erven, areas and percentages of the subject areas were approved in the original application:

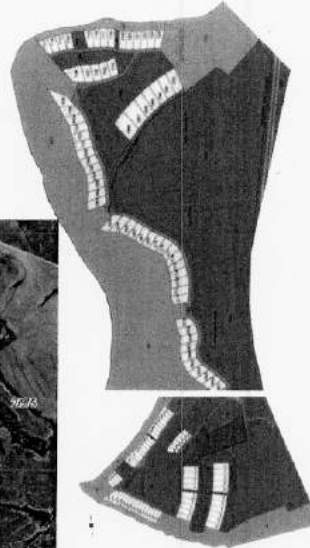
Zoning / Use	No of erven	Area (±ha)	%
Residential Zone V	1	2.6	1.2
Special Zone	1	5.38	2.6
Open Space Zone II	9	13.26	6.3
Open Space Zone III	8	61.96	29.5
Agricultural Zone I	2	89.93	42.8
Transport Zone I (Private Road)	1	5.90	2.8
Transport Zone II	1	2.48	1.2
Total	147	210.22	100

The layout of the original township establishment and its zonings and land-use, supported by a cadastral plan, are shown below:

The erf under discussion is Erf 126 as shown on the layout plan, but registered per the Surveyor General Plan as Portion 229 of Farm 575 Afdaks Rivier.

NOTATION				
ZONING CODE	Erf no.	No. of erfes	Area (Hl)	%
Residential Zone	1 - 124	124	128,71	13,65
Residential Zone I	125		12,60	1,33
Special Zone	126		15,34	1,64
Open Space Zone II	127 - 131	5	113,26	12,17
Open Space Zone III	132 - 143	12	161,94	17,36
Agriculture Zone	144 - 145	2	189,93	20,53
Transport Zone I (Private Road)	146	1	15,90	1,71
Sport Zone II	147	1	12,48	1,34
TOTAL		143	1210,22	100,00

According to the Overstrand Planning Department, a SDP of the development was only compiled some years later.



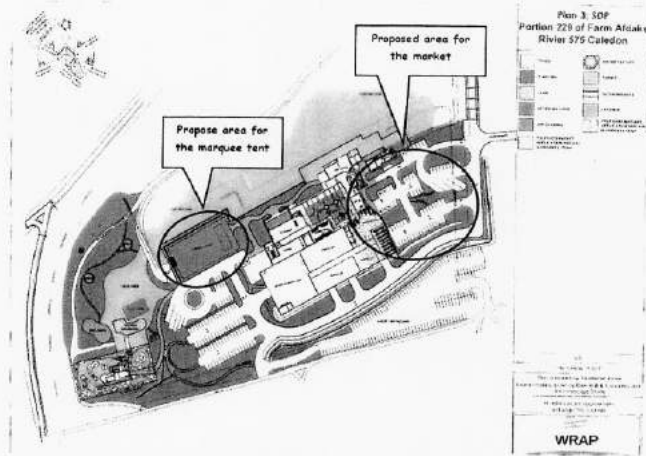
b. Amendment of the Site Development Plan and Departures for a "market" and "a place of entertainment" - 2018 (the second application- Refer to Annexure A)

Following the approval of the original application, a second application was submitted during November 2017 for the amendment of the Site Development Plan, with a departure to allow for "a market" and "a place of entertainment" as part of the existing restaurant, a section of a wine cellar as well as a marquee tent.

The second application was advertised for public comment during March 2018, with a date of closure for comments on 6 April 2018. According to the Overstrand Planning Department, the second application was approved in part more than a year later on 19 March 2019.

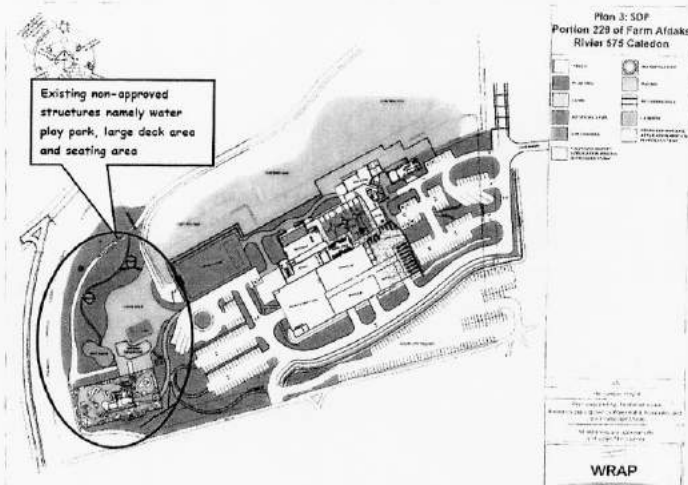
The Overstrand Planning Department confirmed that, as part of the resolutions for approval, the place of entertainment was restricted (mitigated) to include operations of the "place of entertainment" and "market" on the inside of building and the courtyard areas only. This implies that the areas proposed for "place of entertainment" and "market" outside the existing buildings and the courtyard, including the marquee tent, were not supported.

The location of the proposed "place of entertainment" and "market" area, which were not supported because it was located outside the perimeter of the existing building and courtyard areas, is indicated in the following plan:



c. Amendment of the Site Development Plan to accommodate a water play park, wooden deck area and seating area- 2019 (the third application- Refer to Annexure B)

An application for an amendment of the site development plan to accommodate a water orientated play park, wooden deck area and seating area (enhancing the existing mini-golf course & splash pool area) was submitted in March 2019. The purpose of this application is to legalise these as-built features and uses on the property. This application, as at the date of this report, is open for public comments until 12 July 2019.



4. Internal Land-Use Management instruments of the Benguela Cove Estate

The character of the Benguela Cove Estate is generally made up of the rights of the individual home owners, the intended architecture and the local environmental aspects, and these dynamics are predominantly managed and protected by means of the following legal documents:

- i. The Urban & Architectural Design Controls, March 2018, and
- ii. The Benguela Cove Home Owners' Association Constitution, updated 2018.

In the correspondence received from BCEHOA it was pointed out that the Estate's Constitution addresses matters concerning the sub-division and /or rezoning of land units within the Estate, and the following conditions in the Constitution are thus in question:

Heading- "20. VOTING"

- 20.7 Notwithstanding anything contained in this constitution, any resolution or the amendment of a resolution
- 20.7.1 which would have the effect of amending or repealing any part of this constitution, or
- 20.7.2 which would have the effect of amending or repealing paragraph 31 of this constitution which paragraph precludes subdivision or rezoning of the erven or the erection of more than one dwelling per erf, or
- 20.7.3 which would have the effect of amending or repealing paragraph 32 and 33 dealing with the Urban and Architectural Review Controls Manual the Architectural Controls, shall require a 75% (three quarters) majority of all Members entitled to vote before the resolution may be passed, which shall be known as a special resolution.

and

Heading- "30. DEALING WITH COMMON PROPERTY"

- 30.1 Neither the whole nor any portion of the common property shall be:
 - 30.2.3 subjected to any rights, whether registered in the Deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof, or which allow for agricultural activities to be conducted similar in nature to the Agricultural Enterprise; or
 - 30.2.4 built upon, improved or enhanced in value by the construction of buildings, erection of facilities or amenities, other than as contained in this constitution and in the approved layout plan, without the sanction of a special resolution of the Members of the Association.

and

Heading- "31. NO SUBDIVISION OR REZONING AND NOT MORE THAN ONE DWELLING"

- 31.1 No Member shall be entitled to subdivide or rezone his erf, it being noted that that Erf 228 has been zoned as the Hotel and Related Facilities Development, together with the Agricultural Enterprise, which shall enjoy a separate zoning status commensurate with its function as main farm complex for the cultivation, harvesting, processing and marketing of the produce of the agricultural property, together which the Commercial Component, being Erf 229,

comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial.

and

Heading - "32. BUILDING STANDARD RULES AND AESTHETIC APPROVAL"

- o 32.1 It is recorded that the Trustee Committee has appointed the Benguela Cove Urban and Architectural Design Review Committee which comprises of Ellis Associates Architects and two Members appointed by the Developer. In compliance with paragraph 4.6.2 above no owner or any erf shall be entitled to build on his erf or effect any improvements thereto or erect any structures thereon without the prior approval of the Urban and Architectural Review Control Committee, hereinafter referred to as UARCC..."
- o 32.2 No owner of any erf shall be entitled to alter any construction thereon or alter or vary the design or façade of his building, dwelling or improvements so constructed, without written approval of the said UARCC."

Paragraph 4.6.2 as referred to in the above reads as follows:

Heading - "4. MEMBERSHIP"

- "4.6 No Member shall be entitled to transfer an erf, unless a duly authorised representative of the Trustee Committee or the relevant party to which such function has been delegated has in writing consented to the transfer, and the following conditions of title are imposed, namely:
 - o "4.6.2 No improvements, alterations, restructuring, repairs or any building work of any nature shall be affected to the property, nor shall the access to the property be altered, without the prior written approval of the Association."

The "Association" means, as per the definition, the "Benguela Cove Lagoon Owners Association".

(As an informative footnote to the above extracts from the Estate's Constitution, it is stated that cognisance should be taken that "Rezoning" in terms of the Overstrand Municipal Planning By-Law (2015) means the change in zoning in relation to a particular land unit or units or portion of a land unit in terms of Planning Law).

The following is derived from the information provided above:

- The amendment of the Constitution requires 75% support of the members of the Association.
- The Benguela Cove Lagoon Owner Association, with a special resolution, has the mandate in terms of the common property to:
 - o Allow building, improvement or enhancement etc other than that shown on the original approved layout plan. The latter is interpreted to also include the SDP.
 - o The Urban and Architectural Review Control Committee (UARCC), as appointed by the Trustee Committee, has the mandate to allow the approval of building plans of any structure, including improvements and alterations to structures, and to vary the design or facades.

In consideration of the aforementioned, it can be argued that a change in land-use that requires a departure and consequent amendment of the (approved) SDP, should be subjected to the permission of the Members of the Benguela Cove Lagoon Owners Association and by passing a special resolution with the effect thereto.

5. Analysis of the third application (currently subject for Public comment) and the anticipated impact thereof

The impact of the legalisation of the water play park, wooden deck area and seating area (i.e. the existing non-approved structures) are to be analysed / measured against the existing approved rights of the property. The table below provides information on such analyses:

Planning Criteria	Parameters	The Proposal	Comments	
Zoning- Primary Use	Special Zone SZ - 2 for Tourism Business and house of worship	A departure for a water play park, large wooden deck and seating area	All these uses are considered to be consistent with the zoning requirements of the Tourism definition. The impact of these additional uses is considered low.	
Consent	None	n.a.	No application is made for any consent uses.	
Floor Factor	0.75 = 4,0361ha	No additional covered floor area	The proposed structures do not add to the floor factor, coverage or height and is thus consistent	
Coverage	50% = 2,6907ha	No additional coverage		
Height	8m or 2 storeys, provided for the winery 14m.	On ground level, deck lower than 8m		
Building Line	Street	10m	±26m	Consistent, apart from that the proposed structures do not trigger building line encroachments they are more than 10m away from any street and side boundary
	Side	10m		
Parking	1 parking bay per 25m ² of total floor space and in the case of a Place of Worship, 1 parking bay per 5 seats	No additional parking provided Required: = 217 Provided = 309 The above figure is applicable as the marquee tent and outside market area was not supported	The proposed uses do not require any parking and is thus consistent with the parking requirement.	

With reference to the above, and given that the existing zoning of the subject property entails Special Zone SZ-2 with a Primary use for Tourism business and House of Worship, cognisance should be taken that the definition of tourism use in this application differs with that of the Overstrand Municipal Planning By-Law, 2015.

The definition for Tourism business, relevant to the application site on Portion 229 of the Farm 575 Afdaks Rivier, reads: "Tourism business means the utilisation of a site and/or the buildings on the site for business activities such as deemed by council as important to encourage the tourism trade and includes restaurants, guesthouses, guest rooms, wineries, souvenir shops, tourist information centres, antique shops, arts and craft shops, art galleries, interior decorators, travel bureaus and conference facilities.

The definition for "tourist facilities" in terms of the Overstrand Municipal Planning By-Law, 2015 "means amenities for tourists or visitors such as lecture rooms, restaurants, picnic areas, gift shops, cafés, restrooms, recreational facilities, animal parks (domestic or otherwise), but does not include a hotel or overnight facilities"

6. Conclusive Summary

The impact of the existing non-approved structures on the existing commercial development at Benguela Cove Estate is, from a tourism perspective, generally considered to be aligned with the Town Planning Criteria that is relevant to the property.

The comments provided in the table below are, however, provided in response to the request of the BCEHOA as denoted under section 2 of this document:

The questions	The answers
<p>Do the two notices address different applications for the amendment of the SDP of the Commercial Land area, and are such applications perhaps running in parallel ?</p>	<p>The notices are different applications and were running in parallel.</p> <p>The first notice related to a SDP amendment and departures for a (1) place of entertainment and (2) a market. These facilities were proposed to be accommodated in the existing restaurant, a section of a wine cellar as well as a marquee tent.</p> <p>According to the Municipality the place of entertainment and market were restricted to only the courtyard area and the inside of existing buildings, all as per the Municipal approval that occurred in part during March 2019.</p> <p>The second notice refers to a departure application to accommodate a (1) water play park, (2) large wooden deck and (3) seating area.</p>

<p>What are the physical and legal differences between the proposed new SDP and the one originally approved ?</p>	<p>The original approved SDP made provision for the Winery, Farm Stall, Chapel and Conference facility and, as mentioned here-above, the two new SDPs make provision for the following:</p> <p>Notice dated 2017 (1) place of entertainment and (2) a market</p> <p>Notice dated 2019 (1) water play park, (2) large wooden deck and (3) seating area.</p>
<p>Does the proposed amendment of the SDP of the Commercial Land area conform to the Guidelines and Theme of the Estate as a whole?</p>	<p>It is considered that the SDP for the commercial land is consistent with the zoning of the relevant portion.</p> <p>In the Constitution the Commercial component is acknowledged (Par 31) which has a zoning for "Special Zone SZ - 2" for Tourism Business and house of worship.</p> <p>The uses, subject to the application is considered consistent with the zoning. Therefore the proposed amendment of the SDP to include the water play park, large wooden deck and seating area is not considered a material change.</p>
<p>The merits upon which an objection(s) can be lodged against the application(s) to amend the SDP of the Commercial Land area.</p>	<p>The changes proposed are not considered material and is also considered to be aligned with the current zoning.</p> <p>Thus in terms of the proposed land-uses, it is not deemed valid that reasons for objection can be lodged.</p> <p>From a technical point of view it is mentioned that the property description of the land on the notice is incorrectly referring to Portion 229 of the farm no 575, Benguela Cove, Hermanus. The correct description is Portion 229 of the farm no 575, Afdaks Rivier.</p> <p>From experience it is known that the local authority would argue that, although the description is incorrect, the general understanding read together with the report, will not be material in nature and as such the matter would be dismissed.</p>

<p>Are the proposed amendment of the SDP and departures permissible in terms of the Constitution of the Benguela Cove Estate ?</p>	<p>From a town planning point of view: If the Benguela Cove Lagoon Owner Association and the Architectural Review Control Committee have provided their written approval in respect of the proposed amendment of the SDP, then it would be considered permissible.</p> <p>This opinion is motivated as follows:</p> <p>Clause 4.6.2 reads: <i>No improvements, alterations, restructuring, repairs or any building work of any nature shall be affected to the property, nor shall the access to the property be altered, without the prior written approval of the Association."</i></p> <p>"Association" in the above clause (as per definition) means the <u>Benguela Cove Lagoon Owner Association</u>, which is the body that is mandated to represent all individual home owners within the Estate, and which is compelled to execute the requirements of the Constitution to the satisfaction of the individual home owners.</p> <p>Clause 32.1 reads: <i>"..... In compliance with paragraph 4.6.2 above no owner of any erf shall be entitled to build on his erf or effect any improvement thereto or erect any structure thereon without the prior written approval of the Urban and Architectural Review Control Committee, hereinafter referred to as UARCC, as hereafter set out."</i></p> <p>From clauses 4.6.2 and 32.1 it is evident that no material changes to any building, structure or part of the existing development may take place without the involvement and consent of the Association, which includes the Architectural Review Committee.</p> <p>Clause 31.1 reads: <i>"...the Commercial Component, being Erf 229, comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial."</i></p> <p>Clause 31.1 lists the extent of the facilities of the Commercial Land area, and it is deemed appropriate in terms of Clauses 4.6.2 and 32.1 that the consent of the Association have to be obtained to alter or expand the listed facilities. Furthermore, following such consent, the Association should be mandated through a Special Resolution, as warranted by Clause 20.7, to amend clause 31.1. so that it reflects a complete listing of the facilities of the Commercial Land area.</p>
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The development proposal as reflected in the amendment of the Site Development Plan (SDP) as described in this document, can be seen as an enhancement of the commercial development side of the Benguela Cove Estate, and it is not likely to affect the character of the non-commercial side of the Estate (Refer the scale and limited extent of the proposal for the (1) water play park, (2) large wooden deck and (3) seating area).

Notwithstanding the aforesaid, it is recommended that the BCEHOA should ensure that the necessary protocols are followed to ensure compliance with the clauses of the Constitution that pertain to consents for alterations and/or further development.

In the light of the above it is recommended that the Overstrand Municipality reject the application until the said protocols are followed.

Andre Wiehahn Pr Pln A/927/1996

46/118

TR A Theat
CH Olivier

2A

Loretta Gillion - PORTION 2, FARM 575, AFDAKSRIVIER, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR THE AMENDMENT OF THE SITE DEVELOPMENT PLAN - WRAP ON BEHALF OF BENGUELA COVE INVESTMENTS (PTY) LTD ("BCI")



From: Siobain Prew <siobainprew@yahoo.co.uk>
To: Loretta Gillion <lpage@overstrand.gov.za>, Henk Olivier <holivier@overst...>
Date: 12/07/2019 01:17 PM
Subject: PORTION 2, FARM 575, AFDAKSRIVIER, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR THE AMENDMENT OF THE SITE DEVELOPMENT PLAN - WRAP ON BEHALF OF BENGUELA COVE INVESTMENTS (PTY) LTD ("BCI")
Cc: Mike Prew <manofproperty@gmail.com>

Dear Madam/Sir

We would like to object to the above on the following grounds:

1. We are very concerned about the water usage for a water park in the drought affected Western Cape.
2. BCI do not appear to have received approval by the Urban Architectural Review committee as set out in the Homeowners Constitution which requires a special resolution in order to approve additions/alterations.
3. We are not aware that they have submitted a building plan?

Yours faithfully

Michael and Siobain Prew
176 Benguela Cove

FILE NO:	Pfn 229/575
SCAN NO:	
COLLABORATOR NO:	1302039

TP 15 JUL 2019

Re: Ptn 229/575

TP-A Theat
(C H Olivier)

From: "John E Chopamba" <emmanuel.chopamba@btinternet.com>
To: <loretta@overstrand.gov.za>
CC: "Rochelle Chopamba" <rochelle.chopamba@btinternet.com>
Date: 12/07/2019 02:01 PM
Subject: Application for amendment of SDP Commercial Complex - Objection

Att: Town Planner,

We are residents at Benguela Cove Estate and owners of ERF#175. We would like to as register as interested and affected parties and would like to place on record our objection to the above referenced application for amendment of SDP Commercial Complex.

Kind regards,

Rochelle & John Chopamba
ERF#175 Benguela Cove Estate.



FILE NO:	Ptn 229/575
SCAN NO:	
COLLABORATOR NO:	1302035

TP 15 JUL 2019

48/118

AZ

TP-A Theort
(H Olivier)
Anneli van Zyl



ATTORNEYS & CONVEYANCERS

9 Yellowwood Street, Arabella
& Unit 20, Kleinvlei Building, Kleinmond

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086 218 9106
0847001064
info@annelivanzylaw.co.za

☒ P O Box 896
KLEINMOND 7195

Our Ref. VZ/hf

12 July 2019

Your ref. Mr Henk Olivier

Town Planning
Overstrand Municipality
by email to loretta@overstrand.gov.za

Dear Sir

OBJECTION AGAINST THE APPROVAL SOUGHT BY BENGUELA COVE INVESTMENTS (PTY) LTD FOR AN AMENDMENT OF THE SITE DEVELOPMENT PLAN IN RESPECT OF PORTION 229 OF FARM AFDKAS RIVER NO 575 (KNOWN AS THE COMMERCIAL PROPERTY AT BENGUELA COVE ESTATE)

We act upon instruction by our client, the directors of KARL & SARAH PROPERTIES (PTY) LTD, the registered owner of Portion 240 of Farm 575 and herewith submit, on our client's behalf, an objection against the application brought by WRAP on behalf on the Developer's Company, namely Benguela Cove Investments (Pty) Ltd.

No consent was obtained from the Benguela Cove Home Owners Association for the facilities already constructed on the commercial property, and neither were those facilities formally approved by the Municipality. Regarding the application in question, the Developer has once again failed to engage with the Home Owners.

Our client's submission is therefore that the approval sought be denied and the Developer be advised to comply with the stipulations of the Constitution of the Benguela Cove Home Owners Association.

Yours truly


ANNELI VAN ZYL

FILE NO:	fm 229/575
SCAN NO:	
COLLABORATOR NO:	1302031

TP
15 JUL 2019

FILE NO:	Am 229/515
SCAN NO:	Loretta Gillion - Objection To Processing And Change In Site Development Plan - Portion 229
COLLABORATION:	2017 The Farm 575, Afdakrivier, Overstrand Municipal Area
	1302027

49/118

TR A Theat (H Olivier)

From: nico buchholz <nicobuchholz@hotmail.com>
To: "loretta@overstrand.gov.za" <loretta@overstrand.gov.za>
Date: 12/07/2019 10:58 AM
Subject: Objection To Processing And Change In Site Development Plan - Portion 2 Of The farm 575, Afdakrivier, Overstrand Municipal Area



Attachments: 02_Interactive-report-dated-11-July-2019.pdf; 04_DECA-report-dated-11-July-2019.pdf

**PORTION 2 OF THE FARM 575, AFDAKSRIVIER, OVERSTRAND MUNICIPAL AREA:
 APPLICATION FOR THE AMENDMENT OF THE SITE DEVELOPMENT PLAN – WRAP ON BEHALF
 OF BENGUELA COVE INVESTMENTS (PTY) LTD**

Dear Loretta,

Reference is made to the above matter and the notice received from your office in the same regard, and the following is placed on record formally.
 I am the owner of Plot 130, Benguela Cove and I am writing to you to object to the processing and approval of the Application for the Amendment of the Site Development Plan of Portion 229 of the Farm 575, Afdakrivier.

The objection is based on the following:

1. Non-compliance with the Constitution of Benguela Cove Estate

Benguela Cove Investments (Pty) Ltd (hereinafter referred to as BCI) is the developer of the Benguela Cove Estate and the The Estate and its Home Owners Association is governed by a formal Constitution, which requires from the members of the Association to follow specific procedures concerning particular matters. In the instance of the application to amend the Site Development Plan of Portion 229, BCI should have approached the Association as well as the Urban and Architectural Review Control Committee to obtain consent for the matter(s) in question, but BIC did not do so.

The clauses of the Constitution that require from BCI to obtain the various consents are, amongst other information, outlined in the attached report by Interactive Town & Regional Planning dated 10 July 2019.

2. Engineering Services

The attached report by DECA Consulting is self-explanatory insofar as the updating/amendment of certain engineering services

3. Use of Existing Facilities in the absence of Approved Building Plans

Based on the information that is contained in the attached report by Interactive Town & Regional Planning, it is the Association's understanding that building plans for the water play park, wooden deck and other amenities have as yet not been approved by the Municipality. The latter implies that Occupancy Certificates for these amenities could as yet not been

15 JUL 2019

file:///C:/Users/loretta/AppData/Local/Temp/XPgrpwise/5D2867DFHermanusMunpo... 2019/07/15

issued, which means that the Public is using the amenities "at risk".

It then stands to reason that the use of the non-approved amenities should be discontinued formally until such time as the Municipality has approved the necessary building plans and issued Occupancy Certificates in accordance with the relevant sections of the Occupational Health and Safety Act.

I strongly believe that the applicant must follow due process, not only by complying with the requirements of the Benguela Cove constitution but also with the relevant Overstrand By-laws and the various Acts as mentioned in the attached documents.

In closing, I find it very disturbing that - according to the expert report - the applicant has commenced with business activities on erected structures that were built without even submitting building plans and are commercially marketed without approval of the structures

This type of attitude by the applicant is disrespectful towards the Overstrand Municipality and any law-abiding rates & tax payers, and should not be tolerated at all.

Once the applicant complies with regards to the abnormalities pointed out in the report, then I personally do not have any objection to them exploring their commercial activities - but it must be within the framework of the law.

It is trusted that the above is clear and that the Municipality would value and concede to the merits of this objection.

With kind regards

Nico Buchholz
Owner of 575/130 Benguela Cove

Attachment:

- Report by Interactive Town & Regional Planning dated 11 July 2019
- Report by DECA Consulting dated 11 July 2019

P.S. Sorry about the yellow highlighting - software issues on my computer.



Our Contact Person: Mr E Schoeman
Your Contact Person: Mr M Diessner
Our Ref: Letters/Benguela Cove Estate/015

11 July 2019

The Trustees
 Home Owners Association
 Benguela Cove Estate
 R43 Main Road
 Overstrand Municipal District
 Western Cape

Attention: Mr Martin Diessner

Dear Sir,

BENGUELA COVE ESTATE HOME OWNERS ASSOCIATION: PROPOSED AMENDMENT OF THE EXISTING SITE DEVELOPMENT PLAN OF PORTION 229 OF THE FARM 575, AFDAKSRIVIER

The above matter has reference.

We have studied the documentation that you provided on 18 June 2019, and the report by Interactive Town & Regional Planning dated 11 July 2019. The documentation provided on 18 June 2019 comprises a notice by the Overstrand Municipality in respect of the proposed amendment of the existing Site Development Plan of Portion 229 of the Farm 575, Afdakrivier, which is also referred to as the commercial property at Benguela Cove Estate. The report by Interactive Town & Regional Planning entails an assessment and evaluation of the information that pertain to the said Municipal notice and the proposed amendment of the Site Development Plan. Copies of the Municipal notice and Interactive report are attached hereto for ease of reference.

The amendment of the existing Site Development Plan of the commercial property at Benguela Cove Estate, in essence, proposes (a) the legalization of facilities that were constructed without formal Municipal approval, and (b) the addition of new facilities that are still to be constructed.

We have with the aforesaid in mind conducted an assessment of the existing documentation that addresses the bulk and internal engineering services of Benguela Cove Estate, and concluded that the following documents would have to be updated/amended to reflect the status quo of the proposed amendments to the Site Development Plan:

VILLIERSDORP OFFICE | HERMANUS OFFICE
 10 Groot-Straat, Villiersdorp 6810 | P.O. Box 117, Hermanus 6840 | 7 Prins van Oranjestraat, 7200 | P.O. Box 1271, Herenbosch, 7330
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CONSULTING SERVICES: CIVIL ENGINEERING | TRAFFIC ENGINEERING | TRANSPORT ENGINEERING | PROJECT MANAGEMENT

MEMBERS: C. GILFLOOY (P) ENG | P. ENGBELBECHT (P) (E) ENG + REG NO: 98 104 78/13

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- 2 -

- (i) Services report concerning Benguela Cove Estate and the Site Development Plan for Ptn 2 of Farm 575, Afdakrivier – DECA Consulting, 08 June 2016.
- (ii) Calculation of Development Contribution levies – DECA Consulting, 2017.
- (iii) Services Agreement between the Overstrand Municipality and Benguela Cove Investments (Pty) Ltd – DECA Consulting, 2017.

The extent of the facilities and amenities at Benguela Cove Estate govern the content and context of the aforementioned documents, and it should therefore be updated/amended to reflect the latest services requirements at Benguela Cove Estate.

It is trusted that you will find the above in order. The undersigned and our Mr Engelbrecht hold themselves available should you and/or other entities wish to discuss any matter(s) that are addressed herein, in further detail.

Yours faithfully,
DECA Consulting



Pp
Pieter Engelbrecht Pr Tech Eng

Appendices: - Report by Interactive Town & Regional Planning dated 11 July 2019.
- Annexures A & B - Notices by Overstrand Municipality.



InterActive Town & Regional Planning
 PO Box 980
 Hermanus
 7200

Reference: Portion 229 of Farm Afdaks Rivier 575

Date: 11 July 2019

AMENDED SDP FOR PORTION 229 OF FARM AFDAKS RIVIER 575 CALEDON: EVALUATION AND COMMENTS/ PROPOSAL

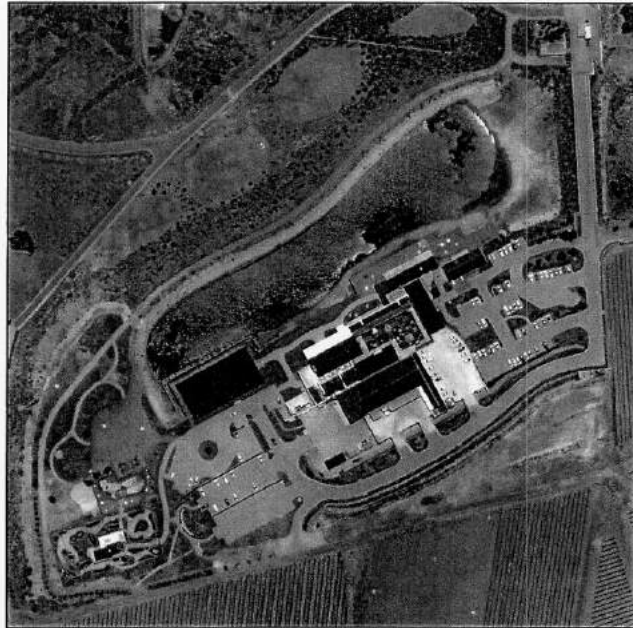
1. Introduction

InterActive Town and Regional Planning was appointed by the Benguela Cove Estate Home Owners Association (BCEHOA) to investigate and evaluate the proposed SDP amendment for Portion 229 of Farm Afdaks Rivier 575, Caledon and to provide comments and proposals regarding the foreseen impacts of certain of the existing non-approved proposed structures on Portion 229 of the Farm Afdaksrivier 575, which is an integral part of the Benguela Cove Estate.

2. The request

This appointment originated from a notice received by the BCEHOA from the Overstrand Municipality regarding the proposed amendment of the Site Development Plan of the Commercial Land area within the Estate. The Commercial Land is owned by the developer of the Benguela Cove Estate, Benguela Cove Investments (Pty) Ltd, who is also a member of the Home Owners Association.

The adjacent areal photograph shows the status of commercial development (aerial photograph dated December 2018 obtained from Overstrand GIS Viewer):



Resulting from the aforementioned notice, the BCEHOA requested a professional opinion regarding the following:

- a. Do the two notices address different applications for the amendment of the SDP of the Commercial Land area, and are such applications perhaps running in parallel ?
- b. What are the physical and legal differences between the proposed new SDP and the one that was originally approved ?
- c. Does the proposed amendment of the SDP of the Commercial Land area conform to the Guidelines and Theme of the Estate as a whole ?
- d. The merits upon which an objection(s) can be lodged against the application(s) to amend the SDP of the Commercial Land area.
- e. Are the proposed amendment of the SDP and departures permissible in terms of the Constitution of the Benguela Cove Estate ?

3. Background - history of applications and amendments lodged

a. Township Establishment 2004 (the original application)

The first subdivision and rezoning approval of Benguela Cove Estate formed part of the township establishment which was approved in 2004 in terms of the Land Use Planning Ordinance, 1985 (Ord. 15 of 1985). This approval was subject to the conditions of the:

- Department of Economic Development, Environmental Affairs & Tourism (refer ROD),
- Department of Agriculture (refer consent to subdivide),
- Provincial Roads Department (refer requirements for access).

In addition to the conditions set by the above entities, a services agreement with the Overstrand Municipality, requirements relating to use of water from the Fisherhaven dam for irrigation purposes, sewerage arrangement from the Hawston treatment works and an agreement with the Department of Water Affairs & Forestry (DWAF), were included as conditions of approval.

The following zonings / land-uses, number of erven, areas and percentages of the subject areas were approved in the original application:

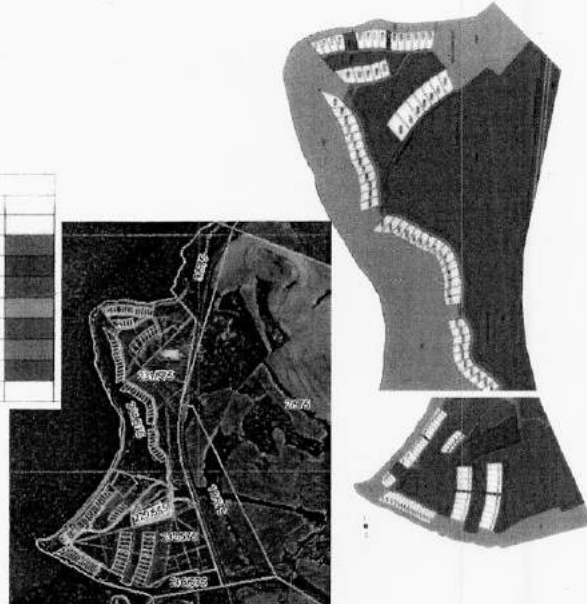
Zoning / Use	No of erven	Area (±ha)	%
Residential Zone V	1	2.6	1.2
Special Zone	1	5.38	2.6
Open Space Zone II	9	13.26	6.3
Open Space Zone III	8	61.96	29.5
Agricultural Zone I	2	89.93	42.8
Transport Zone I (Private Road)	1	5.90	2.8
Transport Zone II	1	2.48	1.2
Total	147	210.22	100

The layout of the original township establishment and its zonings and land-use, supported by a cadastral plan, are shown below:

The erf under discussion is Erf 126 as shown on the layout plan, but registered per the Surveyor General Plan as Portion 229 of Farm 575 Afdaks Rivier.

NOTATION				
ZONING/USE	Erf no. 1	No. of erfven	Area (kha)	%
Residential Zone	126	124	228,71	18,65
Residential Zone II	122		22,60	1,80
Special Zone	120		15,38	1,26
Open Space Zone I	127-135	9	113,26	9,17
Open Space Zone II	136-142	7	161,96	13,16
Agriculture Zone	144-145	2	489,93	39,75
Transport Zone (Private Road)	146		15,90	1,28
Transport Zone II	147		12,48	1,01
TOTAL		143	1210,22	100,00

According to the Overstrand Planning Department, a SDP of the development was only compiled some years later.



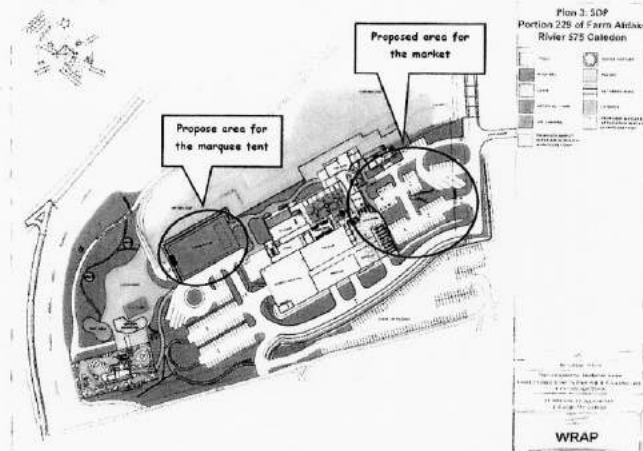
b. Amendment of the Site Development Plan and Departures for a "market" and "a place of entertainment" - 2018 (the second application- Refer to Annexure A)

Following the approval of the original application, a second application was submitted during November 2017 for the amendment of the Site Development Plan, with a departure to allow for "a market" and "a place of entertainment" as part of the existing restaurant, a section of a wine cellar as well as a marquee tent.

The second application was advertised for public comment during March 2018, with a date of closure for comments on 6 April 2018. According to the Overstrand Planning Department, the second application was approved in part more than a year later on 19 March 2019.

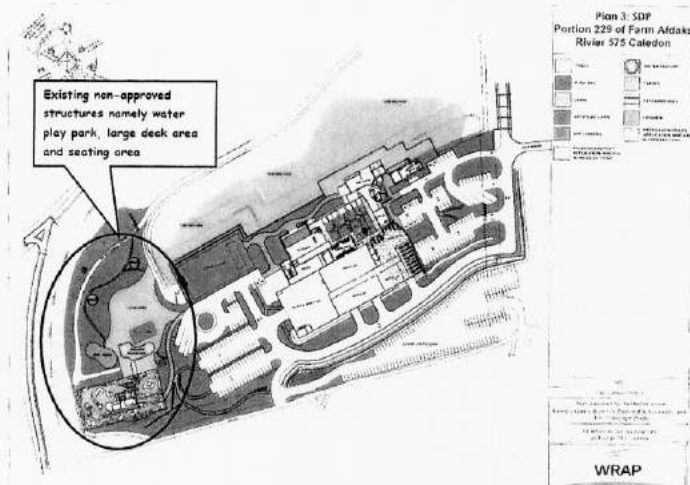
The Overstrand Planning Department confirmed that, as part of the resolutions for approval, the place of entertainment was restricted (mitigated) to include operations of the "place of entertainment" and "market" on the inside of building and the courtyard areas only. This implies that the areas proposed for "place of entertainment" and "market" outside the existing buildings and the courtyard, including the marquee tent, were not supported.

The location of the proposed "place of entertainment" and "market" area, which were not supported because it was located outside the perimeter of the existing building and courtyard areas, is indicated in the following plan:



- c. Amendment of the Site Development Plan to accommodate a water play park, wooden deck area and seating area- 2019 (the third application- Refer to Annexure B)

An application for an amendment of the site development plan to accommodate a water orientated play park, wooden deck area and seating area (enhancing the existing mini-golf course & splash pool area) was submitted in March 2019. The purpose of this application is to legalise these as-built features and uses on the property. This application, as at the date of this report, is open for public comments until 12 July 2019.



4. Internal Land-Use Management instruments of the Benguela Cove Estate

The character of the Benguela Cove Estate is generally made up of the rights of the individual home owners, the intended architecture and the local environmental aspects, and these dynamics are predominantly managed and protected by means of the following legal documents:

- i. The Urban & Architectural Design Controls, March 2018, and
- ii. The Benguela Cove Home Owners' Association Constitution, updated 2018.

In the correspondence received from BCEHOA it was pointed out that the Estate's Constitution addresses matters concerning the sub-division and /or rezoning of land units within the Estate, and the following conditions in the Constitution are thus in question:

Heading- "20. VOTING"

- 20.7 Notwithstanding anything contained in this constitution, any resolution or the amendment of a resolution
- 20.7.1 which would have the effect of amending or repealing any part of this constitution, or
- 20.7.2 which would have the effect of amending or repealing paragraph 31 of this constitution which paragraph precludes subdivision or rezoning of the erven or the erection of more than one dwelling per erf, or
- 20.7.3 which would have the effect of amending or repealing paragraph 32 and 33 dealing with the Urban and Architectural Review Controls Manual the Architectural Controls, shall require a 75% (three quarters) majority of all Members entitled to vote before the resolution may be passed, which shall be known as a special resolution.

and

Heading- "30. DEALING WITH COMMON PROPERTY"

- 30.1 Neither the whole nor any portion of the common property shall be:
 - o 30.2.3 subjected to any rights, whether registered in the Deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof, or which allow for agricultural activities to be conducted similar in nature to the Agricultural Enterprise; or
 - o 30.2.4 built upon, improved or enhanced in value by the construction of buildings, erection of facilities or amenities, other than as contained in this constitution and in the approved layout plan, without the sanction of a special resolution of the Members of the Association.

and

Heading- "31. NO SUBDIVISION OR REZONING AND NOT MORE THAN ONE DWELLING"

- 31.1 No Member shall be entitled to subdivide or rezone his erf, it being noted that that Erf 228 has been zoned as the Hotel and Related Facilities Development, together with the Agricultural Enterprise, which shall enjoy a separate zoning status commensurate with its function as main farm complex for the cultivation, harvesting, processing and marketing of the produce of the agricultural property, together which the Commercial Component, being Erf 229,

comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial.

and

Heading- "32. BUILDING STANDARD RULES AND AESTHETIC APPROVAL"

- o 32.1 It is recorded that the Trustee Committee has appointed the Benguela Cove Urban and Architectural Design Review Committee which comprises of Ellis Associates Architects and two Members appointed by the Developer. In compliance with paragraph 4.6.2 above no owner or any erf shall be entitled to build on his erf or effect any improvements thereto or erect any structures thereon without the prior approval of the Urban and Architectural Review Control Committee, hereinafter referred to as UARCC.."
- o 32.2 No owner of any erf shall be entitled to alter any construction thereon or alter or vary the design or façade of his building, dwelling or improvements so constructed, without written approval of the said UARCC."

Paragraph 4.6.2 as referred to in the above reads as follows:

Heading - "4. MEMBERSHIP"

- "4.6 No Member shall be entitled to transfer an erf, unless a duly authorised representative of the Trustee Committee or the relevant party to which such function has been delegated has in writing consented to the transfer, and the following conditions of title are imposed, namely:
 - o "4.6.2 No improvements, alterations, restructuring, repairs or any building work of any nature shall be affected to the property, nor shall the access to the property be altered, without the prior written approval of the Association."

The "Association" means, as per the definition, the "Benguela Cove Lagoon Owners Association".

(As an informative footnote to the above extracts from the Estate's Constitution, it is stated that cognisance should be taken that "Rezoning" in terms of the Overstrand Municipal Planning By-Law (2015) means the change in zoning in relation to a particular land unit or units or portion of a land unit in terms of Planning Law).

The following is derived from the information provided above:

- The amendment of the Constitution requires 75% support of the members of the Association.
- The Benguela Cove Lagoon Owner Association, with a special resolution, has the mandate in terms of the common property to:
 - o Allow building, improvement or enhancement etc other than that shown on the original approved layout plan. The latter is interpreted to also include the SDP.
 - o The Urban and Architectural Review Control Committee (UARCC), as appointed by the Trustee Committee, has the mandate to allow the approval of building plans of any structure, including improvements and alterations to structures, and to vary the design or facades.

In consideration of the aforementioned, it can be argued that a change in land-use that requires a departure and consequent amendment of the (approved) SDP, should be subjected to the permission of the Members of the Benguela Cove Lagoon Owners Association and by passing a special resolution with the effect thereto.

5. Analysis of the third application (currently subject for Public comment) and the anticipated impact thereof

The impact of the legalisation of the water play park, wooden deck area and seating area (i.e. the existing non-approved structures) are to be analysed / measured against the existing approved rights of the property. The table below provides information on such analyses:

Planning Criteria	Parameters	The Proposal	Comments
Zoning- Primary Use	Special Zone SZ - 2 for Tourism Business and house of worship	A departure for a water play park, large wooden deck and seating area	All these uses are considered to be consistent with the zoning requirements of the Tourism definition. The impact of these additional uses is considered low.
Consent	None	n.a.	No application is made for any consent uses.
Floor Factor	0.75 = 4,0361ha	No additional covered floor area	The proposed structures do not add to the floor factor, coverage or height and is thus consistent
Coverage	50% = 2,6907ha	No additional coverage	
Height	8m or 2 storeys, provided for the winery 14m.	On ground level, deck lower than 8m	Consistent, apart from that the proposed structures do not trigger building line encroachments they are more than 10m away from any street and side boundary
Building Line	Street	10m	
	Side	10m	
Parking	1 parking bay per 25m ² of total floor space and in the case of a Place of Worship, 1 parking bay per 5 seats	No additional parking provided Required: = 217 Provided = 309 The above figure is applicable as the marquee tent and outside market area was not supported	The proposed uses do not require any parking and is thus consistent with the parking requirement.

With reference to the above, and given that the existing zoning of the subject property entails Special Zone SZ-2 with a Primary use for Tourism business and House of Worship, cognisance should be taken that the definition of tourism use in this application differs with that of the Overstrand Municipal Planning By-Law, 2015.

The definition for Tourism business, relevant to the application site on Portion 229 of the Farm 575 Afdaks Rivier, reads: "Tourism business means the utilisation of a site and/or the buildings on the site for business activities such as deemed by council as important to encourage the tourism trade and includes restaurants, guesthouses, guest rooms, wineries, souvenir shops, tourist information centres, antique shops, arts and craft shops, art galleries, interior decorators, travel bureaus and conference facilities.

The definition for "tourist facilities" in terms of the Overstrand Municipal Planning By-Law, 2015 "means amenities for tourists or visitors such as lecture rooms, restaurants, picnic areas, gift shops, cafés, restrooms, recreational facilities, animal parks (domestic or otherwise), but does not include a hotel or overnight facilities"

6. Conclusive Summary

The impact of the existing non-approved structures on the existing commercial development at Benguela Cove Estate is, from a tourism perspective, generally considered to be aligned with the Town Planning Criteria that is relevant to the property.

The comments provided in the table below are, however, provided in response to the request of the BCEHOA as denoted under section 2 of this document:

The questions	The answers
<p>Do the two notices address different applications for the amendment of the SDP of the Commercial Land area, and are such applications perhaps running in parallel ?</p>	<p>The notices are different applications and were running in parallel.</p> <p>The first notice related to a SDP amendment and departures for a (1) place of entertainment and (2) a market. These facilities were proposed to be accommodated in the existing restaurant, a section of a wine cellar as well as a marquee tent.</p> <p>According to the Municipality the place of entertainment and market were restricted to only the courtyard area and the inside of existing buildings, all as per the Municipal approval that occurred in part during March 2019.</p> <p>The second notice refers to a departure application to accommodate a (1) water play park, (2) large wooden deck and (3) seating area.</p>

<p>What are the physical and legal differences between the proposed new SDP and the one originally approved ?</p>	<p>The original approved SDP made provision for the Winery, Farm Stall, Chapel and Conference facility and, as mentioned here-above, the two new SDPs make provision for the following:</p> <p>Notice dated 2017 (1) place of entertainment and (2) a market</p> <p>Notice dated 2019 (1) water play park, (2) large wooden deck and (3) seating area.</p>
<p>Does the proposed amendment of the SDP of the Commercial Land area conform to the Guidelines and Theme of the Estate as a whole?</p>	<p>It is considered that the SDP for the commercial land is consistent with the zoning of the relevant portion.</p> <p>In the Constitution the Commercial component is acknowledged (Par 31) which has a zoning for "Special Zone SZ - 2" for Tourism Business and house of worship.</p> <p>The uses, subject to the application is considered consistent with the zoning. Therefore the proposed amendment of the SDP to include the water play park, large wooden deck and seating area is not considered a material change.</p>
<p>The merits upon which an objection(s) can be lodged against the application(s) to amend the SDP of the Commercial Land area.</p>	<p>The changes proposed are not considered material and is also considered to be aligned with the current zoning.</p> <p>Thus in terms of the proposed land-uses, it is not deemed valid that reasons for objection can be lodged.</p> <p>From a technical point of view it is mentioned that the property description of the land on the notice is incorrectly referring to Portion 229 of the farm no 575, Benguela Cove, Hermanus. The correct description is Portion 229 of the farm no 575, Afdaks Rivier.</p> <p>From experience it is known that the local authority would argue that, although the description is incorrect, the general understanding read together with the report, will not be material in nature and as such the matter would be dismissed.</p>

<p>Are the proposed amendment of the SDP and departures permissible in terms of the Constitution of the Benguela Cove Estate ?</p>	<p>From a town planning point of view: If the Benguela Cove Lagoon Owner Association and the Architectural Review Control Committee have provided their written approval in respect of the proposed amendment of the SDP, then it would be considered permissible.</p> <p>This opinion is motivated as follows:</p> <p>Clause 4.6.2 reads: <i>No improvements, alterations, restructuring, repairs or any building work of any nature shall be affected to the property, nor shall the access to the property be altered, without the prior written approval of the <u>Association</u>.</i>"</p> <p>"Association" in the above clause (as per definition) means the <u>Benguela Cove Lagoon Owner Association</u>, which is the body that is mandated to represent all individual home owners within the Estate, and which is compelled to execute the requirements of the Constitution to the satisfaction of the individual home owners.</p> <p>Clause 32.1 reads: <i>"..... In compliance with paragraph 4.6.2 above no owner of any erf shall be entitled to build on his erf or effect any improvement thereto or erect any structure thereon without the prior written approval of the Urban and Architectural Review Control Committee, hereinafter referred to as UARCC, as hereafter set out."</i></p> <p>From clauses 4.6.2 and 32.1 it is evident that no material changes to any building, structure or part of the existing development may take place without the involvement and consent of the Association, which includes the Architectural Review Committee.</p> <p>Clause 31.1 reads: <i>"...the Commercial Component, being Erf 229, comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial."</i></p> <p>Clause 31.1 lists the <u>extent</u> of the facilities of the Commercial Land area, and it is deemed appropriate in terms of Clauses 4.6.2 and 32.1 that the consent of the Association have to be obtained to alter or expand the listed facilities. Furthermore, following such consent, the Association should be mandated through a Special Resolution, as warranted by Clause 20.7, to amend clause 31.1, so that it reflects a complete listing of the facilities of the Commercial Land area.</p>
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The development proposal as reflected in the amendment of the Site Development Plan (SDP) as described in this document, can be seen as an enhancement of the commercial development side of the Benguela Cove Estate, and it is not likely to affect the character of the non-commercial side of the Estate (Refer the scale and limited extent of the proposal for the (1) water play park, (2) large wooden deck and (3) seating area).

Notwithstanding the aforesaid, it is recommended that the BCEHOA should ensure that the necessary protocols are followed to ensure compliance with the clauses of the Constitution that pertain to consents for alterations and/or further development.

In the light of the above it is recommended that the Overstrand Municipality reject the application until the said protocols are followed.

Andre Wiehahn Pr Pln A/927/1996

AZ

T-P A Theart
C H Olivier
Anneli van Zyl

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 ☒ P O Box 896
 KLEINMOND 7195

Our Ref. VZ/hf

12 July 2019

Your ref. Mr Henk Olivier

 Town Planning
 Overstrand Municipality
 by email to loretta@overstrand.gov.za

Dear Sir

OBJECTION AGAINST THE APPROVAL SOUGHT BY BENGUELA COVE INVESTMENTS (PTY) LTD FOR AN AMENDMENT OF THE SITE DEVELOPMENT PLAN IN RESPECT OF PORTION 229 OF FARM AFDAKS RIVER NO 575 (KNOWN AS THE COMMERCIAL PROPERTY AT BENGUELA COVE ESTATE)

We act upon instruction by our client, KORNELIA OSWALD-DIESEL, the registered owner of Portion 247 of Farm 575 and herewith submit, on our client's behalf, an objection against the application brought by WRAP on behalf on the Developer's Company, namely Benguela Cove Investments (Pty) Ltd.

No consent was obtained from the Benguela Cove Home Owners Association for the facilities already constructed on the commercial property, and neither were those facilities formally approved by the Municipality. Regarding the application in question, the Developer has once again failed to engage with the Home Owners.

Our client's submission is therefore that the approval sought be denied and the Developer be advised to comply with the stipulations of the Constitution of the Benguela Cove Home Owners Association.

Yours truly


 ANNELI VAN ZYL

FILE NO:	Ptn 229/575
SCAN NO:	1
COLLABORATOR NO:	1302025

TP 15 JUL 2019



COPY
TP AT heart

Re: Ptn 229/575

Eugene Schoeman

From: Eugene Schoeman <srvt@netdial.co.za>
Sent: Thursday, 11 July 2019 9:49 PM
To: 'loretta@overstrand.gov.za'
Cc: 'Martin Diessner'; 'André Wiehahn'; 'Pieter Engelbrecht'
Subject: Proposed Amendment of the Site Development Plan of Ptn 2 of the Farm 575, Afdakrivier
Attachments: 01_Letter of objection by BCEHOA.pdf; 02_Interactive report dated 11 July 2019.pdf; 03_Annexures A & B - Municipal Notices.pdf; 04_DECA report dated 11 July 2019.pdf

Tracking:

Recipient	Read
'loretta@overstrand.gov.za'	
'Martin Diessner'	
'André Wiehahn'	
'Pieter Engelbrecht'	Read: 2019/07/11 11:35 PM

Dear Loretta,

The heading in the subject line of this e-mail communication refers.

On behalf of the Benguela Cove Home Owners Association, and with specific reference to a Notice issued by the Overstrand Municipality, please find attached hereto a letter of objection (complete with appendices) in respect of the Proposed Amendment of the Site Development Plan of Ptn 2 of the Farm 575, Afdakrivier.

FOR THE SAKE OF FORMALITY PLEASE ACKNOWLEDGE RECEIPT OF THIS COMMUNICATION.

Kind regards | Vriendelike groete,

Eugene Schoeman Pr Tech Eng

for

DECA Consulting

Mobile: +27 82 575 5026
Fax: +27 86 672 7077
E-mail: srvt@netdial.co.za

FILE NO:	Ptn 2/575
SCAN NO:	
COLLABORATOR NO:	1301736

TP 12 JUL 2019



Benguela Cove

11 July 2019

Town Planning Division
Overstrand Municipality
P.O. Box 20
Hermanus
7200

Method of delivering this document:
Transmission via e-mail facilities to
loretta@overstrand.gov.za

Attention: Mr Henk Olivier

COPY

Dear Sir,

PORTION 2 OF THE FARM 575, AFDAKSRIVIER, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR THE AMENDMENT OF THE SITE DEVELOPMENT PLAN – WRAP ON BEHALF OF BENGUELA COVE INVESTMENTS (PTY) LTD

Reference is made to the above matter and the notice received from your office in the same regard, and the following is placed on record formally.

The Benguela Cove Estate Home Owners Association object to the processing and approval of the Application for the Amendment of the Site Development Plan of Portion 229 of the Farm 575, Afdakrivier. The objection is based on the following:

1. **Non-compliance with the Constitution of Benguela Cove Estate**

Benguela Cove Investments (Pty) Ltd (hereinafter referred to as BCI) is the developer of the Benguela Cove Estate and the owner of Portion 229 of the Farm 575, Afdakrivier, and the Company is as such also a member of the Benguela Cove Estate Home Owners Association.

The Estate and its Home Owners Association is governed by a formal Constitution, which requires from the members of the Association to follow specific procedures concerning particular matters. In the instance of the application to amend the Site Development Plan of Portion 229, BCI should have approached the Association as well as the Urban and Architectural Review Control Committee to obtain consent for the matter(s) in question, but BIC did not do so.

The clauses of the Constitution that require from BCI to obtain the various consents are, amongst other information, outlined in the attached report by Interactive Town & Regional Planning dated 11 July 2019.

- 2 -

2. **Engineering Services**

The attached report by DECA Consulting is self-explanatory insofar as the updating/amendment of certain engineering services documents are concerned.

3. **Use of Existing Facilities in the absence of Approved Building Plans**

Based on the information that is contained in the attached report by Interactive Town & Regional Planning, it is the Association's understanding that building plans for the water play park, wooden deck and other amenities have as yet not been approved by the Municipality. The latter implies that Occupancy Certificates for these amenities could as yet not been issued, which means that the Public is using the amenities "at risk".

It then stands to reason that the use of the non-approved amenities should be discontinued formally until such time as the Municipality has approved the necessary building plans and issued Occupancy Certificates in accordance with the Occupational Health & safety Act.

It is trusted that the above is clear and that the Municipality would value and concede to the merits of this objection.

Martin Diessner

Chairman: Benguela Cove Home Owners Association

Appendices: - Report by Interactive Town & Regional Planning dated 11 July 2019
- Annexures A & B – Municipal Notices
- Report by DECA Consulting dated 11 July 2019



InterActive Town & Regional Planning
 PO Box 980
 Hermanus
 7200

Reference: Portion 229 of Farm Afdaks Rivier 575

Date: 11 July 2019

AMENDED SDP FOR PORTION 229 OF FARM AFDAKS RIVIER 575 CALEDON: EVALUATION AND COMMENTS/ PROPOSAL

1. Introduction

InterActive Town and Regional Planning was appointed by the Benguela Cove Estate Home Owners Association (BCEHOA) to investigate and evaluate the proposed SDP amendment for Portion 229 of Farm Afdaks Rivier 575, Caledon and to provide comments and proposals regarding the foreseen impacts of certain of the existing non-approved proposed structures on Portion 229 of the Farm Afdaksrivier 575, which is an integral part of the Benguela Cove Estate.

2. The request

This appointment originated from a notice received by the BCEHOA from the Overstrand Municipality regarding the proposed amendment of the Site Development Plan of the Commercial Land area within the Estate. The Commercial Land is owned by the developer of the Benguela Cove Estate, Benguela Cove Investments (Pty) Ltd, who is also a member of the Home Owners Association.

The adjacent areal photograph shows the status of commercial development (aerial photograph dated December 2018 obtained from Overstrand GIS Viewer):



Resulting from the aforementioned notice, the BCEHOA requested a professional opinion regarding the following:

- a. Do the two notices address different applications for the amendment of the SDP of the Commercial Land area, and are such applications perhaps running in parallel ?
- b. What are the physical and legal differences between the proposed new SDP and the one that was originally approved ?
- c. Does the proposed amendment of the SDP of the Commercial Land area conform to the Guidelines and Theme of the Estate as a whole ?
- d. The merits upon which an objection(s) can be lodged against the application(s) to amend the SDP of the Commercial Land area.
- e. Are the proposed amendment of the SDP and departures permissible in terms of the Constitution of the Benguela Cove Estate ?

3. **Background - history of applications and amendments lodged**

a. **Township Establishment 2004 (the original application)**

The first subdivision and rezoning approval of Benguela Cove Estate formed part of the township establishment which was approved in 2004 in terms of the Land Use Planning Ordinance, 1985 (Ord. 15 of 1985). This approval was subject to the conditions of the:

- Department of Economic Development, Environmental Affairs & Tourism (refer ROD),
- Department of Agriculture (refer consent to subdivide),
- Provincial Roads Department (refer requirements for access).

In addition to the conditions set by the above entities, a services agreement with the Overstrand Municipality, requirements relating to use of water from the Fisherhaven dam for irrigation purposes, sewerage arrangement from the Hawston treatment works and an agreement with the Department of Water Affairs & Forestry (DWAF), were included as conditions of approval.

The following zonings / land-uses, number of erven, areas and percentages of the subject areas were approved in the original application:

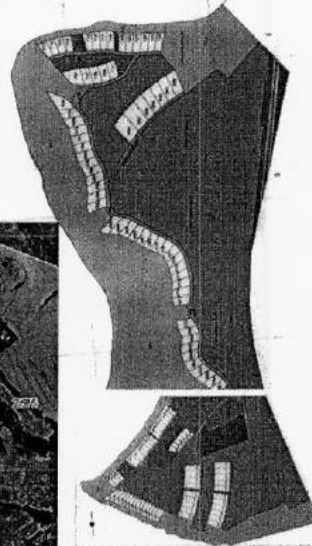
Zoning / Use	No of erven	Area (±ha)	%
Residential Zone V	1	2.6	1.2
Special Zone	1	5.38	2.6
Open Space Zone II	9	13.26	6.3
Open Space Zone III	8	61.96	29.5
Agricultural Zone I	2	89.93	42.8
Transport Zone I (Private Road)	1	5.90	2.8
Transport Zone II	1	2.48	1.2
Total	147	210.22	100

The layout of the original township establishment and its zonings and land-use, supported by a cadastral plan, are shown below:

The erf under discussion is Erf 126 as shown on the layout plan, but registered per the Surveyor General Plan as Portion 229 of Farm 575 Afdaks Rivier.

NOTARION				
ZONING/USE	Erf no's	No of ervens	Area (HA)	%
Residential Zone I	1 - 124	124	438,71	13,61
Residential Zone V	125	1	42,40	1,30
Special Zone	126	1	45,38	1,38
Open Space Zone I	127 - 132	6	115,29	3,54
Open Space Zone II	136 - 143	8	161,95	4,94
Agriculture Zone	144 - 145	2	389,93	11,94
port Zone I (High Road)	146	1	45,90	1,40
Transport Zone I	147	1	42,40	1,28
TOTAAL		145	3210,22	100,00

According to the Overstrand Planning Department, a SDP of the development was only compiled some years later.



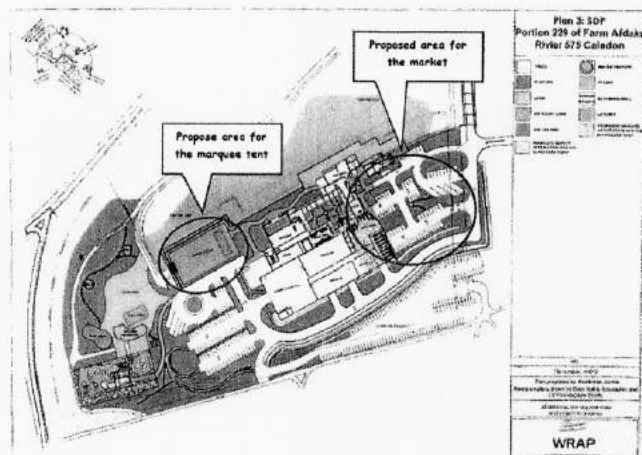
b. Amendment of the Site Development Plan and Departures for a "market" and "a place of entertainment" - 2018 (the second application- Refer to Annexure A)

Following the approval of the original application, a second application was submitted during November 2017 for the amendment of the Site Development Plan, with a departure to allow for "a market" and "a place of entertainment" as part of the existing restaurant, a section of a wine cellar as well as a marquee tent.

The second application was advertised for public comment during March 2018, with a date of closure for comments on 6 April 2018. According to the Overstrand Planning Department, the second application was approved in part more than a year later on 19 March 2019.

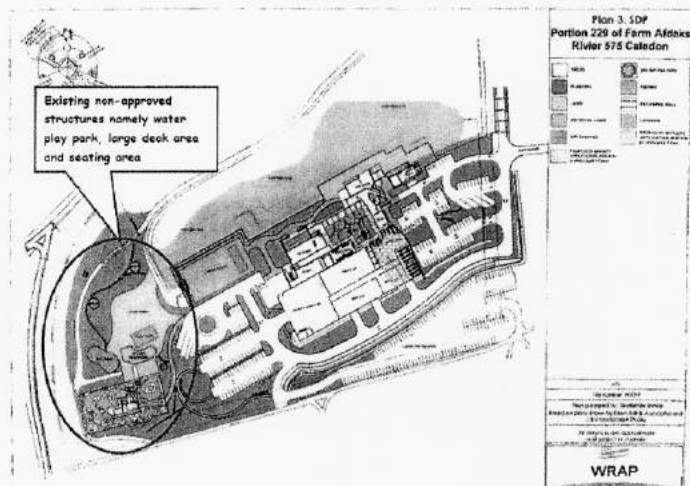
The Overstrand Planning Department confirmed that, as part of the resolutions for approval, the place of entertainment was restricted (mitigated) to include operations of the "place of entertainment" and "market" on the inside of building and the courtyard areas only. This implies that the areas proposed for "place of entertainment" and "market" outside the existing buildings and the courtyard, including the marquee tent, were not supported.

The location of the proposed "place of entertainment" and "market" area, which were not supported because it was located outside the perimeter of the existing building and courtyard areas, is indicated in the following plan:



- c. Amendment of the Site Development Plan to accommodate a water play park, wooden deck area and seating area- 2019 (the third application- Refer to Annexure B)

An application for an amendment of the site development plan to accommodate a water orientated play park, wooden deck area and seating area (enhancing the existing mini-golf course & splash pool area) was submitted in March 2019. The purpose of this application is to legalise these as-built features and uses on the property. This application, as at the date of this report, is open for public comments until 12 July 2019.



4. Internal Land-Use Management instruments of the Benguela Cove Estate

The character of the Benguela Cove Estate is generally made up of the rights of the individual home owners, the intended architecture and the local environmental aspects, and these dynamics are predominantly managed and protected by means of the following legal documents:

- i. The Urban & Architectural Design Controls, March 2018, and
- ii. The Benguela Cove Home Owners' Association Constitution, updated 2018.

In the correspondence received from BCEHOA it was pointed out that the Estate's Constitution addresses matters concerning the sub-division and /or rezoning of land units within the Estate, and the following conditions in the Constitution are thus in question:

Heading- "20. VOTING"

- 20.7 Notwithstanding anything contained in this constitution, any resolution or the amendment of a resolution
- 20.7.1 which would have the effect of amending or repealing any part of this constitution, or
- 20.7.2 which would have the effect of amending or repealing paragraph 31 of this constitution which paragraph precludes subdivision or rezoning of the erven or the erection of more than one dwelling per erf, or
- 20.7.3 which would have the effect of amending or repealing paragraph 32 and 33 dealing with the Urban and Architectural Review Controls Manual the Architectural Controls, shall require a 75% (three quarters) majority of all Members entitled to vote before the resolution may be passed, which shall be known as a special resolution.

and

Heading- "30. DEALING WITH COMMON PROPERTY"

- 30.1 Neither the whole nor any portion of the common property shall be:
 - o 30.2.3 subjected to any rights, whether registered in the Deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof, or which allow for agricultural activities to be conducted similar in nature to the Agricultural Enterprise; or
 - o 30.2.4 built upon, improved or enhanced in value by the construction of buildings, erection of facilities or amenities, other than as contained in this constitution and in the approved layout plan, without the sanction of a special resolution of the Members of the Association.

and

Heading- "31. NO SUBDIVISION OR REZONING AND NOT MORE THAN ONE DWELLING"

- 31.1 No Member shall be entitled to subdivide or rezone his erf, it being noted that that Erf 228 has been zoned as the Hotel and Related Facilities Development, together with the Agricultural Enterprise, which shall enjoy a separate zoning status commensurate with its function as main farm complex for the cultivation, harvesting, processing and marketing of the produce of the agricultural property, together which the Commercial Component, being Erf 229,

comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial.

and

Heading- "32. BUILDING STANDARD RULES AND AESTHETIC APPROVAL"

- o 32.1 It is recorded that the Trustee Committee has appointed the Benguela Cove Urban and Architectural Design Review Committee which comprises of Ellis Associates Architects and two Members appointed by the Developer. In compliance with paragraph 4.6.2 above no owner or any erf shall be entitled to build on his erf or effect any improvements thereto or erect any structures thereon without the prior approval of the Urban and Architectural Review Control Committee, hereinafter referred to as UARCC.."
- o 32.2 No owner of any erf shall be entitled to alter any construction thereon or alter or vary the design or façade of his building, dwelling or improvements so constructed, without written approval of the said UARCC."

Paragraph 4.6.2 as referred to in the above reads as follows:

Heading - "4. MEMBERSHIP"

- "4.6 No Member shall be entitled to transfer an erf, unless a duly authorised representative of the Trustee Committee or the relevant party to which such function has been delegated has in writing consented to the transfer, and the following conditions of title are imposed, namely:
 - o "4.6.2 No improvements, alterations, restructuring, repairs or any building work of any nature shall be affected to the property, nor shall the access to the property be altered, without the prior written approval of the Association."

The "Association" means, as per the definition, the "Benguela Cove Lagoon Owners Association".

(As an informative footnote to the above extracts from the Estate's Constitution, it is stated that cognisance should be taken that "Rezoning" in terms of the Overstrand Municipal Planning By-Law (2015) means the change in zoning in relation to a particular land unit or units or portion of a land unit in terms of Planning Law).

The following is derived from the information provided above:

- The amendment of the Constitution requires 75% support of the members of the Association.
- The Benguela Cove Lagoon Owner Association, with a special resolution, has the mandate in terms of the common property to:
 - o Allow building, improvement or enhancement etc other than that shown on the original approved layout plan. The latter is interpreted to also include the SDP.
 - o The Urban and Architectural Review Control Committee (UARCC), as appointed by the Trustee Committee, has the mandate to allow the approval of building plans of any structure, including improvements and alterations to structures, and to vary the design or facades.

In consideration of the aforementioned, it can be argued that a change in land-use that requires a departure and consequent amendment of the (approved) SDP, should be subjected to the permission of the Members of the Benguela Cove Lagoon Owners Association and by passing a special resolution with the effect thereto.

5. Analysis of the third application (currently subject for Public comment) and the anticipated impact thereof

The impact of the legalisation of the water play park, wooden deck area and seating area (i.e. the existing non-approved structures) are to be analysed / measured against the existing approved rights of the property. The table below provides information on such analyses:

Planning Criteria		Parameters	The Proposal	Comments
Zoning- Primary Use		Special Zone SZ - 2 for Tourism Business and house of worship	A departure for a water play park, large wooden deck and seating area	All these uses are considered to be consistent with the zoning requirements of the Tourism definition. The impact of these additional uses is considered low.
Consent		None	n.a.	No application is made for any consent uses.
Floor Factor		0.75 = 4,0361ha	No additional covered floor area	The proposed structures do not add to the floor factor, coverage or height and is thus consistent
Coverage		50% = 2,6907ha	No additional coverage	
Height		8m or 2 storeys, provided for the winery 14m.	On ground level, deck lower than 8m	
Building Line	Street	10m	±26m	Consistent, apart from that the proposed structures do not trigger building line encroachments they are more than 10m away from any street and side boundary
	Side	10m		
Parking		1 parking bay per 25m ² of total floor space and in the case of a Place of Worship, 1 parking bay per 5 seats	No additional parking provided Required: = 217 Provided = 309 The above figure is applicable as the marquee tent and outside market area was not supported	The proposed uses do not require any parking and is thus consistent with the parking requirement.

With reference to the above, and given that the existing zoning of the subject property entails Special Zone SZ-2 with a Primary use for Tourism business and House of Worship, cognisance should be taken that the definition of tourism use in this application differs with that of the Overstrand Municipal Planning By-Law, 2015.

The definition for Tourism business, relevant to the application site on Portion 229 of the Farm 575 Afdaks Rivier, reads: "Tourism business means the utilisation of a site and/or the buildings on the site for business activities such as deemed by council as important to encourage the tourism trade and includes restaurants, guesthouses, guest rooms, wineries, souvenir shops, tourist information centres, antique shops, arts and craft shops, art galleries, interior decorators, travel bureaus and conference facilities.

The definition for "tourist facilities" in terms of the Overstrand Municipal Planning By-Law, 2015 "means amenities for tourists or visitors such as lecture rooms, restaurants, picnic areas, gift shops, cafés, restrooms, recreational facilities, animal parks (domestic or otherwise), but does not include a hotel or overnight facilities"

6. Conclusive Summary

The impact of the existing non-approved structures on the existing commercial development at Benguela Cove Estate is, from a tourism perspective, generally considered to be aligned with the Town Planning Criteria that is relevant to the property.

The comments provided in the table below are, however, provided in response to the request of the BCEHOA as denoted under section 2 of this document:

The questions	The answers
Do the two notices address different applications for the amendment of the SDP of the Commercial Land area, and are such applications perhaps running in parallel ?	<p>The notices are different applications and were running in parallel.</p> <p>The first notice related to a SDP amendment and departures for a (1) place of entertainment and (2) a market. These facilities were proposed to be accommodated in the existing restaurant, a section of a wine cellar as well as a marquee tent.</p> <p>According to the Municipality the place of entertainment and market were restricted to only the courtyard area and the inside of existing buildings, all as per the Municipal approval that occurred in part during March 2019.</p> <p>The second notice refers to a departure application to accommodate a (1) water play park, (2) large wooden deck and (3) seating area.</p>

<p>What are the physical and legal differences between the proposed new SDP and the one originally approved?</p>	<p>The original approved SDP made provision for the Winery, Farm Stall, Chapel and Conference facility and, as mentioned here-above, the two new SDPs make provision for the following:</p> <p>Notice dated 2017 (1) place of entertainment and (2) a market</p> <p>Notice dated 2019 (1) water play park, (2) large wooden deck and (3) seating area.</p>
<p>Does the proposed amendment of the SDP of the Commercial Land area conform to the Guidelines and Theme of the Estate as a whole?</p>	<p>It is considered that the SDP for the commercial land is consistent with the zoning of the relevant portion.</p> <p>In the Constitution the Commercial component is acknowledged (Par 31) which has a zoning for "Special Zone SZ - 2" for Tourism Business and house of worship.</p> <p>The uses, subject to the application is considered consistent with the zoning. Therefore the proposed amendment of the SDP to include the water play park, large wooden deck and seating area is not considered a material change.</p>
<p>The merits upon which an objection(s) can be lodged against the application(s) to amend the SDP of the Commercial Land area.</p>	<p>The changes proposed are not considered material and is also considered to be aligned with the current zoning.</p> <p>Thus in terms of the proposed land-uses, it is not deemed valid that reasons for objection can be lodged.</p> <p>From a technical point of view it is mentioned that the property description of the land on the notice is incorrectly referring to Portion 229 of the farm no 575, Benguela Cove, Hermanus. The correct description is Portion 229 of the farm no 575, Afdaks Rivier.</p> <p>From experience it is known that the local authority would argue that, although the description is incorrect, the general understanding read together with the report, will not be material in nature and as such the matter would be dismissed.</p>

<p>Are the proposed amendment of the SDP and departures permissible in terms of the Constitution of the Benguela Cove Estate ?</p>	<p>From a town planning point of view: If the Benguela Cove Lagoon Owner Association and the Architectural Review Control Committee have provided their written approval in respect of the proposed amendment of the SDP, then it would be considered permissible.</p> <p>This opinion is motivated as follows:</p> <p>Clause 4.6.2 reads: <i>No improvements, alterations, restructuring, repairs or any building work of any nature shall be affected to the property, nor shall the access to the property be altered, without the prior written approval of the <u>Association</u>.</i></p> <p>"Association" in the above clause (as per definition) means the <u>Benguela Cove Lagoon Owner Association</u>, which is the body that is mandated to represent all individual home owners within the Estate, and which is compelled to execute the requirements of the Constitution to the satisfaction of the individual home owners.</p> <p>Clause 32.1 reads: <i>"..... In compliance with paragraph 4.6.2 above no owner <u>of any erf</u> shall be entitled to build on his erf or effect any improvement thereto or erect any structure thereon without the prior written approval of the Urban and Architectural Review Control Committee, hereinafter referred to as UARCC, as hereafter set out."</i></p> <p>From clauses 4.6.2 and 32.1 it is evident that no material changes to any building, structure or part of the existing development may take place without the involvement and consent of the Association, which includes the Architectural Review Committee.</p> <p>Clause 31.1 reads: <i>"...the Commercial Component, being Erf 229, comprises of with the <u>Winery, Restaurant, Farm Stall, the Chapel, Conference facilities</u> being zoned as Commercial."</i></p> <p>Clause 31.1 lists the <u>extent</u> of the facilities of the Commercial Land area, and it is deemed appropriate in terms of Clauses 4.6.2 and 32.1 that the consent of the Association have to be obtained to alter or expand the listed facilities. Furthermore, following such consent, the Association should be mandated through a Special Resolution, as warranted by Clause 20.7, to amend clause 31.1, so that it reflects a complete listing of the facilities of the Commercial Land area.</p>
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The development proposal as reflected in the amendment of the Site Development Plan (SDP) as described in this document, can be seen as an enhancement of the commercial development side of the Benguela Cove Estate, and it is not likely to affect the character of the non-commercial side of the Estate (Refer the scale and limited extent of the proposal for the (1) water play park, (2) large wooden deck and (3) seating area).

Notwithstanding the aforesaid, it is recommended that the BCEHOA should ensure that the necessary protocols are followed to ensure compliance with the clauses of the Constitution that pertain to consents for alterations and/or further development.

In the light of the above it is recommended that the Overstrand Municipality reject the application until the said protocols are followed.

Andre Wiehahn Pr Pln A/927/1996

ANNEXURE A:

NOTICE OF SITE DEVELOPMENT PLAN AMENDMENT 2018

Navrae:
Enquiries: H Olivier (Town Planner)

Lêerverwysing:
File Reference: PIn 229 of 575, HBENG (3817)

Datum:
Date: 05 March 2018



TOWN PLANNING / STADSBEPLANNING
HERMANUS

Benguela Cove Home Owners Association
2 Norton Dingle Drive
Constantia
7806

E-mail: martin.diessner@gmail.com

Dear Sir

NOTICE LETTER

PORTION 229 OF FARM NO. 575, BENGUELA COVE : PROPOSED AMENDMENT OF APPROVED SITE DEVELOPMENT PLAN AND DEPARTURE : WRAP (OBO BENGUELA COVE INV PTY LTD)

Notices has been served on all owners of properties in the Benguela Cove development with a closing date of 23 March 2018. Due to the fact we did not have the postal detail of the Home Owners Association, no notice was served on them. You have now provided us with a postal address for the Home Owners Association and the notice is therefore now being sent to you for their attention. An extended period for comment is now provided to the Home Owners Association up to 6 April 2018.

Yours faithfully

pp 
S MÜLLER
DIRECTOR: INFRASTRUCTURE & PLANNING

PORION 229 OF FARM NO. 575, BENGUELA COVE: PROPOSED AMENDMENT OF APPROVED SITE DEVELOPMENT PLAN AND DEPARTURE: WRAP (obo BENGUELA COVE INV PTY LTD)

Notice is hereby given in terms of Section 48 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 that an application has been received for an amendment of the approved site development plan in terms of Section 16(2)(i), and a departure from the provisions in the applicable Special Zone, in terms of Section 16(2)(b) to accommodate proposed market areas and also a place of entertainment in the existing restaurant, the wine cellar area and a marquee tent to be erected occasionally on the property.

Full details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, Paterson Street, Hermanus. Any written comments may be submitted in accordance with the provisions of Sections 51 and 52 of the said By-Law to the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / loretta@overstrand.gov.za) on or before **Friday, 23 March 2018**, quoting your name, address and contact details, interest in the application and reasons for comments. Telephonic enquiries can be made to the **Town Planner, Mr H Olivier** at 028-313 8900. The Municipality may refuse to accept comments received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a municipal official will assist them in order to formalize their comment.

GEDEELTE 229 VAN PLAAS NR. 575, BENGUELA COVE : VOORGESTELDE WYSIGING VAN GOEDGEKEURDE TERREINONTWIKKELINGSPLAN EN AFWYKING : WRAP (nms BENGUELA COVE INV PTY LTD)

Kennis word hiermee gegee ingevolge Artikel 48 van die Overstrand Munisipaliteit Verordening vir Munisipale Grondgebruikbeplanning, 2016 dat 'n aansoek om 'n wysiging van die goedgekeurde terreinontwikkingsplan ontvang is in terme van Artikel 16(2)(i), en 'n afwyking van die bepaling in die toepaslike Spasialezone in terme van Artikel 16(2)(b), ten einde voorgestelde stalletjie-areas toe te laat en ook 'n vermaaklikheidsplek toe te laat in die bestaande restaurant, die wynproe area en 'n marktleent wat vir sekere geleenthede opgerig sal word, toe te laat op die eiendom.

Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende woensdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus. Enige kommentaar op die voorstel moet skriftelik ingedien word in terme van Artikels 51 en 52 van die voorgeskrewe Verordening na die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / loretta@overstrand.gov.za) voor of op **Vrydag, 23 Maart 2018**, met die naam, adres en kontakbesonderhede, belang in die aansoek sowel as redes vir die kommentaar aangedui. Telefoniese navrae kan gerig word aan die **Stadsbeplanner, Mnr. H Olivier** by 028-313 8900. Die Munisipaliteit mag weier om die kommentaar te aanvaar na die sluitingsdatum. Enige persoon wat nie kan lees of skryf nie kan die Departement Stadsbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formaliseer.

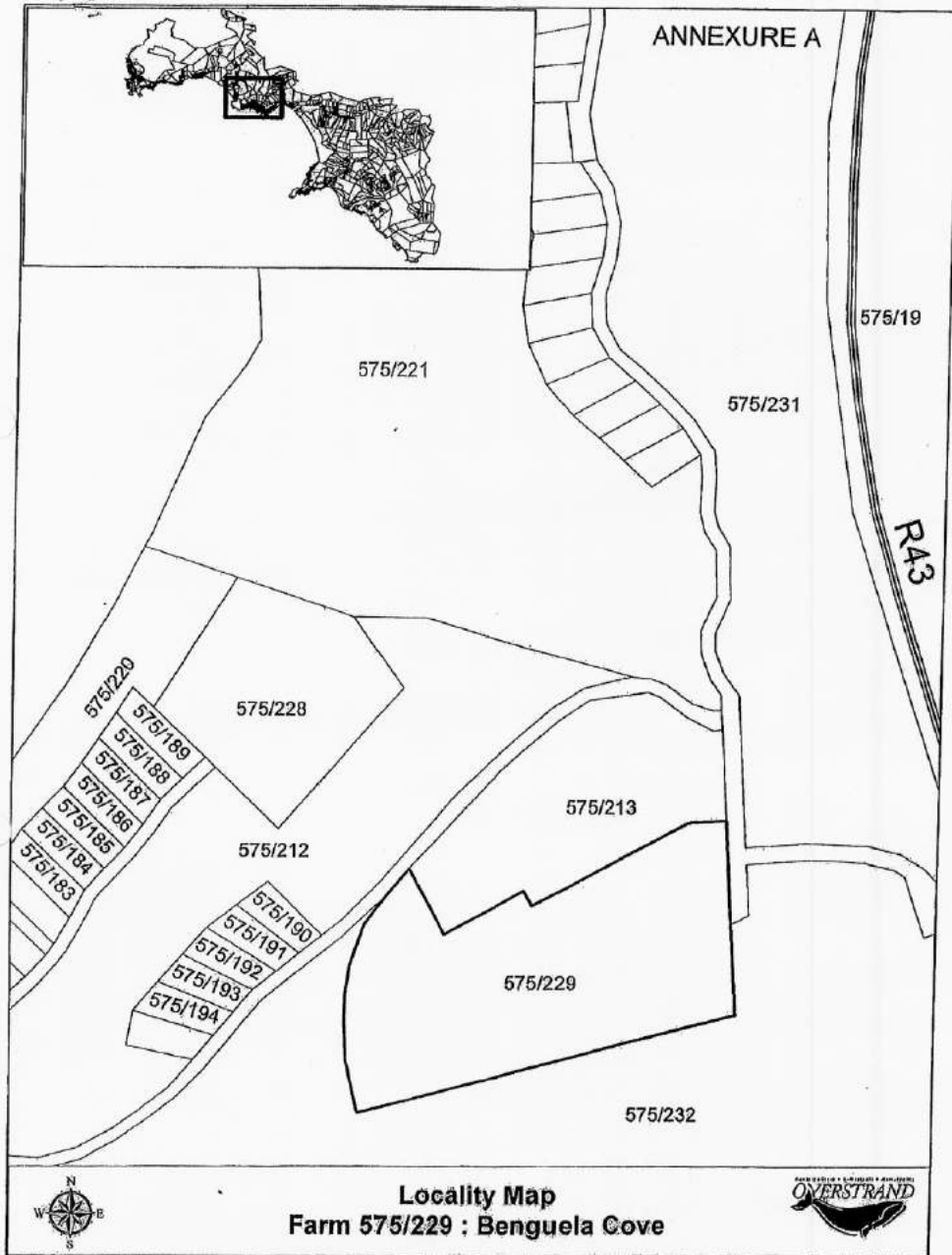
INXALENYE 229 IFAMA 575, BENGUELA COVE: ISICELO SOKUBA KULUNGISWE ISICWANGCISO ESAMKELWEYO SOPHULISO LWESIZA NOKUPHAMBUKA: WRAP CONSULTANCY (EGAMENI BENGUELA COVE INV PTY LTD)

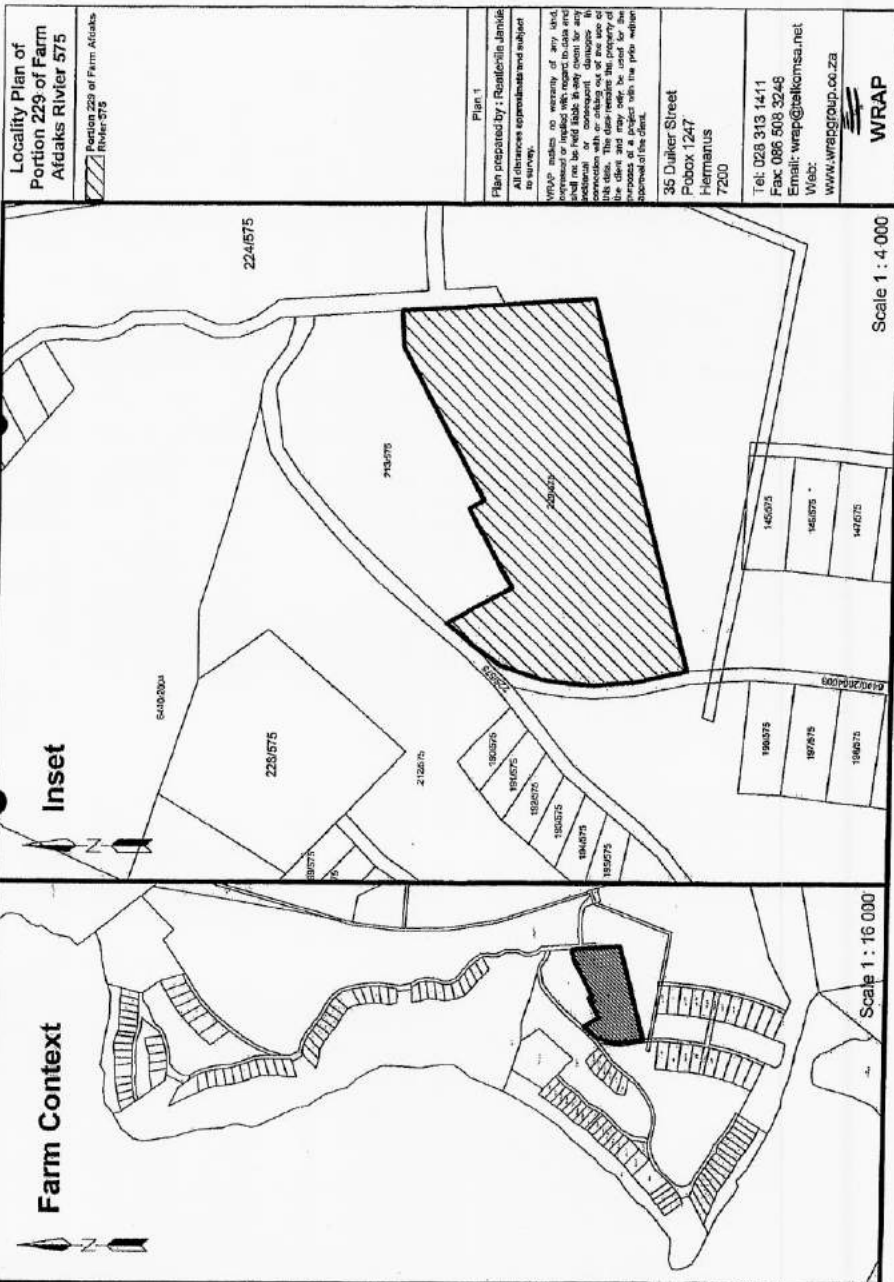
Esi sisaziso esikhutshwa ngokweSototy 48 loMthethwana kaMasipala weYilo lokuSetyenziswa koMhlaba kaMasipala, 2016 sokuba kufunyenwe isicelo sokuba kulungiswe isicwangciso esamkelweyo sophuhiso lwesiza ngeCandelo 16(2)(i), nokuphambuka kwi Spacial Zone ngeCandelo 16(2)(b) ukwenzela kuvunyelwa isicelo semariko, indawo yokuzonwabisa ngaphakathi kwendawo yokutyela (iresityu) ekhoyo, nalepho iwayini igcinwa khona, nentente ezosetyenziswa ngamanye amaxosha kule fama.

Iinkokacha eziphoteleyo malunga nesi sindutulo ziyafumaneka ngeentsuku zomsebenzi phakathi kweyure-08:00 ne-16:30 kuwiSebe: Town Planning, Paterson Street, Hermanus. Naziphi na izimvo ezibhalwayo mazingeni nswa ngokwezibonelelo zamaCandelo 51 nelama-52 alo Mthethwana zilhunyelwe kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) ngolu siku okanye ngaphambi koLwesihlanu, 23 uMatshi 2018, unke igama lakho, idlasi neenkukacha zoxibelelvano nawe, umdla wakho kwesi sicelo nezizathu zokunika izimvo. Xa ufuna ukubuzaz into malunga nesi saziso ungafonela **Umyili weDolophu, Mnu H Olivier** ku-028-313 8900. Umasipala angala ukuzamkela izimvo ezifike emva komhla wokuvata. Nabani na ongakwaziyo ukufunda okanye ukubhala makaye kuwiSebe loYilo lweDolophu apho igosa likamasipala liya kumcedisa azibhale izimvo zakhe.

Tel: 028 3138900
Fax: 028 3132093
E-mail: loretta@overstrand.gov.za

PO Box 20 / Pöbus 20
HERMANUS
7200





Locality Plan of
 Portion 229 of Farm
 Afdaks River 575

Portion 229 of Farm Afdaks
 River 575

Plan 1

Plan prepared by: Ronelinh Jambule
 All dimensions approximate and subject
 to survey.

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 the services of WRAP. The accuracy of the
 information and the results of the survey are
 guaranteed as to the accuracy of the
 information of the client.

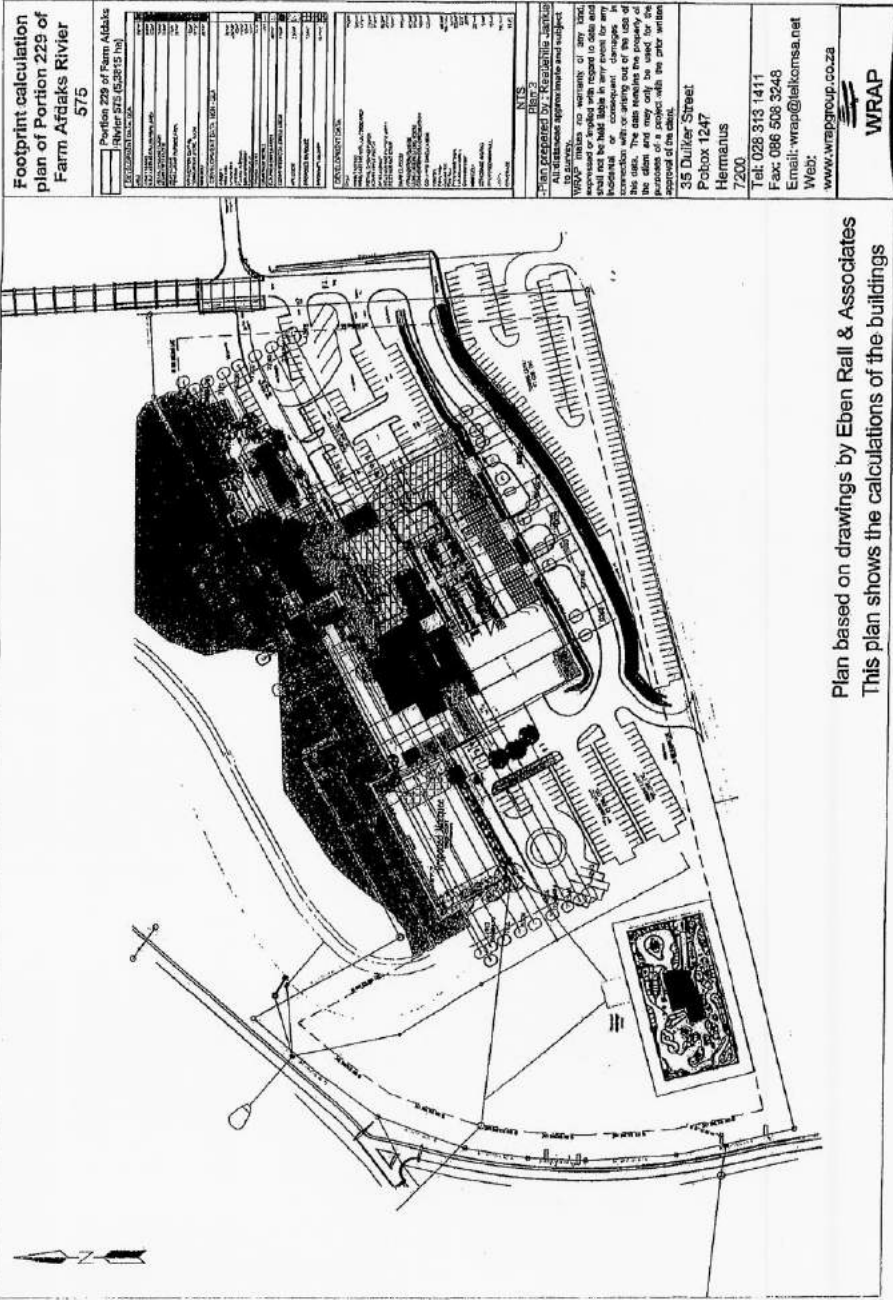
35 Duiker Street
 P.O. Box 1247
 Hermanus
 7200

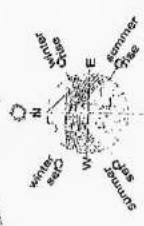
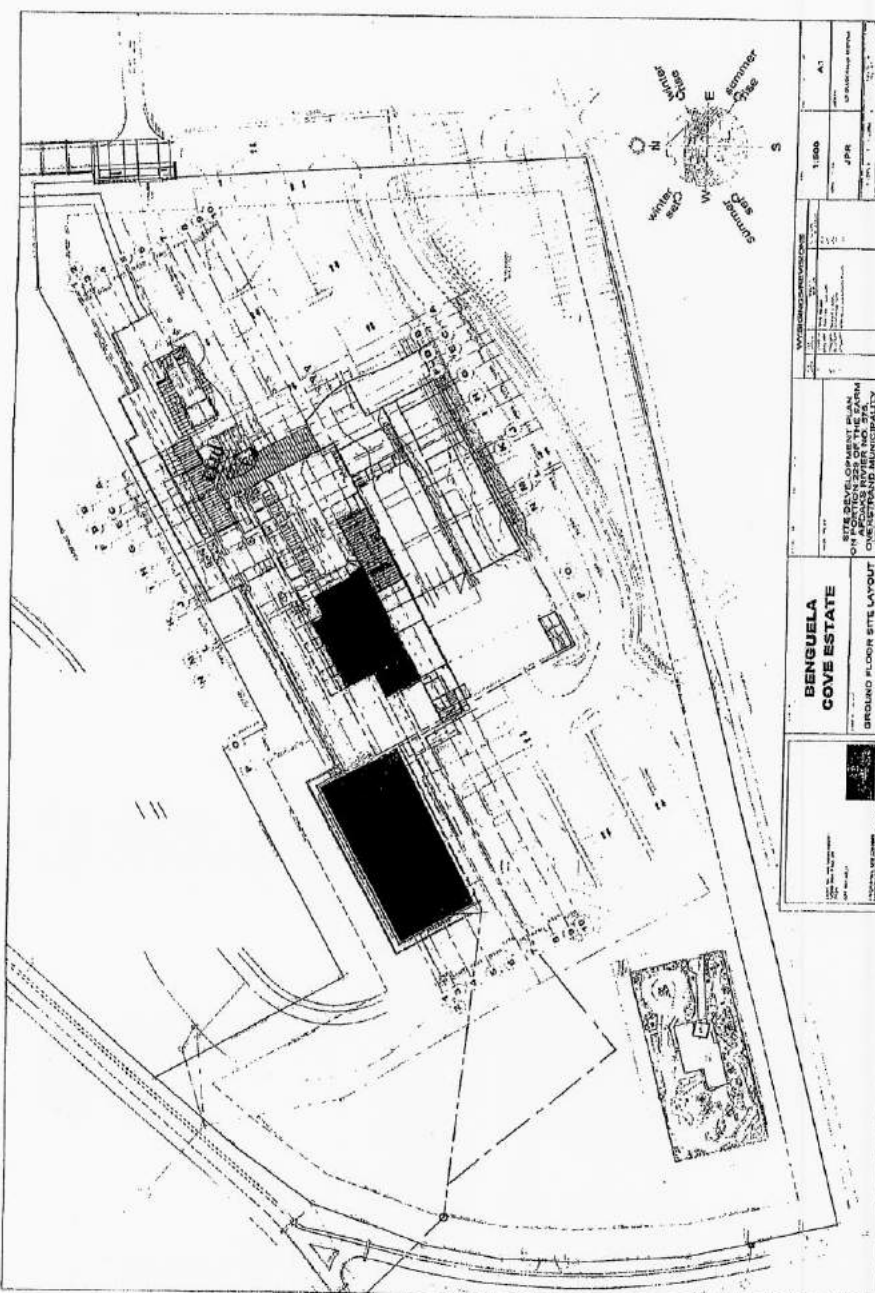
Tel: 028 313 1411
 Fax: 086 508 3248
 Email: wrap@talkmsa.net
 Web: www.wrapgroup.co.za

WRAP

Scale 1 : 4,000

Scale 1 : 16,000





BENGUELA COVE ESTATE GROUND FLOOR SITE LAYOUT		1:500 JPA 20.03.11 DR REF: G-002-08
SITE DEVELOPMENT PLAN ON A PORTION OF THE ZARF COMMUNITY MUNICIPALITY ADMINISTRATION OF CALZADON		A1 1:500 JPA 20.03.11 DR REF: G-002-08

<p>Picture of Lourensford Market to illustrate which is envisaged on the subject property</p>		<p>Plan 4 Source of picture: www.illum.co.za 35 Duijker Street Pobox 1247 Hermannus 7200</p>	<p>Tel: 028 313 1411 Fax: 086 503 3248 Email: wrap@telkomsa.net Web: www.wrapgroup.co.za</p> <p>WRAP</p>



EXECUTIVE SUMMARY

2. APPLICANT'S INTENT

The owners of Benguela Cove envisage the establishment of a market as well as to host weddings, conferences and events in the existing restaurant, part of the cellar and a marquee tent that will be erected occasionally on the lawn area in front of the restaurant. These proposed land uses will add to the tourism offering of the Overstrand area.

Portion 229 of Farm Afdaks Rivier 575 Caledon (5,3815 ha) is located in the Benguela Cove development. The subject property, zoned Special Zone (SZ-2), is renowned for its wine tasting facilities, restaurant, art collections and is designed in an architecturally appealing manner.

Application is hereby made for the following:

1. Amendment of the Site Development Plan (SDP) which will depict the extent and scale of the proposed market and place of entertainment (restaurant, section of cellar and marquee tent area);
2. A departure from the provisions of the Special Zone SZ-2 to allow a market; and
3. A departure from the provisions of the Special Zone SZ-2 for a place of entertainment in the existing restaurant, a section of the wine cellar and in the proposed marquee tent that will be erected occasionally.

The proposed market, conference, events and wedding venue will be easy to promote as the property overlooks the Atlantic Ocean in Hermanus, is located within a safe security estate and offers some of the most unique real estate in South Africa. Benguela Cove is also surrounded by the Botriver lagoon with fish and birdlife. It is surrounded by water, vineyards mountains, olive trees, lavender fields, has its own jetty, slipway, boating garage, clubhouse and storage. Other activities on the property include kitesurfing, kayaking and open water swimming, swimming pool, tennis court, basketball and boule courts.

Envisaged market character and ambiance

The character and ambiance at the proposed market will resemble that of Lourensford Market in Somerset-West (refer Plan 4 for photo's) (visit www.lfmm.co.za for more information). The proposed market intends to be one of the trendiest and favourite markets in the Overstrand, offering a diversity of products to a diversity of people. This market is also intended to contribute to accelerating social interaction on the subject property.

The proposed stalls are intended to have both a modern and rustic feel. The proposed market area is intended to prioritise quality when a customer strolls from one stall to the next. There will also be activities focussed on entertaining children.

Site specific proposal for the proposed market

Criteria	Proposal
Operation hours	Friday evening from 17:00 to 21:00. Saturday and Sunday from 10:00 to 15:00.
Number of stalls	Approximately 80 stalls are proposed. These stalls are intended to sell a mixture of food and artisan products.
Type of market	The type of market will be a community market with great diversity which

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EXECUTIVE SUMMARY

		will be a combination of an art and craft market, farmers market, flea market and community market. The rationale for the proposal for the market to be diverse is to attract diverse stall holders and diverse customers which would enhance social integration on the subject property.
Type of products	of	Artisan products, local products, food and drinks.
Criteria for stall holders	for	A criterion will be instituted to ensure that the stall holders are screened to ensure compliance with the above criteria of products and type of market.
Management		The general manager of the estate will manage the proposed market. The current security team will monitor and ensure the safety of stall holders and customers.

Approval of a departure for the proposed market is required as there are no provisions in Special Zone SZ-2 for a market.

Conference-, event- and wedding venue (place of entertainment)

The owners would like to utilise the existing restaurant, a section of the existing cellar and a marquee tent that will be erected occasionally on the lawn area in front of the restaurant for conferences, events and weddings.

The proposed conference venue is a primary right in terms of the applicable Special Zone. The proposed events and wedding venue (place of entertainment) is not a primary right in terms of Special Zone SZ-2. Application is therefore made for a departure from Special Zone SZ-2 for a place of entertainment.

This application seeks to depict on an SDP the scale of the proposed market, conference-, event- and wedding venue (refer Plan 5). The total additional area that will be provided is the area of the marquee tent – 20m x 6.7m = 134 m².

Considering the above, application is hereby made for the following:

- Amendment of the site development plan in terms of Section 18(2)(l) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015;
- Departure from the provisions of Special Zone SZ-2 to allow for a market in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015; and
- Departure from the provisions of Special Zone SZ-2 to allow for a place of entertainment in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.



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3. CHARACTER OF ENVIRONMENT

The subject property is located approximately 17km from the Hermanus Central Business District (CBD) and is renowned for its complementary mixed uses which range from agriculture, open space, residential and commercial. This proposal which includes a market, conference-, events- and wedding venue seeks to add greater number of land uses which are compatibly located on the subject property which is zoned Special Zone SZ-2.

4. TITLE DEED AND PROPERTY DETAILS

The title deed of the subject property was assessed to determine if there are any restrictive conditions which may prohibit this proposal.

PROPERTY DESCRIPTION	APPROX. EXTENT	OWNERSHIP	TITLE DEED NO
Portion 229 of Farm Afdaks Rivier 575 in the Overstrand Municipality, Division Caledon, Western Cape Province	53816m ²	Benguela Cove Inv Pty (Ltd)	T32228/2006

The perusal of the title deed revealed that there are no title deed restrictions which may prohibit the proposed market, conference-, events- and wedding venue.

5. ZONING

The subject property is zoned Special Zone SZ-2. Herewith are the applicable development parameters of the subject property and it will be assessed how this proposal is aligned or deviate from these development parameters.

Use	Parameters	Proposal	Comply/deviate
Primary use	Tourism business, house of worship	Conference	Comply
Consent use	None	N/A	N/A
Land use restrictions			
Floor factor	0.75 = 4,0361 ha permissible	0.19	Comply
Coverage	50% = 2,6907 ha permissible	14.8%	Comply
Height	At most 8m or 2 storeys, provided that in the case of the winery, the maximum height shall be 14m.	The proposed marquee tent is below 8m.	Comply
Street building line	10m	N/A	N/A
Side building line	A minimum of 10m provided that council may lay down building lines in the interest of public health and safety or to enforce any law or right.	25,9m	Comply
Parking	At least 1 parking bay per 25m ² of the total floor space provided that in the case of a "Place of Worship" 1 parking bay per 5 seats.	Total GFA 5426m ² which requires 217 parking bays. 309 parking bays are provided creating an	Comply

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Portion 229 of Farm Afdaks Rivier 575
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		<p>excess of 92 parking bays.</p> <p>The proposed marquee tent will accommodate between 60 and 80 people requiring 20 parking bays.</p> <p>The proposed market is 1720m² requiring 69 parking bays.</p> <p>There is therefore an excess of 3 parking bays.</p>	
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Additional definitions

- I. **Conference facility** means the use of a building for the hosting of conferences and can include committee rooms, auditoriums, dining rooms and on-site consumption of alcoholic beverages.
- II. **Arts & crafts shop** means the use of a building or portion of a building where hand made goods are produced, displayed and sold to the general public;
- III. **Tourism business** means the utilisation of a site and / or the buildings on the site for business activities, such as deemed by council as important to encourage the tourism trade and seen as relevant to the tourism trade and which are related to the tourism trade and includes restaurants, guesthouses, guest rooms, wineries, souvenir shops, tourist information centres, antique shops, arts and craft shops, art galleries, interior decorators, travel bureaux and conference facilities.

Primary use

The proposed conference facility is a primary right in terms of Special Zone SZ-2.

Departures

The proposed market is not a primary right and will require a departure from Special Zone SZ-2.

The utilisation of the existing restaurant, sections of the cellar and the proposed marquee tent will require a departure from Special Zone SZ-2 for a place of entertainment. The definition for a place of entertainment in terms of the Overstrand Municipality Zoning Scheme reads as follows:

"Place of entertainment" means a place used for commercial entertainment which may attract large numbers of people, operate outside of 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.

6. DESIRABILITY

In terms of Section 55 (b) and (c) of the Land Use Planning Act, 2014, an application can be refused based on it being undesirable. The measure to assess the desirability of the application is the consistency of the application with spatial development frameworks, applicable structure plans, the principles referred to in Chapter VI Land Use Planning Act, 2014 and guidelines issued by the Provincial Minister regarding the desirability of proposed development.

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The proposed amendment of the site development plan and departures need to be desirable and consistent with the logic character of Benguela Cove and add value for the owner and the community. The Department of Environmental Affairs and Development Planning (DEADP) published a Guideline on Need and Desirability as part of the EIA Guideline and Information Document Series. Although this application does not include an environmental authorization application, the desirability guidelines set out in the document are also applicable in planning.

In terms of the above several questions need to be asked with regard to the need and desirability of a proposal, which include the following:

Need and desirability measure	Yes/ or No	Applicability to the subject farm
Is the land use considered within the timeframe intended by the existing approved SDF agreed to by the relevant environmental authority?	Yes	The zoning applicable on the subject property was approved by the Overstrand Municipality and the Western Cape Department of Environmental Affairs and Development Planning. All spatial policy related matters were considered in the approval of the application.
Does the community/area need the activity and the associated land use concerned?	Yes	There is a definite need at Benguela Cove for a market, conference, events, and wedding venue. These facilities have become increasingly popular within the Overstrand where residents meet and interact with each other and play an integral role towards strengthening communal ties. There is therefore a definite need for development of this nature to strengthen the existing communal ties.
Are the necessary services with adequate capacity currently available, or must additional capacity be created to cater for the development?	Yes	There is an existing building on the subject property which has adequate sanitation facilities which will cater to the prospective customers of the proposed land uses.
Is this development the best practicable environmental option for this land/site?	Yes	The subject property is located within an already approved township. There is an existing Environmental Record of Deed which proves that the subject property is not located on environmentally sensitive land (refer Annexure D).
Do location factors favour this land use?	Yes	The subject property is renowned for its reputable restaurant, wine tasting and opportunity to view the aesthetically appealing landscape. This well established company brand will enable the proposed development to easily attract additional consumers as it is favourably located.
How will the activity or the land use associated with the activity applied for, impact on sensitive natural and cultural areas?	No	The approval of this proposal will not have an adverse impact on the existing character of the area. The subject property is not located on a sensitive natural or

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Will the proposed activity or the land use associated with the activity applied for, result in unacceptable opportunity costs?	No	cultural area. The approval of this application will not result in an unacceptable opportunity cost.
Will the proposed land use result in unacceptable cumulative impact?	No	The approval of this proposal will not have any unacceptable impact on the society.

7. SERVICES

There are existing services on the subject property such as electricity, water, storm water, sewage and solid waste removal and the availability will be assessed below.

7.1 Electricity

The subject property is connected to the Eskom electricity network. The proposed land uses will therefore use the electricity available on the property.

7.2 Water

Potable water on the subject property is received from the Fisherhaven Reservoir and the proposed land uses will use the same water.

7.3 Sewage

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

7.4 Traffic impacts, parking access and other transport related considerations

There is an existing road network on the subject property and there are 608 parking bays available. The existing parking requirement is 217 parking bays and 89 parking bays for the additional areas to be taken up by the proposed land uses. This results in an excess of 3 parking bays on the subject property. There are therefore adequate parking bays to cater for the proposed land uses.

The additional people who will support the market or who will attend any of the functions cannot in any way cause an unbearable burden on the existing services infrastructure, because customers will only make use of the parking facilities, ablution facilities where necessary and potable water which cannot be deemed to be excessive utilisation of services. The nature of the land uses proposed will also be occasional and will occur on a rotational basis hence the calculation of the parking over the entire market tent and market GLA area.

8. SPATIAL PLANNING INITIATIVES

This proposal primarily pertains to the scale of the proposed amendment of the site development plan and departures which is within the development parameters of the zoning being depleted on the SDP. The Provincial Spatial Development Framework 2014 (PSDF), Overstrand Spatial Development Framework (2006) SDF and Overstrand Municipal Growth Management Strategy May 2010 (OMGMS) were perused and are not applicable as the land use rights are already in place.

9. PLANNING PRINCIPLES

The proposal was analysed for consistency with the planning principles to provide a recommendation to the Municipality for the application. These spatial planning principles are in terms of Section 42 of the Spatial Planning and Land Use Management Act, 2013 and Chapter VI of the Land Use Planning Act, 2014.



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Planning principles	Consideration and Impact
<p>Spatial Justice "Refers to the need to redress the past apartheid spatial development imbalances and aim for equity in the provision of access opportunities, facilities, services and land."</p>	<p>The proposed market will have a variety of products with a variety of prices which are diverse and will cater to a diversity of consumers across different income brackets and social strata. The proposed place of entertainment will increase social interaction on the subject property and contribute to promoting integration of people.</p>
<p>Spatial Sustainability "A spatially sustainable settlement will be one that ensures an equitable land market while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas and limit urban sprawl."</p>	<p>This proposal is within the urban edge of Benguela Cove and will not encroach on agricultural land, environmentally sensitive areas, biodiversity rich areas and will contribute to combating urban sprawl.</p>
<p>Efficiency "Efficiency refers to the need to create settlements that optimise the use of space, energy, infrastructure, resources and land."</p>	<p>The proposed land uses seek to optimally make use of the space on the subject property within the development parameters of the subject special zone while maintaining the character of the existing property. This proposal also seeks to optimally make use of services on the subject property within the services limitations on the subject property.</p>
<p>Spatial Resilience "Spatial resilience in the context of land use planning refers to 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."</p>	<p>The sound approval of the subject special zone was conducted with the spatial plans and policies in mind. The further diversification proposed on the subject property by means of having the proposed land uses in addition to the other commercial activities will subsequently lead to making the subject property being resilient. The resilience will emanate from the fact that if one aspect of the business does not function optimally due to unfavourable market conditions, this will not render all the activities on the subject property unviable.</p>
<p>Good Administration "Good administration in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure a joint planning approach is pursued."</p>	<p>The application process promotes consultative planning as the Municipality will assess this application and make an informed decision after considering all the relevant facts.</p>

10. EVALUATION AND CONCLUSION

Herewith a synopsis of the essential elements that makes the proposed development viable and practical on the subject property.

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Application

- **Amendment of the site development plan** in terms of Section 16(2)(l) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015;
- **Departure** from the provisions of Special Zone SZ-2 to allow for a market in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015; and
- **Departure** from the provisions of Special Zone SZ-2 to allow for a place of entertainment in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.

Character of the environment

The subject property is located in Benguela Cove which has a variety of mixed land uses. The owners seek to diversify the variety of mixed land uses on the subject property which is zoned as a Special Zone.

Title deed

Title deed T32226/2006 was perused and there are no title deed restrictions which may prohibit the proposed development.

Desirability

- There is a definite need in Benguela Cove for a market and a conference-, event- and wedding venue which will contribute to enhancing and strengthening communal ties within the Greater Overstrand area.
- There is sanitary infrastructure capacity to cater to the proposed market and place of assembly.
- The subject proposal is the most practical environmental option as there is an Environmental Record of Decision which elucidates this (refer Annexure D).
- The only additional buildings to be erected occasionally is the marquee tent on an existing lawn area and will therefore not impact on any sensitive cultural areas.
- The approval of this application will not result in unacceptable opportunity cost and will not have an unacceptable cumulative impact.

Zoning

The zoning of the subject property is Special Zone SZ-2.

The proposed conference facility is a primary right. Departures are required for the proposed place of assembly and market.

- The permissible floor factor is 0,75 and the proposed floor factor is 0,19;
- The permissible coverage is 50% and the proposed coverage is 14,8%;
- The proposed marquee tent does not encroach on the 10m building line; and
- The required parking bays are 306 and the subject property has 309 parking bays.

Services

Electricity: the subject property is connected to Eskom.

Water: potable water on the subject property is obtained from the Fishershaven Reservoir.

Sewage: the subject property is connected to an existing sewer network and system.

Access: there is an existing road network on the subject property and there are 309 parking bays.

The customers of the proposed market, conferences-, events- and wedding venue will use parking bays, ablution facilities and potable water. The utilisation thereof will be done on a rotational basis and cannot be deemed to be excessive as it will be occasionally used.

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Spatial Planning Initiatives

This proposal primarily pertains to the scale of the proposed market, conference-, events- and wedding venue and departures which is within the development parameters of the zoning being depicted on the SDP. The PSDP, SDF and OMGMS were perused and are not applicable as the land use rights are already in place.

Planning Principles

- **Spatial justice:** the approval of this proposal will have a diversity of products with varying prices which will cater to a diversity of people across different income brackets and subsequently lead to integration in the social space of the proposed land uses.
- **Spatial sustainability:** this proposal is within the urban edge and not located within an area which is agriculturally viable or environmentally sensitive and thus promote spatial sustainability.
- **Efficiency:** this proposal seeks to optimally make use of the services on the subject property in a manner which is efficient and within the infrastructure capacity on the subject property.
- **Spatial resilience:** the proposed market, conference-, events- and wedding venue will lead to a diversification of commercial land uses on the subject property which will promote spatial resilience as the failure of one aspect of commercial activities will not render the entire development unviable.
- **Good administration:** the Overstrand Municipality will assess the application and provide necessary feedback.

This application took into consideration the site-specific circumstances of the subject property, title deed restrictions, and services connected to the property, various development frameworks and the planning principles and the application therefore complies with the requirements of all the essential elements.

**RECOMMENDATION****11. RECOMMENDATION**

This motivation report has provided a clear and complete analysis of the site-specific circumstances of the erf and how the proposed land uses blend in with the commercial activities in Benguela Cove and with the character of the site.

Considering the above, it is recommended that the following application be approved:

- Amendment of the site development plan in terms of Section 16(2)(l) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015;
- Departure from the provisions of Special Zone SZ-2 to allow for a market in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015; and
- Departure from the provisions of Special Zone SZ-2 to allow for a place of entertainment in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.

ANNEXURE B:

NOTICE OF SITE DEVELOPMENT PLAN AMENDMENT 2019

**PORTION 229 OF FARM NO 575, BENGUELA COVE, HERMANUS, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR AMENDMENT OF THE SITE DEVELOPMENT PLAN: WRAP ON BEHALF OF
BENGUELA COVE INVESTMENTS (PTY) LTD**

Notice is hereby given in terms of Section 48, read with Section 16(2)(i) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 that an application has been received for an amendment of the site development plan to permit a water play park, large wooden decking area and seating area.

Full details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, Paterson Street, Hermanus. Any written comments must be submitted in accordance with the provisions of Sections 51 and 52 of the said By-Law and be submitted at the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / loretta@overstrand.gov.za) on or before 12 July 2019, quoting your name, address and contact details, interest in the application, as well as the reasons for comment. Telephonic enquiries can be made to Mr. H Olivier at 028-313 8900. The Municipality may refuse to accept comments received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a municipal official will assist them in order to formalize their comment.

**GEDEELTE 229 VAN DIE PLAAS NR 575, BENGUELA COVE, HERMANUS, OVERSTRAND
MUNISIPALE AREA: AANSOEK OM WYSIGING VAN TERREINONTWIKKELINGSPLAN: WRAP
NAMENS BENGUELA COVE INVESTMENTS (PTY) LTD**

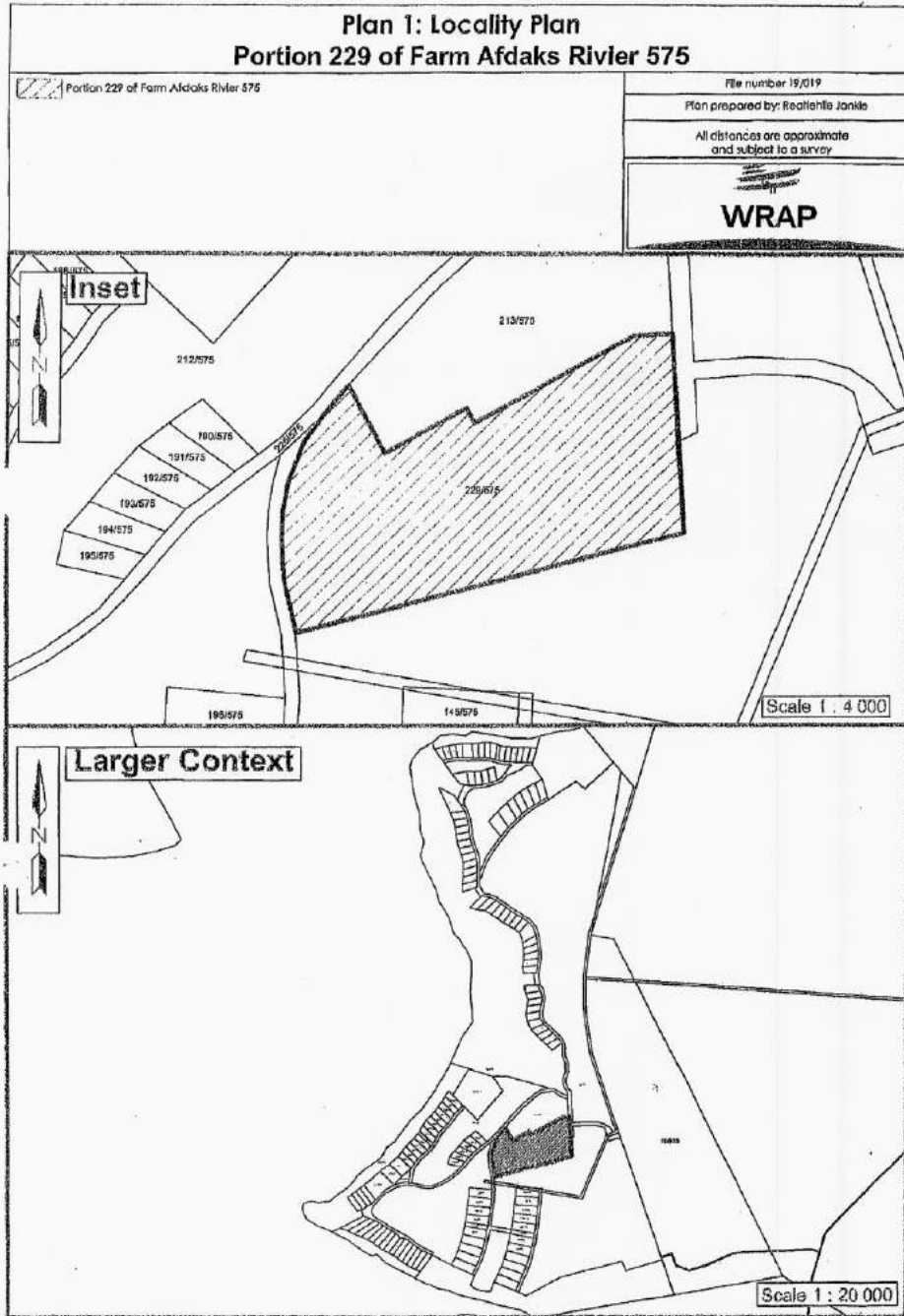
Kennis geskied hiermee ingevolge Artikel 48, saamgelees met Artikel 16 (2)(i) van die Overstrand Munisipaliteit Verordening vir Munisipale Grondgebruiksbeplanning, 2015, dat 'n aansoek ontvang is vir die wysiging van die terreinontwikkelingsplan ontvang is om 'n water speelplek, groot hout dek area en sitplek area toe te laat.

Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende wekedae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus. Enige skriftelike kommentaar op die voorstel moet ingevolge die bepalinge van Artikels 51 en 52 van die Verordening ingedien word en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / loretta@overstrand.gov.za) bereik voor of op 12 Julie 2019, met vermelding van u naam, adres, kontakbesonderhede, belang in die aansoek, sowel as die redes vir kommentaar. Telefoniese navrae kan gerig word aan Mnr. H Olivier by 028-313 8900. Die Munisipaliteit mag weier om die kommentaar te aanvaar na die sluitingsdatum. Enige persoon wat nie kan lees of skryf nie kan die Departement Stadsbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formaliseer.

**INXALENYE 229 YEFAMA 575, BENGUELA COVE, EHERMANUS, UMDA KAMASPALA
WASEOVERSTRAND; UKULUNGISWA KWESICWANGCISO SOKUPHULISA ISAYITHI: WRAP
EGAMENI LIKA BENGUELA COVE INVESTMENTS (PTY) LTD**

Esi sisaziyo esikhutshwa ngokweSoloty 48 efundwa kunye neSoloty 16(2)(i) loMthethwana kaMasipala woYilo lokuSetyenziswa koMhlaba kaMasipala, 2015 sokuba kufunyenwe isicelo sokulungiswa kwesicwangciso sokuphuhlisa isayithi ukuvumela ipaki yokudlala yamanzi, indawo enkulu yamaplanga yokuhlala, kunye nendawo yokuhlala ezitlwaneni.

Inkcukacha ezipheleleyo malunga nesi sindululo ziyafumaneka ngeentsuku zomsebenzi phakathi kweyure-08:00 no-16:30 kwiSebe: Town Planning, Paterson Street, Hermanus. Naziphi na izimvo ezibhalwayo mezingenisiwe ngokwezibonelelo zamaCandelo 51 nelama-52 ayo Mthethwana zithunyelwe kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) ngolu suku okanye ngaphambi kwalo uLwesihlanu, 12 uJulayi 2019 (EyeKhala / EyeNtla), unike igama lakho, idlest neenkukacha zonxibelelwano nawe, umdla wakho kwesi sicelo nezizathu zokunika izimvo. Xa ufuna ukubuzaz into malunga nesi sisaziyo ungfonela uMnu. H Olivier ku-028-313 8900. Umasipala angala ukuzamkela izimvo ezifike emva komhla wokuvula. Nabani na ongakwaziyo ukufunda okanye ukubhala makaye kwiSebe loYilo lweDolophu apho igosa likamasipala liya kumncedisa ezibhale izimvo zakhe.



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2. ABBREVIATIONS

OMZS	Overstrand Municipality Zoning Scheme, 2013
SDF	Overstrand Municipality Spatial Development Framework, 2006
OM	Overstrand Municipality
OM By-Law	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015
SPLUMA	Spatial Planning and Land Use Management Act, 2013
LUPA	Land Use Planning Act, 2014
PSDF	Western Cape Provincial Spatial Development Framework 2014
IDP	Overstrand Municipality Integrated Development Plan
IDF	Integrated Development Framework 2014
DEADP	Western Cape Department of Environmental Affairs and Development Planning
SDP	Site Development Plan
BCHOA	Benguela Cove Home Owners Association
BCI Pty (Ltd)	Benguela Cove Investments Pty (Ltd)
BCE	Benguela Cove Estate

3. DEFINITIONS PERTINENT TO THIS PROPOSAL

Amendment of an SDP	Applying for an existing SDP, which has been approved to be amended, to either, depict existing, or proposed buildings and land uses.
Urban fabric	Refers to the physical aspect of urbanism, emphasizing building types, thoroughfares, open space, frontages, and streetscapes but excluding environmental, functional, economic and sociocultural aspects.

4. SUMMARY OF STATUS QUO PROPERTY DETAILS

Applicant	WRAP (Wright Approach Consultancy)
Registered owner	Benguela Cove Investments Pty (Ltd)
Farm extent	5,3815 ha
Title deed	132226/2006
Restrictive conditions	None
Applicable zoning scheme	OMZS
Current land use	Restaurant, gift shop, wine cellar wine tasting facility, private golf course, water play park and large wooden decking- and seating area.
Current zoning	Special Zone (SZ-2)

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Portion 229 of Farm Afdaks Rivier 676 Caledon
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EXECUTIVE SUMMARY

5. SUBMITTED APPLICATION: (REFERENCE: PTN 229 OF 575, HBENG (3817))

An application pertaining to the subject property was submitted by WRAP in November 2017 for the following;

- **Amendment of the site development plan** in terms of Section 16(2)(l) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015;
- **Departure** from the provisions of Special Zone SZ-2 to allow for a market in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015; and
- **Departure** from the provisions of Special Zone SZ-2 to allow for a place of entertainment in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.

The application is currently being processed by the OM and a decision pertaining to the subject application will be taken in due course. The submission of this town planning application for the amendment of a SDP is therefore running concurrently with the submitted town planning application.

6. BACKGROUND

The owner of the subject property erected the following structures (refer **Plan 3**) on the subject property:

1. Water play park;
2. Large wooden decking area; and
3. Seating area.

The purpose of this application is to confer appropriate land use rights which permit the above buildings and land uses. The application for the amendment of the SDP is proposed to accommodate the existing buildings and land uses. Should this application be approved, building plans will have to be submitted to the OM Building Control Department for approval.

Proposal rationale

The subject property currently has a pirate golf course (put-put) which is popular among children and adults. The parents of the children requested the property owner to also establish a water play park which has a lawn area and a deck to cater for the needs of the children. The property owner subsequently constructed the structures to make the existing restaurant and wine tasting facility more appealing to clients and to make the entire establishment more welcoming to families with children.

The constructed structures were also made to be visually appealing to the residents of BCE and to contribute to a contextually appropriate enhancement of the built environment of BCE. The pirate golf course which is located next to the existing structures is projected to enhance the ambiance of the entire development, cater to the needs of current clients and attract genteel clients who will fit into the general make up of BCE. The existing structures and the approval of this application is therefore projected to not only enhance the existing building in BCE but to also enhance the ambiance of the entire estate area.

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5. SUBMITTED APPLICATION: (REFERENCE: PTN 229 OF 575, HBENG (3817))

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7. BCE FABRIC

Benguela Cove Estate is one of the most upmarket areas in the Overstrand, characterized by a high quality of life and functional space economy. All buildings have modern architectural designs and building materials which are all in harmony with each other. The agricultural and open space land uses enhance the openness of the area and promotes easy movement of residents within the estate. The street frontages and offset of buildings from the street boundary are longer than on other residential properties in Hermanus and enhances the configuration of homes on the different erven. There is also a restaurant which offers a variety of up market meals and beverages which also caters for kids as there is a pirate golf course on the premises.

The existing buildings for which the subject amendment of an SDP is applied for, are in harmony with the prevailing up market architectural styling of the area (refer **Plan 3**) and add value the existing visual setting of BCE.

8. ZONING

The subject property is zoned Special Zone SZ-2. Herewith are the applicable development parameters of the subject property and it being be assessed how this proposal is aligned or deviate from these development parameters:

Use	Parameters	Proposal	Comply/deviate
Primary use	Tourism business, house of worship	Tourism business	Comply
Consent use	None	N/A	N/A
Land use restrictions			
Floor factor	0,75 = 4,0361 ha permissible	0,22	Comply
Coverage	50% = 2,6907 ha permissible	17,3%	Comply
Height	At most 8m or 2 storeys, provided that in the case of the winery, the maximum height shall be 14m.	The existing deck is lower than 8m.	Comply
Street building line	10m	No buildings encroach on the street building line.	N/A
Side building line	A minimum of 10m provided that council may lay down building lines in the interest of public health and safety or	No buildings encroach on the side building line.	Comply

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	to enforce any law or right.		
Parking	At least 1 parking bay per 25m ² of the total floor space provided that in the case of a "Place of Worship" 1 parking bay per 5 seats.	<p>Total GLA 5426m² which requires 217 parking bays. 309 parking bays are provided creating an excess of 92 parking bays.</p> <p>The marquee tent for which an application was submitted is currently being processed and will accommodate between 50 and 80 people requiring 20 parking bays.</p> <p>The market for which an application was submitted is currently being processed and is 1729m² requiring 69 parking bays.</p> <p>The existing buildings and land uses which are applied for in the amendment of the SDP do not require any parking in terms of the Special Zone requirements applicable to the subject property. This is due to the fact that the water play park and large wooden decking- and seating area are outbuildings which are ancillary and subservient to other uses on the subject property.</p> <p>There is therefore an excess of 3 parking bays.</p>	Comply

Additional definitions extracted from the Special Zone

- i. **Conference facility** means the use of a building for the hosting of conferences and can include committee rooms, auditoriums, dining rooms and on-site consumption of alcoholic beverages.
- ii. **Arts & crafts shop** means the use of a building or portion of a building where hand made goods are produced, displayed and sold to the general public;
- iii. **Tourism business** means the utilisation of a site and / or the buildings on the site for business activities, such as deemed by council as important to encourage the tourism trade and seen as relevant to the tourism trade and which are related to the tourism trade and includes restaurants, guesthouses, guest rooms, wineries, souvenir shops, tourist information centres, antique shops, arts and craft shops, art galleries, interior decorators, travel bureaux and conference facilities.

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9. SERVICES

All services in the proposed development are intended to be off the grid and the proposals will herewith be elucidated.

9.1 Electricity

The subject property is connected to the Eskom electricity network. The proposed land uses will therefore use the electricity available on the property.

9.2 Water

Potable water on the subject property is received from the Fisherhaven Reservoir. None of the existing buildings for which the amendment of the SDP is applied for require potable water. The status quo with regards to water will therefore remain unchanged.

9.3 Sewage

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

9.4 Traffic impacts, parking access and other transport related considerations

There is an existing road network on the subject property and there are 309 parking bays available. The town planning application which has been submitted and which runs concurrent with this application, illustrates that there are 306 parking bays required which means that there is an excess of 3 parking bays on the property.

The water play park and large wooden decking- and seating area are used by guests who visit the restaurant/wine tasting facility on the subject property and is therefore not projected to attract any additional parking, apart from that which the restaurant currently attracts.

10. NEED AND DESIRABILITY

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

Element consideration	for	Motivation of the impact of the approval and implementation of this proposal.	Impact Positive or Negative
Economic Impact		The water play park and large wooden decking- and seating area, enhance the attractiveness and popularity of the existing restaurant and wine tasting facility. The existing buildings therefore enhances the economic viability of the subject establishment and is	Positive

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	projected to enhance the need for additional labour in the future which is a positive economic impact, considering the unemployment rate prevalent in the area.	
Social Impact	The subject restaurant, wine tasting facility, water play park and large wooden decking- and seating area, attracts genteel clients from different socio-cultural backgrounds and promotes intercultural interaction on the subject property. The existing buildings and land uses on the subject property contribute towards creating social cohesion on the subject property and the approval of this proposal will facilitate this positive process which is currently underway.	Positive
Scale of the capital investment	The substantial amount of money which the property owner has invested in the subject property illustrates the commitment of the property owner towards enhancing the prevailing architectural character prevalent in BCE.	Positive
Compatibility with surrounding uses	This existing water play park and large wooden decking- and seating area is ancillary and subservient to the prevailing tourism/restaurant character which is prevalent on the subject property and can be regarded as a compatible land use.	Positive
Impact on safety, health and wellbeing of the surrounding community:	Considering that the water play park and large wooden decking- and seating area attract additional genteel clients to the subject property, this leads to additional surveillance on the subject property. This surveillance enhances the safety and wellbeing of the visitors to the subject establishment and other residents in BCE. There are no noxious land uses which occur on the subject property and the health of the surrounding community will therefore not be compromised on.	Positive
Impact on heritage	The existing buildings on the subject property do not have a heritage value, and the approval of Heritage Western Cape is not required.	Positive
Whether the imposition of conditions can mitigate an adverse impact of the proposed land use	The imposition of conditions of approval on the subject proposal is essential as it will ensure that the land use rights which surrounding property owners enjoy are not deprived. <ul style="list-style-type: none"> • That all signage have to comply with the Overstrand Municipality By-Law on Signage; • That all development parameters in the applicable Special Zone and other title deed restrictions be 	Positive

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	<p>complied with. This will ensure that the scale of the subject development remains within reasonable bounds;</p> <ul style="list-style-type: none"> • That building plans be submitted to the Building Department for approval as that will ensure that building is designed in accordance with prescribed legislation; • That all prescripts of the fire department be complied with to ensure that the subject building does not become a fire risk to the occupant as well as clients; • That all land uses on the subject premises not interfere with the peace, comfort or become an unbearable nuisance to surrounding property owners; and • That all other relevant legislation be complied with. 	
<p>Aspects which impact on quality of life (including views, sunlight, privacy, visual impact, character)</p>	<p>The deck which has been constructed is not in any way visually intrusive and will not deprive any resident of BCE of any land use rights which are enjoyed.</p> <p>The subject property is also surrounded by a private open space and the agricultural area of BCE. The openness immediately adjacent to the subject property is a buffer for other residents of BC and will ensure that the minimal sound will be audible from the water play park and large wooden decking area and seating area, will not interfere with the peace and comfort which residents enjoy.</p>	<p>Positive</p>

11. SPATIAL PLANNING POLICIES

The PSDF, SDF, IDF and OMGMS were perused and the existing buildings do not contradict any of the spatial planning policies which pertain to the subject site.

12. COMMON LAW

Common law dictates that a property owner may not use his/her land in such a way as to interfere with the rights of others, particularly neighbours (*sic utere tuo ut allenum non laedas*). A nuisance occurs when a land use interferes with a neighbour's or communities health, wellbeing or comfort in the occupation of his/her land. There must however be evidence of material interference and the complainant must not be oversensitive.

The test applied is one of reasonableness. In other words, would a reasonable man who is the neighbour or public believe that a water play park and large wooden decking- and seating area, which is contextually appropriate and complies with provisions of the Special Zone,

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complain about the land uses. In other words, would the existing land use for which an application is submitted, negatively affect the wellbeing of the neighbours or the public in the occupation of their land? Considering the merits and scale of the land uses which are applied for, a reasonable person would not be deprived of his/her right of occupation and wellbeing should this application be approved. The water play park and large wooden decking- and seating area, applied for are not noxious land uses which are project to deprive any resident in BC of any land use rights which are enjoyed.

13. PLANNING PRINCIPLES

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

Spatial Justice

Refers to the need to redress the past apartheid spatial development imbalances and aim for equity in the provision of access to opportunities, facilities, services and land. The additional employment opportunities relating to maintenance and cleaning created at the water play park and large wooden decking- and seating area, mostly benefit the previously disadvantaged. This allows employees who were unemployed to earn an income which enables access to opportunities, quality services, facilities and housing possible due to the additional income stream. This will therefore enable the subject development, the operation thereof and approval of this proposal to contribute to addressing spatial development imbalances caused by apartheid spatial and land use planning.

Spatial Sustainability

Spatial sustainability in the context of land use planning means promoting mixed use environments which allow for a functional space economy to flourish. The land uses on the subject property which are related to the tourism industry, promote a functional space economy and there is a complementary mix of tourism related land uses. The approval of this proposal will therefore enable the functional space economy on the subject property to flourish.

Efficiency

Efficiency refers to the need to create rural areas that optimise on the use of space, energy, infrastructure, resources and land. The water play park and large wooden decking- and seating area, promotes the optimal utilisation of space, energy, infrastructure, resources and land on the subject property while being in harmony with the valued architectural character and styling of the subject site.

Spatial Resilience

This proposal is not in conflict with any spatial resilience development proposals for the subject site highlighted in the PSDF, IDF, SDF and OMGMS. The land use/economic diversification on the subject property will therefore make the established commercial enterprise on the subject property to be able to absorb economic and environmental shock in a timely and efficient manner.

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Good Administration

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

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EVALUATION AND CONCLUSION

14. EVALUATION AND CONCLUSION

The following is a synopsis of the essential elements that make this proposal viable and practical:

Application

Amendment of a site development plan to accommodate the water play park and large wooden decking- and seating area.

BCE fabric

The existing buildings for which an amendment of the SDP is applied for contribute to the enhancement of the prevailing BCE fabric.

Zoning

- The water play park and large wooden decking- and seating area are primary rights on the subject property, encourage the existing tourism industry and are all primary rights and also comply with the definition of an outbuilding;
- The permissible coverage is 50% and the existing deck has increased the existing coverage to 17,3%;
- The deck is lower than 8m;
- No building lines are encroached upon; and
- There are 306 parking bays required and 309 parking bays are available on the property.

Services availability

Service	Availability yes or no
Electricity	Yes
Water	Yes
Waste	Yes
Sewage	Yes
Access and egress	Yes

Desirability

Element for consideration	Motivation	Impact Positive or Negative
Economic impact	The increased viability of the restaurant and wine tasting facility brought about by the water play park and large wooden decking- and seating area has a positive economic impact.	Positive
Social impact	The intercultural interaction of genteel clients on the subject property is a positive social impact which is enhanced by the water play	Positive

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EVALUATION AND CONCLUSION

	park and large wooden decking- and seating area, contributes to social cohesion.	
Scale of the capital Investment	The scale of the capital invested on the subject property illustrates the commitment of the property owner towards contributing to the aesthetically appealing built environment of BCE.	Positive
Impact on safety, health and wellbeing of the surrounding community;	The additional surveillance of genteel guests on the subject property can be regarded as enhancing the safety, health and wellbeing of the residents of BCE.	Positive
Impact on heritage	No heritage sensitive areas will be impacted upon.	Positive
Whether the imposition of conditions can mitigate an adverse impact of the proposed land use	There are several conditions of approval which are proposed which can guarantee that the subject proposal does not deprive surrounding property owners of land use rights which are enjoyed.	Positive

Spatial planning policies

The approval of this proposal is not in conflict with any spatial planning policies.

Planning Principles

Policy	Motivation	Compliance Yes or No
Spatial Justice	The approval of this proposal will enable the activities which occur on the water play park and large wooden decking- and seating area to continue to contribute to addressing spatial development imbalances caused by apartheid planning.	Yes
Spatial Sustainability	The use of the water play park and large wooden decking- and seating area are aligned with the principles of spatial sustainability.	Yes
Efficiency	This proposal promotes the efficient use of the subject erf.	Yes
Spatial Resilience	This proposal is aligned with the spatial resilience policy proposal which pertain to this site.	Yes
Good administration	The OM has a credible history of promoting good administration in the processing of land use applications.	Yes

WRAP

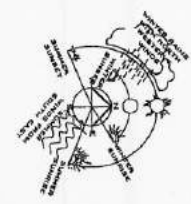
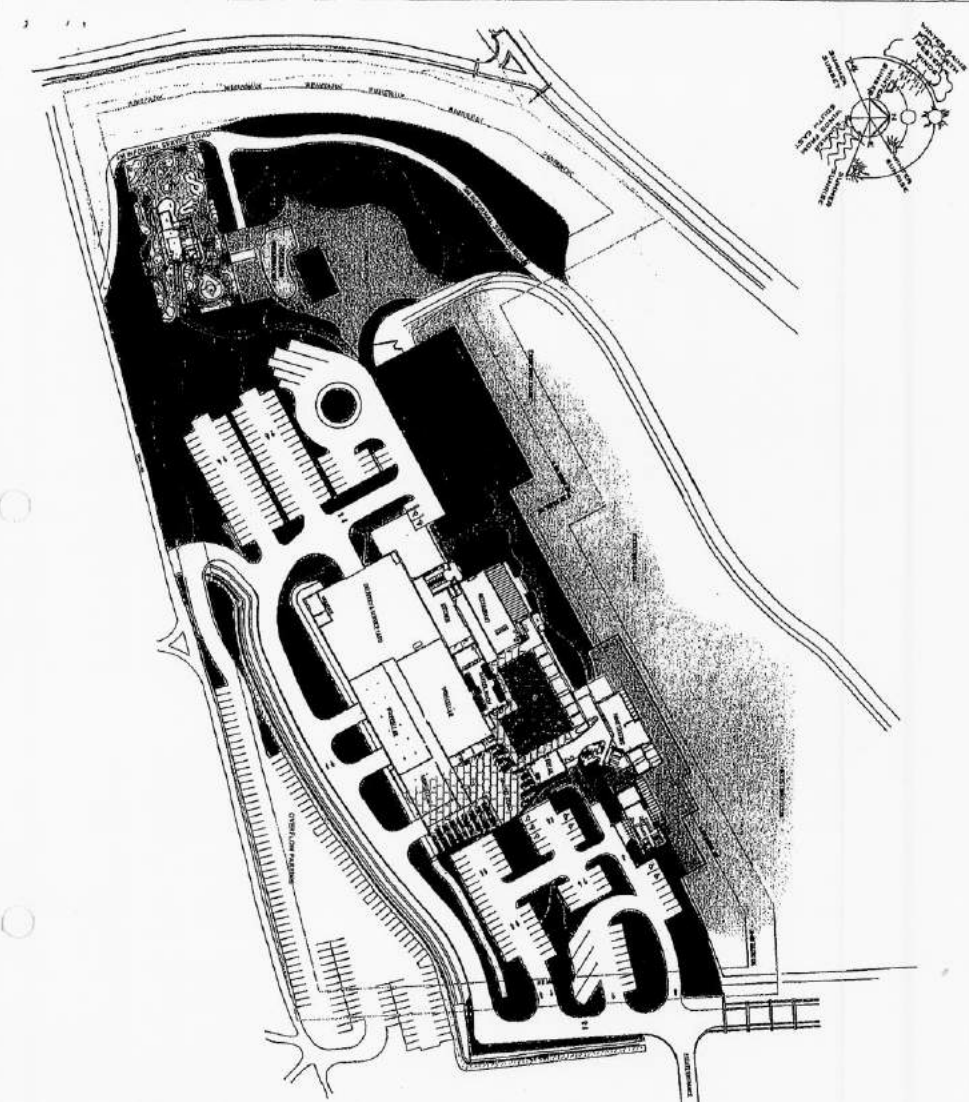
RECOMMENDATION

15. RECOMMENDATION

This motivation report has illustrated that existing water play park and large wooden decking and seating area are aligned with the prevailing architectural character and styling of BCE.

Considering the above, it is recommended that the following be **approved**:

- **Amendment of a site development plan** to accommodate the existing water play park and large wooden decking- and seating area in terms of Section 16(2)(l) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.



Plan 3: SDP
Portion 229 of Farm Afdaks
River 575 Caledon

	TREES		WATER RETAINING
	PLANTING		PAVING
	LAWN		RETAINING WALL
	ARTIFICIAL LAWN		LANTERN
	SWP CHANNEL		PROPOSED MANURE APPLICATION WHICH IS IN PROCESS 572M ²
	PROPOSED MANURE APPLICATION WHICH IS IN PROCESS 672M ²		PROPOSED MANURE APPLICATION WHICH IS IN PROCESS 34M ²

NIS
 The number 192079

Plan prepared by: Reaville Airdge
 based on plans drawn by Eben Ross & Associates and
 JLV Landscape Studio

All drawings are approximate
 and subject to a survey



114/118

LEYSON CONSTRUCTION CC

TRATHERT
(C. H. Olivier)



P.O Box 948
Somerset West
7129
Tel/Fax : 8515962
Cell : 0832935403
5 July 2019

For attention: S Muller & H Olivier

Re: Portion 229 of farm no 575 Benguela Cove, Hermanus, Overstrand Municipal Area

File reference: Ptn 229/575 HBENG

Dear Sir / Madam

Services 9.4 of your application refer to **Traffic impacts, parking and other transport related considerations**. The existing road network & parking area adjacent to the Pirate Golf & Water Park allows for any vehicle or person to enter into the home owners portion of the estate without any security checks. Furthermore the total parking of 306 bays includes a large portion of vehicles driving into the estate adjacent to the home owner's area again with absolutely no consideration of security in place.

Section 10 **Need and desirability, Impact on safety, health and wellbeing of the surrounding community**. Once again what is stated as additional surveillance on the subject property is non-existent as we have people and vehicles walking and driving right in front of our house all the time.

Section 10 **Whether the imposition of conditions can mitigate an adverse impact of the proposed land use**. Due to no security behind the winery and easy access into the home owners portion of the estate adjacent to the Private Golf & Water Park, we are now deprived of the privileges that one should have when living in a security estate. (We are not secure)

For the record we do hear **loudly and clearly**, music & voices from the Private Golf & Water Park

Should however the correct security be in place, we would not be writing this letter. The security or lack of security is of great concern to us. Please take this seriously before some criminal activity occurs which threatens somebody's life.

Yours sincerely

Richard & Lisa Southin
LEYSON CONSTRUCTION
147 Benguela Cove estate
0832935403 /0810420672

FILE NO:	Ptn 229/575
SCAN NO:	
COLLABORATOR NO:	1299721

6107 707 8 -

MEMBERS R.SOUTHIN
CK 98/26551/23

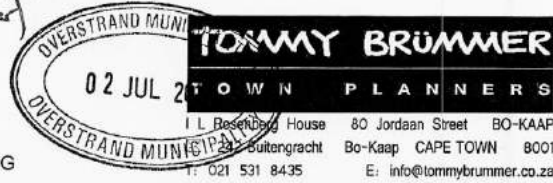
115/118

TRATHA
C. H. Olivier

Date: 1 July 2019

Ref:

Your Ref: 2948/2019;
Ptn 229/575 HBENG



The Director: Infrastructure and Planning
Overstrand Municipality
PO Box 20
Hermanus
7200

FILE NO:	Ptn 229/575
SCAN NO:	Benguela
COLLABORATOR NO:	1296897

Dear Sir

**OBJECTION: APPLICATION FOR AMENDMENT OF SITE DEVELOPMENT PLAN (SDP);
PORTION 229 OF FARM 575, CALEDON AT BENGUELA COVE**

1. Introduction

We act for the Austen Dundas Family Trust ("The Trust") who are property owners in the Benguela Cove Estate. The Trust is in receipt of your letter dated 3 June 2019, calling for comments or objections to the proposed Site Development Plan (SDP) amendment as advertised. This letter serves to submit the Trusts' objection to the application for, *inter alia*, the following reasons:

- **Contradictory Information:** The motivation contains contradictory information relating to the additional uses and infrastructure as proposed in the amended SDP. The contradictory information makes the objective assessment of the application problematic.
- **Impact on Character of the area:** The applicant does not give adequate consideration to the adverse impact the proposal will have on the character of the area or the impact on the surrounding landowners' existing rights, especially in terms of noise.
- **Impact on Existing Rights:** The applicant has not given adequate consideration to the full extent of the impact that the final development will have on surrounding properties. The manner in which the various SDP amendments (proposed market, additional marquee tent, water play park and deck seating area) are being applied for, in separate planning applications being run in parallel, does not allow for a complete evaluation of the cumulative impacts of all the additional uses. The potential impact of all the proposed additional developments on existing rights and well-being of the community, can thus not be properly assessed.

2. Contradictory Information

It is a commonplace principle of law that any application submitted to an administrative body such as the Overstrand Municipality should be made honestly and should include all relevant and material facts, so that the decision-making body can apply its mind in an informed manner and come to an informed decision, having taken all relevant and material considerations, including impacts on existing rights, into account.

Member: THOMAS BRIAN BRÜMMER
Registration Number: B, Sc M(TRP) Pr Planner A/281/1985
Tommy Brummer CC Registration Number: CK 94/032549/23
Vat Registration Number: 4900146830

- 2 JUL 2019

The motivation submitted by the applicant for the amendment of the SDP of the property contradicts itself, specifically with regard to the use and associated traffic generation of the wooden deck and water play park. In the extract from the motivation below, the applicant states that the water play park, wooden decking and seating area are to be/is used by guests who visit the restaurant and wine tasting and; "...it is therefore projected not to attract additional parking".

9.4 Traffic impacts, parking access and other transport related considerations

There is an existing road network on the subject property and there are 309 parking bays available. The town planning application which has been submitted and which runs concurrent with this application, illustrates that there are 306 parking bays required which means that there is an excess of 3 parking bays on the property.

The water play park and large wooden decking- and seating area are used by guests who visit the restaurant/wine tasting facility on the subject property and is therefore not projected to attract any additional parking, apart from that which the restaurant currently attracts.

Further in the motivation, when evaluating the impact of the proposed uses (see extract below), the applicant states that the uses will attract "additional genteel clients". This then must have implications for additional traffic and also noise generation. The applicant must be required to clarify the exact nature of users of the water play park, wooden decking and seating area, and provide additional parking for the "additional genteel clients".

<p>Impact on safety, health and wellbeing of the surrounding community:</p>	<p>Considering that the water play park and large wooden decking- and seating area attract additional genteel clients to the subject property, this leads to additional surveillance on the subject property. This surveillance enhances the safety and wellbeing of the visitors to the subject establishment and other residents in BCE.</p> <p>There are no noxious land uses which occur on the subject property and the health of the surrounding community will therefore not be compromised on.</p>	<p>Positive</p>
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3. Impact on Existing Character and Rights

Of greater concern to our clients is the negative impacts that the additional uses will have on the rights that they currently have in terms of the special zoning of Benguela Cove. The additional uses will have a negative impact on the peace and tranquillity that is enjoyed by the land owners, especially close to the tourist facility – which now appears to be taking on the character of an amusement park with all the proposed additional activities. The addition of playpark activities will not only generate additional traffic, but will by their nature, generate significant noise. This is in addition to the already noisy golf course and noise from the proposed market area.

The applicant, in evaluating the impact of the proposals on the 'quality of life', see extract below, notes that open space and openness between the proposed facilities and surrounding residences act as "...a buffer for other residents of BC and will ensure that minimal sound will be audible from the water play park and large wooden decking area and seating area, will not interfere with the peace and comfort which residents enjoy".

This statement is factually incorrect and flawed. It is common knowledge that **openness actually promotes the distribution of sound**. Noise barriers are therefore commonly erected between busy roads and abutting residential areas to block and disperse sound. The applicants' evaluation of impact is therefore incorrect and must be noted as '**negative**'. The additional uses at the golf course specifically, will have a significant noise impact on existing residents. This is

as a result of the openness, inadequate noise barriers as well as the possible absence of restricted operating hours.

Aspects which impact on quality of life (including views, sunlight, privacy, visual impact, character)	<p>The deck which has been constructed is not in any way visually intrusive and will not deprive any resident of BCE of any land use rights which are enjoyed.</p> <p>The subject property is also surrounded by a private open space and the agricultural area of BCE. The openness immediately adjacent to the subject property is a buffer for other residents of BC and will ensure that the minimal sound will be audible from the water play park and large wooden decking area and seating area, will not interfere with the peace and comfort which residents enjoy.</p>	Positive
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The applicant actually acknowledges that the proposal will have negative impacts by proposing a list of 'conditions' to be imposed that would 'mitigate' the impacts of the proposal – as indicated in the extract from the motivation report, below.

Whether the imposition of conditions can mitigate an adverse impact of the proposed land use	<p>The imposition of conditions of approval on the subject proposal is essential as it will ensure that the land use rights which surrounding property owners enjoy are not deprived.</p> <ul style="list-style-type: none"> • That all signage have to comply with the Overstrand Municipality By-Law on Signage; • That all development parameters in the applicable Special Zone and other title deed restrictions be 	Positive
	<p>complied with. This will ensure that the scale of the subject development remains within reasonable bounds;</p> <ul style="list-style-type: none"> • That building plans be submitted to the Building Department for approval as that will ensure that building is designed in accordance with prescribed legislation; • That all prescripts of the fire department be complied with to ensure that the subject building does not become a fire risk to the occupant as well as clients; • That all land uses on the subject premises not interfere with the peace, comfort or become an unbearable nuisance to surrounding property owners; and • That all other relevant legislation be complied with. 	

We are of the opinion that these proposed conditions are hopelessly inadequate to address the negative impacts that can clearly be anticipated by the proposed uses.

Council must consider imposing the following conditions if the proposals are considered for approval:

- There must be requirements for significant noise barrier installation around the water park, deck and seating area, including the golf course, to contain the noise generation.
- Additional large tree planting along the eastern boundary of the tourist facility must be required. This will also assist in reducing noise spill from the facility to the surrounding residential areas.
- Clear times of operation must be given to restrict the operating hours of the water park and associated facilities. Especially the outside deck and seating areas.

- The issue of additional parking must be addressed. The additional facilities will in our opinion (and per motivation from the applicant) generate additional patrons and not only be used by visitors to the restaurant and wine tasting.
- The applicant must be required to provide one complete SDP to indicate all additional uses and changes. This complete SDP, compliant with the By-Law, must be advertised for further comment.

4. Conclusion

We conclude that the current application is not adequately motivated and does not consider the actual impacts of the proposal. In fact, the motivation contradicts itself and presents the Council with statements that are factually incorrect. Council would do well to refuse the application on this basis but also when considering the potential negative impacts on the rights of the existing owners in Benguela Cove.

The approach by the applicant, to submit selected bits of development as separate SDP amendment applications is considered as an attempt to not fully disclose the final development and does not enable the Council or the public to adequately assess the potential impact.

Furthermore, we note that the SDP as submitted is not scaled and not dimensioned. This is contrary to the requirements of the By-Law on Municipal Planning, 2015 which defines an SDP as follows (our underlined highlighting):

"site development plan" means a scaled and dimensioned plan that shows details of the proposed land development including the site layout, positioning of buildings, structures, access, building designs and landscaping, as stipulated in the applicable Zoning Scheme Regulations;"

Council can therefore not approve the SDP as submitted and must require that the SDP comply with the legal requirements as per the By-Law.

Finally, should the application be considered for approval, Council must at the very least impose conditions to limit noise dispersal and restrict time of operation to limit noise impacts. Such measures may reduce negative impact on existing rights.

Yours faithfully



Tommy Brummer

TOMMY BRÜMMER TOWN PLANNERS
July 2019



TP N. Oliva
ANNEXURE E 1/13
(1.1. Oliva)

Project Office

Town Planning & Project Management



Our Reference: 19/019
Your reference: PTN 229/575 HBENG

20 August 2019

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

FILE NO: PTN 229 / 575
Benguda ✓
SCAN NO:
FARM 575
COLLABORATOR NO:
1317335

Attention: Mr Henk Olivier

PORTION 229 OF FARM AFDAKS RIVIER 575 CALEDON: APPLICATION FOR AN AMENDMENT OF A SITE DEVELOPMENT PLAN

Comments and objections were received from:

- J Viljoen;
- M & R Diessner;
- CS McCarthy;
- V & IM Buchholz;
- M & S Prew;
- R & J Chopamba;
- Anneli van Zyl Attorneys obo Karl & Sarah Properties (Pty) Ltd;
- N Buchholz;
- Anneli van Zyl Attorneys obo K Oswald-Diesel;
- DECA Consulting (E Schoeman);
- Leyson Construction (R & L Southin); and
- Tommy Brummer Town Planners obo the Austen Dundas Family Trust.

Response to objections pertaining to impact related considerations

Objection	Comment
When we purchased our property at Benguela Cove we gave consideration to the site development plan and the approved activities. Our purchase was based on this. The proposed amendment will again be a step in the direction to fundamentally change the character of the estate.	The water play park, wooden decking and seating area are all primary rights on the subject property. The subject structures are all lower than 1m and not visually intrusive and are therefore in harmony with the current character of the site. The proposed amendment of the site development plan is not unlocking additional development rights which the objector did not expect.

Response to objections pertaining to the Benguela Cove constitution related considerations

Objection	Comment
<p>Non-compliance with the Constitution of Benguela Cove Estate:</p> <p>Benguela Cove Investments (Pty) Ltd (hereinafter referred to as BCI) is the developer of the Benguela Cove Estate and the owner of Portion 229 of the Farm 575, Afdakrivier, and the Company is as such also a member of the Benguela Cove Estate Home Owners Association.</p> <p>The Estate and its Home Owners Association is governed by a formal Constitution, which requires from the members of the Association to follow specific procedures concerning particular matters. In the instance of the application to amend the Site Development Plan of Portion 229, BCI should have approached the Association as well as the Urban and Architectural Review Control Committee to obtain consent for the matter(s) in question, but BIC did not do so.</p> <p>"Internal Land-Use Management Instruments of the Benguela Cove Estate"</p> <p>The character of the Benguela Cove Estate is generally made up of the rights of the individual home owners, the intended architecture and the local environmental aspects, and these dynamics are predominantly managed and protected by means of the following legal documents:</p> <ol style="list-style-type: none"> i. The Urban & Architectural Design Controls, March 2018, and ii. The Benguela Cove Home Owners' Association Constitution, updated 2018. <p>In the correspondence received from BCEHOA it was pointed out that the Estate's Constitution addresses matters concerning the sub-division and / or rezoning of land units within the Estate, and the following</p>	<p>Voting</p> <p>The contents under the voting heading only pertain to the process regarding internal decision making and has no relevance to the submitted proposal.</p> <p>Dealing with common property</p> <p>In terms of Section 2.4.4 of the BCHOA the subject property is not common property as it is explicitly excluded from the definition of common property. The consent of the BCHOA is therefore not required.</p> <p>No subdivision or rezoning and not more than one dwelling</p> <p>The submitted proposal does not entail a subdivision, rezoning or the construction of a dwelling unit. The consent of the BCHOA is therefore not required.</p> <p>Building standard rules and aesthetic approval</p> <p>The submitted application relates to conferring the most appropriate land use rights to the existing water play park, wooden decking and seating area. The seating area, pool and wooden deck are all lower than 1m and are therefore not regarded as buildings in terms of the National Building Regulations and Building Standards Act No. 103 of 1977. The consent of the BCHOA is therefore not required as the subject land uses are not regarded as buildings.</p> <p>Membership</p> <p>The contents under the heading elucidate what each property owner must comply with to be a member of the BCHOA and conditions which need to be complied with before any property is transferred. The section which refers to building works can therefore only be evoked before a property is transferred.</p>



conditions in the Constitution are thus in question.

Heading- "20. VOTING"

- 20.7 Notwithstanding anything contained in this constitution, any resolution or the amendment of a resolution
- 20.7.1 which would have the effect of amending or repealing any part of this constitution, or
- 20.7.2 which would have the effect of amending or repealing paragraph 31 of this constitution which paragraph precludes subdivision or rezoning of the erven or the erection of more than one dwelling per erf, or
- 20.7.3 which would have the effect of amending or repealing paragraph 32 and 33 dealing with the Urban and Architectural Review Controls Manual the Architectural Controls, shall require a 75% (three quarters) majority of all Members entitled to vote before the resolution may be passed, which shall be known as a special resolution.

and

Heading- "30. DEALING WITH COMMON PROPERTY"

- 30.1 Neither the whole nor any portion of the common property shall be:
 - 30.2.3 subjected to any rights, whether registered in the Deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof, or which allow for agricultural activities to be conducted similar in nature to the Agricultural Enterprise; or
 - 30.2.4 built upon, improved or enhanced in value by the construction of buildings, erection of facilities or amenities, other than as contained in this constitution and in the approved layout plan, without the sanction of a special resolution of the Members of the Association;
- and

The submitted proposal pertains to the conferring of appropriate land use rights to the existing structures and the OM is the decision-making authority in this regard and not the Urban Architectural Review Committee.



Heading- "31. NO SUBDIVISION OR REZONING AND NOT MORE THAN ONE DWELLING"

31.1 No Member shall be entitled to subdivide or rezone his erf, it being noted that that Erf 228 has been zoned as the Hotel and Related Facilities Development, together with the Agricultural Enterprise, which shall enjoy a separate zoning status commensurate with its function as main farm complex for the cultivation, harvesting, processing and marketing of the produce of the agricultural property, together with the Commercial Component, being Erf 229, comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial.

and

Heading- "3 2. BUILDING STANDARD RULES AND AESTHETIC APPROVAL"

- 32.1 It is recorded that the Trustee Committee has appointed the Benguela Cove Urban and Architectural Design Review Committee which comprises of Ellis Associates Architects and two Members appointed by the Developer. In compliance with paragraph
- 4.6.2 above no owner or any erf shall be entitled to build on his erf or effect any improvements thereto or erect any structures thereon without the prior approval of the Urban and Architectural Review Control Committee, hereinafter referred to as UARCC..."
- 32.2 No owner of any erf shall be entitled to alter any construction thereon or alter or vary the design or facade of his building, dwelling or improvements so constructed, without written approval of the said UARCC."

Paragraph 4.6.2 as referred to in the above reads as follows:

Heading - "4. MEMBERSHIP"

- "4.6 No Member shall be entitled to transfer an erf, unless a duly authorised representative of the Trustee Committee



or the relevant party to which such function has been delegated has in writing consented to the transfer, and the following conditions of title are imposed, namely:

- "4.6.2 No improvements, alterations, restructuring, repairs or any building work of any nature shall be affected to the property, nor shall the access to the property be altered, without the prior written approval of the Association."

The "Association" means, as per the definition, the "Benguela Cove Lagoon Owners Association".

(As an informative footnote to the above extracts from the Estate's Constitution, it is stated that cognisance should be taken that "Rezoning" in terms of the Overstrand Municipal Planning By-Law (2015) means the change in zoning in relation to a particular land unit or units or portion of a land unit in terms of Planning Law).

The following is derived from the information provided above:

- The amendment of the Constitution requires 75% support of the members of the Association.
- The Benguela Cove Lagoon Owner Association, with a special resolution, has the mandate in terms of the common property to:
- Allow building, improvement or enhancement etc other than that shown on the original approved layout plan. The latter is interpreted to also include the SDP.
- The Urban and Architectural Review Control Committee (UARCC), as appointed by the Trustee Committee, has the mandate to allow the approval of building plans of any structure, including improvements and alterations to structures, and to vary the design or facades.

In consideration of the aforementioned, it can be argued that a change in land-use that requires a departure and consequent



amendment of the (approved) SDP, should be subjected to the permission of the Members of the Benguela Cove Lagoon Owners Association and by passing a special resolution with the effect thereto.

No consent was obtained from the Benguela Cove Home Owners Association for the facilities already constructed on the commercial property, and neither were those facilities formally approved by the Municipality. Regarding the application in question, the Developer has once again failed to engage with the Home Owners.

"BCI do not appear to have received approval by the Urban Architectural Review committee as set out in the Homeowners Constitution which requires a special resolution in order to approve additions/alterations."

Response to objections pertaining to engineering capacity related considerations

Objection	Comment
<p>The attached report by DECA Consulting is self-explanatory insofar as the updating/amendment of certain engineering services documents are concerned.</p> <p>Impact on the Environment:</p> <p>a. Benguela Cove is a Water Scarce Area: Running a water park uses a large amount of water. Surely it is not a good idea to do this in a water scarce area.</p> <p>According to the Application, in section "9.2 water", it states that water is received from the Fisherhaven reservoir.</p> <p>The Fisherhaven reservoir gets water from "De Bos Dam" (according to this document "OVERSTRAND MUNICIPALITY: WATER SERVICES DEVELOPMENT PLAN")</p> <p>The Current Dam levels (from here): De Bos Dam Date: 8 July 2019 Current storage: 48.1% Storage level last week: 37.7%</p>	<p>Water</p> <p>The objector is highlighting that water storage levels at the De Bos Dam increased from 37.7% to 48.1% in one week. The objector is therefore illustrating that the water stored in dams is increasing. It is common practice for properties to have pools in Benguela Cove and it is unclear as to why the owner of the subject property should be denied of the same right.</p> <p>The water in the subject park is not discharged into the lagoon but is treated on site. This prevents the adverse impacts on the precious wildlife of Benguela Cove.</p> <p>National Environmental Management Act</p> <p>No listed activities in the National Environmental Management Act are triggered by this proposal. This nullifies the need to obtain authorisation.</p> <p>Services</p> <p>The impact of the exiting water play park, wooden decking and seating area does not require the amendment of the services report due to the small-scale nature of the</p>



After a huge amount of rain this Winter, we are still only on 48.1 %. Surely, we should not approve plans to operate a water park at this level.

b. Benguela Cove is a protected nature reserve.

A waterpark uses a huge amount of chemical in water to keep it clean. Surely this will affect marine and wildlife in the area.

Additionally, the noise will probably chase away many of the bird species in the area (who are typically sensitive to sound disturbances).

Has the necessary environment impact assessments been done?

If so, please send me the impact assessment reports so that I can study them as I simply cannot believe this would be acceptable to the nature reserve site.

The amendment of the existing Site Development Plan of the commercial property at Benguela Cove Estate, in essence, proposes (a) the legalization of facilities that were constructed without formal Municipal approval, and (b) the addition of new facilities that are still to be constructed.

We have with the aforesaid in mind conducted an assessment of the existing documentation that addresses the bulk and internal engineering services of Benguela Cove Estate, and concluded that the following documents would have to be updated/amended to reflect the status quo of the proposed amendments to the Site Development Plan:

(i) Services report concerning Benguela Cove Estate and the Site Development Plan for Ptn 2 of Farm 575, Afdakrivier-DECA Consulting, 08 June 2016.

land uses. The land uses are also not an unbearable burden on the existing services on the subject site which nullifies the need for the services report to be updated. The owner of the subject property does not have to amend a site development plan for Portion 2 of Farm 575, Afdakrivier, as the property is in the ownership of a different entity.

Additional development levies are only applicable when additional land portions are created which have additional land use rights which is not the case with the submitted application. The existing water play park, large wooden deck and seating area could however lead to the marginal increase of the value of the subject property. The increase which will be recorded when the OM updates the valuation roll will result in additional rates paid by the property owner. Additional development contribution levies are therefore not applicable in this instance.

The service agreement between the Overstrand Municipality and Benguela Cove Investments (Pty) Ltd would only have to be amended if the nature of additional land uses necessitates that.

Security

The guest who visit the Pirate Golf Course & Water Park area do not roam into the BC home-owners portion as there is no need to do so.

There is security at the entrance of BC and at different entrances into the BC home-owners portion of the estate. These tight security measures prevalent in the area as well as the additional surveillance of the guests has a positive impact on the security of the area.

The users of the water play park, wooden decking and seating area primarily visit the subject site to eat at the restaurant. This therefore makes the water play park, wooden decking and seating area an ancillary and subservient land use which



(ii) Calculation of Development Contribution levies- DECA Consulting, 2017.

(iii) Services Agreement between the Overstrand Municipality and Benguela Cove Investments (Pty) Ltd - DECA Consulting, 2017.

The extent of the facilities and amenities at Benguela Cove Estate govern the content and context of the aforementioned documents, and it should therefore be updated/amended to reflect the latest services requirements at Benguela Cove Estate.

"We are very concerned about the water usage for a water park in the drought affected Western Cape."

"Services 9.4 of your application refer to Traffic impacts, parking and other transport related considerations. The existing road network & parking area adjacent to the Pirate Golf & Water Park allows for any vehicle or person to enter into the home owners portion of the estate without any security checks. Furthermore, the total parking of 306 bays includes a large portion of vehicles driving into the estate adjacent to the home owner's area again with absolutely no consideration of security in place."

"Contradictory Information: The motivation contains contradictory information relating to the additional uses and infrastructure as proposed in the amended SDP. The contradictory information makes the objective assessment of the application problematic."

It is a commonplace principle of law that any application submitted to an administrative body such as the Overstrand Municipality should be made honestly and should include all relevant and material facts, so that the decision-making body can apply its mind in an informed manner and come to an informed decision, having taken all relevant and material

does not attract guests who exclusively visit the subject site with the intent of swimming in the pool or sitting at the seating area.

Parking

The owner of the subject property constructed the water play park, wooden decking and seating area with the hope that it would attract more guests at the restaurant who would later use the land uses applied for. It should therefore be noted that the restaurant already provides sufficient parking in terms of the applicable Special Zone requirements and that the provision of additional parking is not necessary.



considerations, including impacts on existing rights, into account.

The motivation submitted by the applicant for the amendment of the SDP of the property contradicts itself, specifically with regard to the use and associated traffic generation of the wooden deck and water play park. In the extract from the motivation below, the applicant states that the water play park, wooden decking and seating area are to be/is used by guests who visit the restaurant and wine tasting and; "...it is therefore projected not to attract additional parking."

"Further in the motivation, when evaluating the impact of the proposed uses (see extract below), the applicant states that the uses will attract "additional genteel clients". This then must have implications for additional traffic and also noise generation. The applicant must be required to clarify the exact nature of users of the water play park, wooden decking and seating area, and provide additional parking for the "additional genteel clients"

Response to objections pertaining to noise and light related considerations

Objection	Comment
<p>I bought into the estate because it was sold as a quiet exclusive estate. "the lowest density estate in south Africa".</p> <p>"I expected a quiet escape away from the noisy cities. I am concerned about the noise disturbance of a fully operational water park full of playing and screaming kids. I believe this will negatively impact my property value, since it's value is largely due to the area being a quiet, protected, isolated and exclusive nature reserve."</p> <p>"I am not opposed to the enhancement of the commercial development side of the Benguela Cove Estate, however I object to any noise pollution and light pollution. We purchased this property for the peaceful and tranquil ambiance that the estate offers and to be utilised as a family home where we spend weekends and holidays to relax and recharge. It would be extremely</p>	<p>The noise levels which can be emitted from the seating area, water play park and wooden deck is minimal. The subject property is surrounded by an open space and agricultural component. This acts as a buffer which minimises the impact of any noise which could be emitted from the subject property.</p> <p>It is clear from the comments that the water play park which is currently in operation has not become a disturbance as the objector is worried about the prospects of screaming kids. There is therefore no reason to believe that the subject water play park will lead to screaming kids disturbing the tranquillity which BC home owners enjoy as it is not currently occurring on the property.</p>



unfortunate if we had to endure noisy weekends on a permanent basis with bright spotlights at night.

Any live entertainment and events should be limited to inside the building only as even the marquee will not contain the noise emanating from such events."

"As home owners close to the portion 229 we have already experienced noise disturbance from the Golf Course (Put-Put). The applicant has outside speakers installed within the Golf Court (Put-Put) were loud music and sound effects are played which are a very disturbance depending of the wind direction."

"Furthermore, the applicant does not adhere to the restrictions defined in the approval of the Municipality of April 2019. He has still organised open air concerts and music events playing extremely amplified music (for instance 05-04.2019 and 09-04-2019) until long after midnight."

"The applicant has installed floodlights in and around the Golf Course (Put-Put) which distracts wildlife such as bats and night birds during the night."

The submitted proposal does not relate to any live entertainment or a marquee tent.

The Golf Course (Put-Put) has been approved by the OM. The subject site is a commercial site and not an animal conservation area.

The submitted application is not related to the Golf Course (Put Put) area.

Response to objections pertaining to security related considerations

Objection	Comment
<p>"Section 10 Need and desirability, impact on safety, health and wellbeing of the surrounding community. Once again what is stated as additional surveillance on the subject property is non-existent as we have people and vehicles walking and driving right in front of our house all the time.</p> <p>Section 10 Whether the imposition of conditions can mitigate an adverse impact of the proposed land use. Due to no security behind the winery and easy access into the home owners' portion of the estate adjacent to the Private Golf & Water Park, we are now deprived of the privileges that one should have when living in a security estate. (We are not secure)"</p>	<p>The vehicles which drive in front of the objector's property are either those of the BCHOA members or the guided tours which are operated by the owner of the subject property. The security guards at the entrance points of the BC home owners portion screen the guests for security reasons before entering the estate.</p> <p>The matter pertaining to deploying more security on the estate can be raised by the objector in the meetings which are held regularly by members. This would be the most appropriate manner in which this concern can be resolved.</p>



Response to objections pertaining to procedurally related considerations

Based on the information that is contained in the attached report by Interactive Town & Regional Planning, it is the Association's understanding that building plans for the water play park, wooden deck and other amenities have as yet not been approved by the Municipality. The latter implies that Occupancy Certificates for these amenities could as yet not been issued, which means that the Public is using the amenities "at risk".

It then stands to reason that the use of the non-approved amenities should be discontinued formally until such time as the Municipality has approved the necessary building plans and issued Occupancy Certificates in accordance with the Occupational Health & safety Act.

"Use of Existing Facilities in the absence of Approved Building Plans Based on the information that is contained in the attached report by Interactive Town & Regional Planning, it is the Association's understanding that building plans for the water play park, wooden deck and other amenities have as yet not been approved by the Municipality.

The latter implies that Occupancy Certificates for these amenities could as yet not been issued, which means that the Public is using the amenities "at risk".

It then stands to reason that the use of the non-approved amenities should be discontinued formally until such time as the Municipality has approved the necessary building plans and issued Occupancy Certificates in accordance with the relevant sections of the Occupational Health and Safety Act.

I strongly believe that the applicant must follow due process, not only by complying with the requirements of the Benguela Cove constitution but also with the relevant Overstrand By-laws and the various Acts as mentioned in the attached documents.

The owner of the subject property appointed WRAP to institute a process where the existing wooden deck, water play park and seating area can be conferred the most appropriate land use rights. This illustrates the sincere intent the property owner has to comply with all prescribed regulations. There is therefore no need for the cessation of the subject land uses until the OM decides on the proposal.



In closing, I find it very disturbing that - according to the expert report - the applicant has commenced with business activities on erected structures that were built without even submitting building plans. We have taken our children to the play park and have paid an entrance fee and were unaware that those structures were not approved.

This type of attitude by the applicant is disrespectful towards the Overstrand Municipality and any law-abiding rates & tax payers and should not be tolerated at all.

Once the applicant complies with regards to the abnormalities pointed out in the report, then I personally do not have any objection to them exploring their commercial activities - but it must be within the framework of the law.

It is trusted that the above is clear and that the Municipality would value and concede to the merits of this objection."

Objections pertaining to an application NOT RELATED to the submitted application.

c. "Amendment of the Site Development Plan and Departures for a "market" and "a place of entertainment" - 2018 (the second application- Refer to Annexure A)

Following the approval of the original application, a second application was submitted during November 2017 for the amendment of the Site Development Plan, with a departure to allow for "a market" and "a place of entertainment" as part of the existing restaurant, a section of a wine cellar as well as a marquees tent .

The second application was advertised for public comment during March 2018, with a date of closure for comments on 6 April 2018. According to the Overstrand Planning Department, the second application was approved in part more than a year later on 19 March 2019.

The Overstrand Planning Department confirmed that, as part of the resolutions for approval, the place of entertainment was restricted (mitigated) to include operations of the "place of entertainment" and "market" on the inside of building and the courtyard areas only. This implies the that the areas proposed for "place of entertainment" and "market" outside the existing buildings and the courtyard, including the marquees tent, were not supported.

Comment supporting the submitted application.

"The development proposal as reflected in the amendment of the Site Development Plan (SDP) as described in this document, can be seen as an enhancement of the commercial development side of the Benguela Cove Estate, and it is not likely to affect the character



of the non-commercial side of the Estate (Refer the scale and limited extent of the proposal for the (1) water play park, (2) large wooden deck and (3) seating area)."

An evaluation done of the submitted proposal.

The objectors highlight that the existing land uses are not negative. The comments made by the objectors are therefore not refuted.

"The impact of the existing non-approved structures on the existing commercial development at Benguela Cove Estate is, from a tourism perspective, generally considered to be aligned with the Town Planning Criteria that is relevant to the property.

The objections are noted however there is no material evidence provided which justifies the refusal of the submitted application.

Yours faithfully

A handwritten signature in black ink, appearing to read "Rea Jankie", is written over a horizontal line.

REA JANKIE

TOWN PLANNER (B/8392/2017)

OVERSTRAND SECTION 8 SCHEME REGULATIONS**BENGUELA COVE****Introduction**

Application is hereby submitted in terms of clause 3.28 of the Section 8 Scheme Regulations for the addition of a further Special Zone to include the following parameters;

SPECIAL ZONE 2

- 2.1 Colour notation : blue-green.
Primary use : Tourism Business; House of Worship.
Consent uses : None.
- 2.2 Land Use Restrictions
- Floor factor : 0.75
Coverage : 50%
Height : at most 8m or 2 storeys, provided that in the case of the winery, the maximum height shall be 14m.
Street building line : 10m
Side building line : A minimum of 10m provided that council may lay down side building lines in the interests of public health and safety or to enforce any law or right.
Parking : at least 1 parking bay per 25m² of the total floor space, provided that in the case of a "Place of Worship" 1 parking bay per 5 seats.

2.3 Parking and site access

- i Vehicular access shall be provided to the satisfaction of the council;
- ii If the corner at a street intersection is not splayed, vehicular access or exit ways shall be not closer than 10 m to such corner;
- iii Parking areas shall be duly constructed to the satisfaction of the council;
- iv Parking areas shall be used exclusively for the parking of vehicles which are lawfully allowed access and shall not be used for trading or any other purpose;
- v The way in which it is intended that vehicles should park and gain access to or exit from such parking area shall be indicated on a plan which shall be submitted to the council, who may approve or reject it or lay down any conditions deemed necessary by the council;
- vi The council may lay down more restrictive requirements than those mentioned above if deemed necessary from a traffic point of view.

2.4 Site development

- i Should a combination of the primary uses be developed on a site, a maximum coverage of 50% will be applicable;
- ii Only one dwelling house will be permitted per erf, inhabited by the owner / employee of the tourism business or cottage industry concerned;
- iii Flats will only be permitted if a tourism business or cottage industry concern exists on the subject erf;
- iv a dwelling house will only be permitted if a tourism business or cottage industry concern exists on the subject erf;
- v The manufacturing section of a cottage industry concern, shall not exceed more than 50% of the floor area of such a concern;
- vi Any development on an erf will be subject to the approval of a site development plan by the council indicating all existing and proposed structures, and their use and parking layout indication the number of parking bays provided;
- vii All structures shall comply with the Benguela Cove approved design manual and approved by the appointed architectural review committee.

2.5 Definitions

Arts & craft shop means the use of a building or portion of a building where hand made goods are produced, displayed and sold to the general public.

Conference facility means the use of a building for the hosting of conferences and can include committee rooms, auditoriums, dining rooms and on-site consumption of alcoholic beverages.

Guesthouse means a building , excluding a hotel, hostel or boarding house, consisting of a number of dwelling units or guest rooms, which are equipped for and may be utilized by travellers or holiday makers which in the opinion of the council are of a short term nature, provided that the units or guest rooms are marked for rental only and which can be licensed in terms of the Liquor Act 1989 (Act 27 of 1989) as amended, for on-site consumption of alcohol and subject to any conditions or restrictions that may be imposed by the council, and may include a restaurant, but excludes a cash bar.

Guest rooms means rooms, other than rooms occupied by the owner / manager and their families, that are fitted to be used by travellers or holiday makers and which are rented for a short term on a bed-and-breakfast basis.

Restaurant means a business which can be licensed or not , where food and refreshments are prepared and served to clients and in which on-site consumption of liquor has been legalised in terms of a liquor licence issued, but excludes a tavern.

Tourism business means the utilization of a site and / or the buildings on the site for business activities, such as deemed by the council as important to encourage the tourism trade and seen as relevant to the tourism trade and which are related to the tourism trade and includes restaurants, guesthouses, guest rooms, wineries, souvenir shops, tourist information centres, antique shops, art & craft shops, art galleries, interior decorators, travel bureaus and conference facilities.



BENGUELA COVE
HOME OWNERS' ASSOCIATION
CONSTITUTION

UPDATED 20th APRIL 2018

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10 JAN 2019

* 20th April 2018: Maria De Vries, 2018/0075 Special Resolution to the New Constitution of the HOA

OVERSTRAND MUNICIPALITY
DEPARTMENT: TOWN PLANNING
P O BOX 20, HERMANUS, 7200

Benguela Cove
LAKESIDE HOME OWNERS ASSOCIATION

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 - (C) CONSTRUCTION ENVIRONMENTAL MANAGEMENT PLAN
 - (D) URBAN AND ARCHITECTURAL DESIGN CONTROLS MANUAL
 - (E) BY-LAWS RELATING TO THE CONTROL AND USE OF THE BOT RIVER ESTUARY
[Government Gazette No. 5095, P.N. 480/1996 dated the 15th November 1996]
 - (F) BUILDER'S CODE OF CONDUCT

1. NAME

The name of the Association is: "Benguela Cove Home Owners Association"

2. DEFINITIONS

2.1. The headings to the paragraphs in this constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

¹ 07th April 2018, Marais De Smet, 20180007 Special Resolution 14-Removal of aesthetic approval clause

² 07th April 2018, Marais De Smet, 20180007 Special Resolution 15-Deposit

³ 07th April 2018, Marais De Smet, 20180007 Special Resolution 21-New standard building

10 JAN 2019

OVERSTRAND MUNICIPALITY
DEPARTMENT: TOWN PLANNING
P O BOX 20, HERMANUS, 7200



- 2.2 Words importing the singular shall include the plural and vice versa.
- 2.3 Words importing the masculine shall include the feminine.
- 2.4 Unless the context clearly indicates a contrary intention, the following words and expressions shall bear the following meanings:
- 2.4.1 "the Developer" shall mean Benguela Cove Investments (Pty) Ltd, Registration No. 2002/004722/07, Ambition House, 107 Voortrekker Road, Bellville, Cape Town, 7535.
- 2.4.2 "the development" or "the estate" shall mean the land together with all improvements and services thereon.
- 2.4.3 "erf" shall mean a portion of private land owned by the Member within the development which shall have been allocated a cadastral number by the surveyor general upon approval of the general plan.
- 2.4.4 "the common property" shall mean the land transferred to the H.O.A., which shall include Erven 222 to 227 inclusive, which is designated as Private Roads, Erven 205 to 211 and Erven 214 to 220 inclusive, which is designated as Private Open Spaces, Erf 221 which is designated as the Nature Reserve and Erf 212 which is designated as the Grazing Area, but shall exclude Erven 231 and 232, which is designated as the Agricultural Enterprise which shall be retained by the Developer for the cultivation of vines, olives and lavender fields, together with all the residential erven, the hotel, being Erf 228 and the commercial component, being Erf 229 within the development and all the dams, being Erf 213.
- 2.4.5 "The Agricultural Enterprise" shall mean the Vineyards, the Olive trees and the Lavender fields and dams, Situated on Erven 231, 232 and 213.
- 2.4.6 "The Commercial Component shall mean Erf 229 which includes the Public Area, being the Winery, Restaurant, Farm Stall, the Chapel and the Conference facilities, but the Members shall have certain rights over these facilities as governed by the Agricultural Benefits Agreement.
- 2.4.7 "the general plan" shall mean the general plan relating to the land as approved by the surveyor general.
- 2.4.8 "the association" shall mean the Benguela Cove Lagoon Home Owners Association.
- 2.4.9 "the Act" shall mean the Companies Act No. 61 of 1973.
- 2.4.10 "occupant" shall mean any person lawfully occupying an erf by virtue of his relationship to or with a Member of the Association.
- 2.4.11 "HADRC" means the Urban and Architectural Design Review Committee.

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3. OBJECT AND PURPOSE

- 3.1 The main business of the Association is to promote, advance and protect the interests of its Members, relative to their ownership of erven in the development.
- 3.2 The main object and purpose of the Association is to provide for:
- the promotion and enforcement of standards in keeping with the character of the Benguela Cove Lagoon Wine Estate development, in such a way that Members derive the maximum collective benefit
 - control over and protection and maintenance of the common property of areas regarded as common to all Members, and to apportion the expenses in relation thereto between the Members by the charging of levies to the Members.
- 3.3 It is recorded that the agricultural property within the development designated for the cultivation of vines, olives trees and lavender fields are under the direct control and ownership of the Developer, notwithstanding the fact that the Developer has granted the H.O.A and its Members certain rights and benefits, which are governed by the Agricultural Benefits Agreement annexed hereto marked Annexure "A". It is further recorded that notwithstanding the aforementioned ownership of the Developer, the Developer shall be unconditional obliged to develop the agricultural enterprise and commercial facilities in order to fulfil its obligations to the H.O.A and its Members in terms of the aforementioned Agricultural Benefits Agreement.

4. MEMBERSHIP

- 4.1 Membership of the Association shall be limited to registered owners of erven in the development which Membership shall commence simultaneously with the transfer of an erf in the development into the name of the registered owner; provided that:
- 4.1.1 a person who is entitled to obtain in terms of the provisions of Section 43 of Act No. 47 of 1937 a Certificate of Registered Title to any such erf shall be deemed to be registered owner thereof;
- 4.1.2 when any such owner is more than one person or entity, all the registered owners of that erf shall be deemed, jointly and severally, to be one Member of the Association.
- 4.2 When a Member ceases to be the registered owner of an erf, he shall immediately cease to be a Member of the Association. The registered owner of an erf may not resign as a Member of the Association.

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- 4.3 The rights and obligations of a Member are not transferable and every Member shall;
- 4.3.1 to the best of his ability further the aims and objects of the Association and;
- 4.3.2 observe and be bound by, this constitution and all rules and regulations made by the Association or by the Trustee Committee from time to time.
- 4.4 Nothing contained in this constitution shall prevent a Member from ceding his rights in terms of this constitution as security, to the mortgagee of that Member's erf.
- 4.5 Each Member of the Association shall be jointly liable for any expenditure incurred in connection with the main object or purpose of the Association and for anything done by the Association with the intention of benefiting its Members. The Association shall charge monthly levies to cover all expenses which are incurred or anticipated, and which shall be borne by each Member equally, as to a 1/126 share per erf until such time as the buildings are completed on the Hotel Site, the Public Areas and the Commercial Components, thereafter the Association shall charge monthly levies to cover all services to be provided, which shall amount to approximately 1/136 of the total costs save for the Hotel and Commercial Components, which shall be levied at 6/136 each respectively of the total costs. It is hereby recorded the H.O.A has entered into a Services and Maintenance Agreement with the Developer and that all Members have been made aware of such agreement as per Annexure " b ". It is further recorded that the Agricultural Enterprise shall be liable and obliged to meet all of its own costs and/or expenses from services received and all maintenance of its Enterprise and thus will not be liable to pay any levies to the H.O.A.
- 4.6 No Member shall be entitled to transfer an erf, unless a duly authorised representative of the Trustee Committee or the relevant party to which such function has been delegated has in writing consented to the transfer, and the following conditions of title are imposed, namely:
- 4.6.1 The property, or any part thereof, shall not be transferred without the written consent of the Benguela Cove Home Owners' Association of which the Purchaser and his successors in title, for so long as they are the registered owners of the property, shall be obliged to be a Member and bound by its constitution, rules and regulations.
- 4.6.2 No improvements, alterations, restructuring, repairs or any building work of any nature shall be effected to the property, nor shall the access to the property be altered, without the prior written approval of the Association.
- 4.7 A consent to transfer an erf as contemplated above shall be withheld by the Trustee Committee until the following have been complied with:
- 4.7.1 Levies and any other amounts due to the Association by the registered owner (and all

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occupants claiming through him) of the property sought to transferred, have been paid up to date to transfer or that provision has been made to the satisfaction of the Trustee Committee for the payment thereof against registration of transfer

4.7.2 All structures and improvements on the property sought to be transferred, not approved of by the UADRC of the Association as contemplated herein, have been removed to the satisfaction of the UADRC or the approval of the UADRC has been given in respect of such structures or improvements, as contemplated herein.

4.8 The Trustee Committee may, by regulation, provide for the issue of a Membership certificate, which certificate shall be in such form as may be prescribed by the Trustee Committee.

4.9 Every Member must register with the intranet of the Association at www.mybenquela.com, which is a digital medium that provides information, regulations and notifications with regards to the Association and its Members. Members are to register and maintain their contact details in a dedicated Member Directory to be used as the address for all electronic and registered email/postal notifications and Correspondence. Electronic notifications and correspondence sent via the intranet or to the Member's email address are deemed to have been sent to the correct electronic address as registered with the Member Directory at the time of sending. In the event of a dispute, the sending and receiving of emails is governed by section 23 of the Electronic Communications and Transactions Act 25 of 2002.³

5. CESSATION OF MEMBERSHIP

No Member ceasing to be a Member of the Association for any reason shall, (nor shall any such Member's executors, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the

Association to claim from such Member or his estate any arrears of levies or other sums due from him to the Association at the time of his so ceasing to be a Member.

TRUSTEES

6. TRUSTEE COMMITTEE

6.1 There shall be a Trustee Committee for the Association which shall consist of 4 (FOUR) Members.

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- 6.2 A Trustee Member shall be an individual, but need not himself be a Member of the Association. A Trustee Member, however, by accepting his appointment to office as such, shall be deemed to have agreed to be bound by all the provisions of these presents.
- 6.3 The Trustee Committee shall consist of not less than two representatives of the Developer and/or a 50% [fifty per centum] representation of the Developer at all times.
- 6.4 At a meeting of the trustees 50% (Fifty Per centum) of the number of trustees, but not less than two shall form a quorum. If the number of trustees falls below the number necessary to form a quorum, the remaining trustees who shall not be less than two, may continue to act, but only for the purpose of appointing or co-opting additional trustees to make up a quorum or for the purpose of convening a general meeting of owners.
- 6.5 In the event of any decision resulting in a deadlock, the Chairman shall have the casting vote, providing that in the event that the decision shall affect the obligations of the Developer in terms of the Agricultural Benefits Agreement and/or any decision which may affect the Agricultural Enterprise in any manner whatsoever, such decision shall not be valid and binding, unless the Developer forms part of the quorum and the Developer shall further have the right to veto any such decision.

7. REMOVAL & ROTATION OF TRUSTEE MEMBERS

- 7.1 Save as forth in 7.2 below, each Trustee shall continue to hold office until the Annual General Meeting next following his said appointment, at which meeting each trustee shall be deemed to have retired from office upon the election or re-election of the new trustees, but each trustee will be eligible for re-election to the Trustee Committee at such meeting.
- 7.2 A Trustee shall be deemed to have vacated his office as such upon:
- 7.2.1 his estate being sequestrated, whether provisionally or finally, or his surrendering his estate;
 - 7.2.2 his making any arrangement or compromising with his creditors;
 - 7.2.3 his conviction for any offence involving dishonesty;
 - 7.2.4 his becoming of unsound mind or being found insane;
 - 7.2.5 his resigning from such office in writing delivered to the Trustee committee at _____;
 - 7.2.6 his death;
 - 7.2.7 his being removed from office as provided in Section 220 of the Act, provided that any-

07th April 2018, Action Order no. 20180057-Special-Resolutions-04-Trustee

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thing done in the capacity of a Trustee in good faith, by a person who ceases to be a Trustee, shall be valid until the fact that he is no longer a Trustee has been recorded in the Minute Book of the Trustee Committee.

- 7.3 Upon any vacancy occurring on the Trustee Committee prior to the next Annual General Meeting, the vacancy in question shall be filled by a person nominated by those remaining for the time being of the Trustee Committee.

8. OFFICE OF TRUSTEES

- 8.1 The Trustees shall appoint from amongst themselves, a Chairman and Vice-Chairman.
- 8.2 The first Chairman, and Vice-Chairman, shall be appointed by the Developer, and such office bearers shall hold their respective offices until the first Annual General Meeting following the date of their appointment, provided that any such office shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason.
- 8.3 Within 7 (seven) days of the holding of such Annual General Meeting, the Trustee Committee shall meet and shall elect from its own number the Chairman and Vice-Chairman, who shall hold their respective offices until the Annual General Meeting held next after their said appointment, provided that the office of the Chairman or Vice-Chairman shall ipso facto be vacated by the Trustee holding such office upon his ceasing to be a Trustee for any reason. No one Trustee shall be appointed to more than one of the aforesaid offices.
- In the event of any vacancy occurring in any of the aforesaid offices at any of the aforesaid offices at any time, the Trustee Committee shall immediately meet to appoint one of their number as a replacement to such office.
- 8.4 Save as otherwise provided in these presents, the Chairman shall preside at all meetings of the Trustee Committee, and all general meetings of Members, and shall perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Trustee Committee or by the Members, and to allow or refuse to permit invitees to speak at any such meetings, provided however, that any such invitees shall not be entitled to vote at any such meetings.
- 8.5 The Vice-Chairman shall assume the powers and duties of the Chairman in the absence of the Chairman, or his inability or refusal to act as Chairman, and shall perform such other duties as may from time to time be assigned to him by the Chairman or by the Trustee Committee.
- 8.6 Trustees shall be entitled to be repaid all reasonable and bona fide expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman/Vice-Chairman, at

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the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

8.7 The duration of the Trustees' appointment shall not be less than two years.

9. FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE

9.1 Subject to the express provisions of this constitution, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not either by virtue of the provisions of the Companies Act, or by this constitution required to be exercised or done by the Association in general meeting, subject nevertheless to any regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made, which aforementioned powers shall not include the Agricultural Enterprise whatsoever.

9.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.

9.3 The Trustee Committee shall have the right to co-opt onto the Trustee Committee any person or persons chosen by it. A co-opted Trustee shall enjoy all the rights and be subject to all the obligations of the Trustees.

9.4 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee, in such reasonable manner as it shall decide from time to time.

9.5 The Trustees may make regulations and rules not inconsistent with this Constitution or any regulations or rules prescribed by the Association in general meeting:

9.5.1 as to the settlement of disputes, generally;

9.5.2 for the furtherance and promotion of any of the objects of the Association;

9.5.3 for the better management of the affairs of the Association;

9.5.4 for the advancement of the interests of Members;

9.5.5 for the regulation and control of the conduct of Members and occupants while in the estate, whether on erven or on the common property (excluding the Agricultural Enterprise which vests with the Developer);

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9.5.6 governing the manner and methods of the use of the common property by or on behalf of the Members of the Association or any occupant,

9.5.7 for the conduct of Trustee Committee meetings and general meetings;

9.5.8 to assist it in administering and governing its activities generally; and shall be entitled to cancel, vary or modify any of the same from time to time. Further to monitor and report on the services and maintenance provided by the Developer in terms of the Services and Maintenance Agreement which has been entrenched and is annexed hereto marked Annexure "b".

9.6 For the purpose of transacting its business as provided herein, the Trustee Committee shall be entitled to open and operate a banking account in the name of the Association at a registered banking institution.

10. OTHER PROFESSIONAL OFFICERS (*existing clause*)

Save as specifically provided otherwise in this constitution, the Trustee Committee shall at all times have the rights to engage on behalf of the Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons deemed necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide.

10. OBLIGATION TO BUILD? (*new clause added*)

10.1 The Member acknowledges that the erection of a dwelling and the establishment and landscaping of a garden on every erf shall:

10.1.1 in the case of a sale concluded as between the Developer and the first purchaser of an erf, commence within 24 (twenty four) months of the date of registration of transfer of the erf into the name of the said first purchaser and shall be completed within 36 (thirty six) months thereafter; or

10.1.2 in the case of a sale concluded between a Member other than the Developer, and a bona fide purchaser of an erf, commence within 12 (twelve) months of the date of registration of transfer of the erf into the name of the said bona fide purchaser and shall be completed within

05th April 2018, Minutes Director, 2018/007 Special Resolutions of the Association (build clause). This new clause 10 was added after 2016 was approved. Informally, the numbering is now 9 (previously SR04) that would have changed paragraph 9 and combined it with the old existing paragraph 10 which is not present.

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36 (thirty six) months of the date of registration of transfer of the erf into the name of the said bona fide purchaser

10.2 The date for the commencement and/or the completion of the building works may be extended by the Association, which extension will only be valid if reduced to writing and signed by Association and the Member. Completion shall have occurred only upon the issue of a certificate of completion by the local municipal authorities, the issue of design guideline approval by the designated architect confirming that the UADRC guidelines have been complied with and the issue of a landscaping certificate by the Association.

10.3 If a Member fails to comply with the provisions of clauses 10.1 and 10.2 relating to the commencement and completion of the construction of his dwelling, the Association shall be entitled, without prejudice to any other rights which it may have in terms of this Constitution and/or at law, at its election, require the Member to landscape and irrigate the erf at the cost and expense of the Member, failing which the Association shall be entitled to do same on the Member's behalf and recover from the Member all amounts so disbursed

10.4 Notwithstanding anything to the contrary aforesaid:

10.4.1 and notwithstanding the fact that a Member is up to date with payment of his levies and any other amount that may be due to the Association, in the event that the construction of the dwelling and the establishment and landscaping of the garden are not completed within the period stipulated in 10.1 above (or within such extended period as set out in 10.2 above):

10.4.1.1 the rights to the use of the common property by the Member shall automatically be suspended until such time as the construction of the dwelling and the establishment and landscaping of the garden have been completed which shall be evidenced by a certificate of completion and a landscaping certificate referred to in 10.2 above;

10.4.1.2 The Member's building deposit shall be forfeited to the Association who shall be entitled to utilize such deposit in its sole and absolute discretion.

10.4.2 in the event that the buildings have not been erected in accordance with the approved building plans and/or architectural design guidelines, the Association shall be entitled

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without prejudice to its other rights in terms of this Constitution or in law, to impose such fine as it may determine expedient from time to time on the Member which amount shall be payable by the Member on demand.

- 10.5 Notwithstanding anything to the contrary aforesaid, and in addition to any provision herein contained, if construction of the dwelling and the establishment and landscaping of the garden have not been completed within the time period prescribed in this clause or within such extended period as may be granted as set out above, the Association shall, in its sole discretion be entitled to give notice in writing to the Member to complete the construction of the dwelling, and the establishment and landscaping of the garden within a period of 7 (seven) months from the date of such notice, and failing compliance with such notice, the Association shall have the right to impose a monthly penalty in the discretion of the Association, to be determined by the Trustees from time to time, which shall be payable by the defaulting member in addition to any other levie which may be payable.
- 10.6 The stipulations contained in this clause 10 shall be binding on the Member and his successors in title and the Member shall include such stipulations in a Deed of Alienation for the sale of the erf to a purchaser thereof.
- 10.7 The Association shall be entitled to withhold its consent to the transfer of the erf unless the proposed Member has undertaken in writing to be bound by this Constitution with effect from the date on which the Member's obligations cease.
- 10.8 The aforesaid obligations relating to the erection of a dwelling on each erf shall not apply to the erven still registered in the name of the Developer.

11. PROCEEDINGS OF THE TRUSTEE COMMITTEE

- 11.1 The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.
- 11.2 Meetings of the Trustee Committee shall be held at least once every quarter, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular quarter then no meeting of the Trustee Committee needs be held for that quarter.
- 11.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be 2 (two) Trustees where there are 4 (four) Trustees and 3 (three) Trustees where there are more than 4 (four)

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Trustees, providing that the Developer is present at all times and represented by at least 50% [fifty per centum] of such quorum.

- 11.4 The Chairman shall preside as such at all meetings of the Trustee Committee, provided that should at any meeting of the Trustee Committee the Chairman not be present within 5 (five) minutes after the time appointed for the holding thereof, then the Vice-Chairman shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within 5 (five) minutes of the time appointed for the holding of such meeting, those present of the Trustees shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 11.5 A Trustee shall take minutes of every Trustee Committee meeting, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting will have closed and shall then be certified correct by the Chairman of the meeting. All minutes of Trustee Committee meetings shall after certification as aforesaid be placed in a Trustee Committee Minute Book to be kept in accordance mutatis mutandis, with the provisions of the law relating to the keeping of minutes of meetings of directors of companies. The Trustee Committee Minute book shall be open for inspection at all reasonable times by a Trustee, the Auditors, The Association Members and Local Authority.
- 11.6 All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.
- 11.7 Save as otherwise provided in this constitution, the proceedings at any Trustee meeting shall be conducted in such reasonable manner and form as the Chairman of the meeting shall decide.
- 11.8 A resolution signed by all the Trustees shall be valid in all respects as if it had been duly passed at a meeting of the Trustee Committee duly convened.

GENERAL MEETINGS

12. GENERAL MEETINGS OF THE ASSOCIATION

- 12.1 The Association shall before the month of May in each calendar year, hold a general meeting as its Annual General Meeting. In addition to any other general meetings during that year, and shall specify the meeting as such in the notices calling it, in terms of paragraph 13 below.

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- 12.2 Such annual general meeting shall be held at such time and place subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.
- 12.3 All general meetings other than annual general meetings shall be called special general meetings.
- 12.4 The Trustee Committee, may, whenever they think fit, convene a special general meeting, and a special general meeting shall also be convened on the request of not less than 5 (five) Members.

13. NOTICE OF MEETING

- 13.1 The annual general meeting and a meeting called for the passing of a special resolution, shall be called with not less than 21 (twenty one) days notice in writing, and a special general meeting, other than one called for the passing of a special resolution, shall be called with not less than 14 (fourteen) days' notice in writing. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in these presents, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any as may be prescribed by the Trustee Committee to such persons as are under these presents entitled to receive such notices from the Association; provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed:
- 13.1.1 in the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote thereat; and
- 13.1.2 in the case of a special general meeting, by a majority in number of the Members having a right to attend and vote at the meeting, being a majority together holding not less than 95% (ninety five percent) of the total voting rights of all Members.

14. SERVICE OF NOTICES

- 14.1 A notice shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at the address of the Erf owned by him.
- 14.2 No Member shall be entitled to have a notice served on him at any address not within the Republic of South Africa, but any Member may require the Association, by notice, to record an address within the Republic of South Africa which shall be deemed to be his address for the purpose of the service of notices.

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- 14.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and proof of the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.
- 14.4 The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings of that meeting.
- 14.5 Notification for the service of any Association correspondence shall be permitted to take place via email.¹

15. VENUE OF MEETINGS

General Meetings of the Association shall take place at such place/s as shall be determined by the Trustee Committee from time to time.

16. QUORUM

- 16.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The quorum necessary for the holding of any general meeting shall be such, that of the Members entitled to vote, one-half of the total votes of all Members of the Association entitled to vote shall be represented at the meeting, save that not less than 5 (five) Members must be present in person or by proxy.
- 16.2 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding the meeting, the Members present shall constitute a quorum.

17. AGENDA AT MEETINGS

17.1 In addition, to any other matters as would be required by the Act to apply to a company or to these presents to be dealt with at an Annual General Meeting, the following matters shall be dealt with at every Annual General Meeting:

- 17.1.1 the consideration of the Chairman's report to the Trustee's Committee.

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- 17.1.2 the election of the Trustee Committee;
- 17.1.3 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;
- 17.1.4 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;
- 17.1.5 the consideration of the report of the Auditors.

18. PROCEDURE AT GENERAL MEETINGS

- 18.1 The Chairman shall preside as such at all general meetings, provided that should he not be present within five minutes after the time appointed for the holding thereof, then the Vice-Chairman, shall act as Chairman at such meeting, provided further that should the Vice-Chairman also not be present within five minutes of the time appointed for the holding of such meeting, then the Members present at such meeting entitled to vote, shall vote to appoint a Chairman for the meeting, who shall thereupon exercise all the powers and duties of the Chairman in relation to such meeting.
- 18.2 The Chairman may, with the consent of any general meeting at which a quorum is present (and if so directed by the meeting) adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place. Whenever a meeting is adjourned for ten days or more, notice of the adjourned meeting shall be given in the same manner as of an original meeting. Save as aforesaid, the Members shall not be entitled to any notice of adjournment, or of the business to be transacted at an adjourned meeting.
- 18.3 Except as otherwise set forth in these presents, all general meetings shall be conducted in accordance with generally accepted practice.

19. PROXIES

- 19.1 A Member may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the Chairman of the Board of Directors of the Company or by its secretary, where an association of persons, by the secretary thereof, where a close corporation, by any Member and where a trust, by any trustee.

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- 19.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is proposed to vote. No instrument appointing a proxy, shall be valid after the expiration of 12 (twelve) months from the date of its execution.
- 19.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustee Committee at least one hour before the time fixed for the holding of the meeting.

20. VOTING

- 20.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Erf registered in his name subject to the provisions of paragraph 4.1.2 hereof. The Developer shall be entitled to a single vote in respect to each erf held by it, in terms of the general plan and in accordance with the deeming provision of paragraph 4.1.1 above.
- 20.2 Save as expressly provided for in these presents, no person other than a Member duly registered, who is not under suspension and who has not had voting rights suspended in accordance with clause 26.1.3, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 20.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 20.4 Notwithstanding the provisions of 20.3 aforesaid, voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the Members present in person or by proxy, and entitled to vote.
- 20.5 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall not be voted upon.
- 20.6 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all the votes cast thereon, and an abstention shall not be counted as a vote for or against the resolution in question. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the general meeting shall be entitled to a casting vote in addition to his vote as Member, subject to Clause 6.5 in favour of the Developer.
- 20.7 Notwithstanding anything contained in this constitution, any resolution or the amendment of a resolution

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- 20.7.1 which would have the effect of amending or repealing any part of this constitution, or
- 20.7.2 which would have the effect of amending or repealing paragraph 31 of this constitution which paragraph precludes subdivision or rezoning of the erven or the erection of more than one dwelling per erf, or
- 20.7.3 which would have the effect of amending or repealing paragraph 32 and 33 dealing with the Urban and Architectural Review Controls Manual the Architectural Controls, shall require a 75% (three quarters) majority of all Members entitled to vote before the resolution may be passed, which shall be known as a special resolution.
- 20.8 Unless any Member present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.

21. FINANCIAL YEAR END

The financial Year End of the Association is the end of February each year.

22. ACCOUNTS

- 22.1 The Association in a general meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members, of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours
- 22.2 At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year of the Association. Every such balance sheet shall be accompanied by proper extensive reports of the Trustee Committee and the Auditors, and

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there shall be attached to the notice sent to Members convening each Annual General Meeting draft copies of such accounts, balance sheet and reports, with the audited accounts, balance sheet and reports (all of which shall be framed in accordance with the provisions of the Companies Act) and any other documents required by law to accompany same, to be sent to Members at least 72 hours prior to the Annual General Meeting via electronic communication."

23. AUDIT

23.1 Once at least in every year, the accounts of the Association shall be examined and the correctness of the income and expenditure account and balance sheets ascertained by the Auditors.

23.2 The Auditors shall perform such duties as are performed by Auditors of any registered company.

24. INDEMNITY

24.1 All Members of the Trustee Committee and the Auditors shall be indemnified out of the funds of the Association against any liabilities bona fide incurred by them in their respective said capacities and in the case of a Trustee Member, in his capacity as Chairman, Vice-Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.

24.2 Every Member of the Trustee Committee, every servant, agent and employee of the Association, and the Auditors shall be indemnified by the Association against (and it shall be the duty of the Trustee Committee out of the funds of the Association to pay) all costs, losses and expenses (including travelling expenses) which such person or persons may incur or become liable for by reason of any contract entered into, or any act or deed done, by such person or persons in the discharge of any of his/their respective duties, including the case of a Trustee Member, his duties as Chairman or Vice-Chairman. Without prejudice to the generality of the above, the Association shall specifically indemnify every such person against all losses of whatever nature incurred arising out of any bona fide act, deed or letter done or written by him jointly or severally in connection with the discharge of his duties, provided that any such act, deed or letter has been done or written in good faith.

24.3 A Trustee Member shall not be liable for the acts, receipts, neglects or defaults of the Auditors or of any of the other Members of the Trustee Committee, whether in their capacities as Trustee Members or as Chairman or Vice-Chairman, or for any loss or expense sustained or incurred by the Association through the insufficiency or deficiency of title to any property acquired by the Trustee Committee for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the

21 February 2019, Minute Document, Special Resolution 20180224-01

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insolvency or tortious act of any person with whom any moneys, securities or effects shall be deposited, or for any loss or damage occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of any of the duties of his office/s or in relation thereto, unless the same shall happen through lack of bona fides or breach of duty or breach of trust.

25. PRIVILEGE IN RESPECT OF DEFAMATION

Every Member of the Association and every Trustee Member shall be deemed by virtue of his Membership or, as the case may be, his holding office as a Trustee Member, to have waived as against every other Trustee Member, the Trustee Committee, the Chairman or Vice-Chairman, the Auditors and everybody else engaged to perform any function or duty on behalf or for the benefit of the Association, or the Trustee Committee, or any sub-committee, all claims and rights of action which such Member or Trustee Member might otherwise have had in law arising as a result of any statement, report, complaint or notice of or concerning such Member or Trustee Member, or any reference to such Member or Trustee Member, made at any Trustee Committee meeting or general meeting, or otherwise in the performance or exercise of any right, function, duty power or trust, within the ambit of these presents, being a statement, report, complaint, notice or reference defamatory to such Member or Trustee Member, or otherwise injurious to the dignity, reputation, business or financial interest of such Member or Trustee Member, whether such statement be true or false.

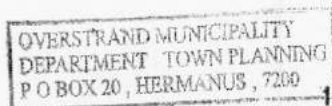
26. BREACH

26.1 Any Member who fails to make payment to the Association on due date therefore of any monthly levy or other amount payable by such Member, or who otherwise breaches or fails in observance of any of the provisions of these presents may, if so determined by a Resolution passed by not less than 1/2 (one-half) of the trustees present at the meeting of the trustees committee:

26.1.1 be ordered to pay such outstanding amounts and/or

26.1.2 be ordered to pay the Association or any Member or other person aggrieved by the breach or failure in question, such sum as compensation be ordered to pay such interest as may be determined on the outstanding amount as in each case shall have been determined at such Trustees Committee meeting.

26.1.3 be denied voting rights at any general meeting.



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30. DEALINGS WITH THE COMMON PROPERTY

30.1 Neither the whole nor any portion of the common property shall be:

30.2.1 sold, alienated, otherwise disposed of, subdivided or transferred, or

30.2.2 subjected to a mortgage; or

30.2.3 subjected to any rights, whether registered in the Deeds registry or not, of use, occupation or servitude, save those enjoyed by the Members of the Association in terms hereof, or which allow for agricultural activities to be conducted similar in nature to the Agricultural Enterprise, or¹

30.2.4 built upon, improved or enhanced in value by the construction of buildings, erection of facilities or amenities, other than as contained in this constitution and in the approved layout plan, without the sanction of a special resolution of the Members of the Association

31. NO SUBDIVISION OR REZONING AND NOT MORE THAN ONE DWELLING

31.1 No Member shall be entitled to subdivide or rezone his erf, it being noted that that Erf 228 has been zoned as the Hotel and Related Facilities Development, together with the Agricultural Enterprise, which shall enjoy a separate zoning status commensurate with its function as main farm complex for the cultivation, harvesting, processing and marketing of the produce of the agricultural property, together with the Commercial Component, being Erf 229, comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial.

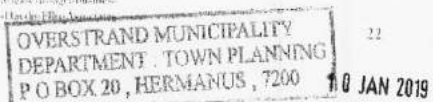
31.2 No more than one dwelling together with such outbuildings as are ordinarily required to be used in connection therewith, shall be erected on any Member's erf in accordance with the HADC Manual.

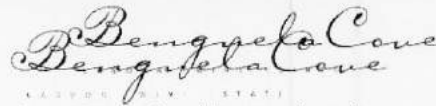
32. BUILDING STANDARD RULES AND AESTHETIC APPROVAL

32.1 It is recorded that the Trustee Committee has appointed the Benguela Cove Urban and Architectural Design Review Committee which comprises of ~~three members~~ and two Members appointed by the Developer. In compliance with paragraph 4.6.2 above no owner of any erf shall be entitled to build on his erf or effect any improvement thereto or erect any structure thereon without

¹ 17th April 2018, Minutes Director, 20180417-Special-Resolution-49-Common-Property-Use-Change-Ordinance

² 15th April 2018, Minutes Director, 20180407-Special-Resolution-10-ARC-Committee-Change-By-Laws





the prior written approval of the Urban and Architectural Review Control Committee, hereinafter referred to as UARCC, as hereinafter set out.

32.2 No owner of any erf shall be entitled to alter any construction thereon or to alter or vary the design or facade of his building, dwelling or improvements so constructed, without the prior written approval of the said UARCC.

32.3 Any registered owner within the development shall be obliged to pay a ... for such review and approval of the Architectural Plans to Urban Concepts.

32.4 **Scrutinizing of House garden layout plan** It is recorded that the Trustee Committee has further appointed Johan De Villiers and Associates as landscape architects. The new landscape drawings will be checked to assess that the layout complies with the Landscape guidelines. A report will be compiled and issued to the Client. Where revisions are required we would also contact the Landscape Planner involved and note the corrections. The revised drawings will be rechecked and signed off. Fixed fee cost per dwelling to scrutinize the garden layout plans. Any registered owner within the development shall be obligated to pay a fee ... for such review and approval.

32.5 **Environmental controls:** It is recorded that the Trustee committee has further appointed Charal Bruwer to manage the ECO startup with Urban Concepts, to include site visits, environmental awareness training of contractors staff, necessary reports and final environmental sign off on completion of construction. The registered owner shall be obliged to pay for site visits (as necessary) to ensure compliance with environment controls, of no more than R2,000.00 (two thousand rand), plus VAT thereon for such review and approval. This fee will escalate by 5% in January annually. Registered Owners must be aware that on some residential sites there may need to be a botanical search and rescue of sensitive plants. In these cases the Registered owner will be obliged to pay the fees of a botanist to remove and protect these plants.

32.6 Only dwellings which comply with the Urban and Architectural standards as set forth in the Urban and Architectural Review Control Manual, annexed hereto marked Annexure "d", may be built on the estate.

0476 April 2018; Martin Dreyer; 2018/0407 Special Resolution of UARCC (Vote membership)
0475 April 2018; Martin Dreyer; 2018/0407 Special Resolution of UARCC (Landscape fee contribution)
0475 April 2018; Martin Dreyer; 2018/0407 Special Resolution of UARCC (Environmental fee contribution)
0476 April 2018; Martin Dreyer; 2018/0407 Special Resolution of UARCC (Vote membership)

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33. SECURITY AND BUILDING DEPOSITS¹⁷

33.1 Every purchaser of an erf shall pay a security deposit to the Association in such amount as may be determined by the Association.

33.1.1 The security deposit is to ensure that the Association, once established, shall have sufficient funds to execute its obligations.

33.1.2 The security deposit shall be payable within 7 (seven) days by the purchaser, upon acceptance of an offer to purchase of an erf.

33.1.3 Payment of the deposit constitutes a suspensive condition, and failure to pay such a deposit within the stipulated time period shall render the offer to purchase null and void at the election of the Association who shall be entitled to refuse to consent to the transfer of the erf in question, and to be of no force and effect whatsoever.

33.1.4 The Trustees shall cause all security deposits received by the Association to be deposited to the credit of an interest bearing account(s) with a registered commercial bank in the name of the Association and, subject to any direction given or restriction imposed at a general meeting of the Association, such monies shall only be withdrawn for the purpose of payment of the expenses of the Association or for further or other investment purposes.

33.1.5 All interest attracted by such an account shall accrue to the Association.

33.1.6 In the event of the purchaser alienating the property after the purchase thereof, the aforementioned security deposit shall be refunded to the purchaser, without interest, 4 (four) weeks after the new owner has taken transfer and paid his security deposit, and all rates and levies clearance certificates have been obtained. Such a purchaser must also have complied with all the standard terms and conditions of the Constitution, its accompanying annexures and any ordinary or special resolutions to be passed during the time of ownership of the erf.

33.2 Every purchaser of a vacant erf shall pay a building deposit to the Association in such amount as may be determined by the Association.

33.2.1 The building deposit is to ensure that a every purchaser of a vacant erf shall, in carrying out any building construction and/or improvements on his erf, shall comply with his obligations in terms of the Constitution and its accompanying annexures and shall not cause any damage whatsoever to any roads, pavements, common property infrastructure nor the property of another Member during the construction of any dwelling or building.

33.2.2 The purchaser shall pay the building deposit within 7 (seven) days of the acceptance of an offer to purchase of an erf.

33.2.3 Payment of the deposit constitutes a suspensive condition, and failure to pay such a deposit within the stipulated time period shall render the offer to purchase null and void at the election of the Association who shall be entitled to refuse to consent to the transfer of the erf in question.

33.2.4 The Trustees shall cause all building deposits received by the Association to be deposited to the credit of an interest bearing account(s) with a registered commercial bank in the name of the Association.

33.2.5 All interest attracted by such an account shall accrue to the Association.

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33.2.6 On the completion of any construction and/or improvements and the submission of an occupational certificate by the local municipal authority, the deposit shall be refunded to the Member, without interest.

33.3 An increase in the security deposit or the building deposit or any other value adjustment to any deposit shall be at the entire discretion of the Trustees to determine from time-to-time.

33.4 Interest on all deposit monies invested shall be used by the Association for any lawful purpose(s) in the interest of the Association.

34. CONDUCT RULES

USE OF PROPERTY AND/OR COMMON PROPERTY AND/OR AGRICULTURAL PROPERTY AND/OR COMMERCIAL COMPONENT

1.1 No owner or occupier of an Erf may, without the prior consent of the Trustees:

- 1.1.1 use the Erf for any purpose other than residential purposes
- 1.1.2 permit any advertisement, name or lettering of any unsightly size, colour or character to be painted on or affixed to any wall, building or structure on the property and no advertisement, name or lettering of any kind shall be painted on or affixed to the roof of any building on the property, save for any advertising allowed by the Trustees for the commercial use of the Hotel and the Commercial Component.
- 1.1.3 erect, store or leave or allow to be erected, kept, stored or left any article or thing on any part of the common property;
- 1.1.4 remove any shrub, tree or plant on or in the common property;
- 1.1.5 erect any washing lines nor hang any washing or other items on any part of the building or the common property so as to be visible from outside the building or from any other Erf nor be exposed to view on the premises in any unsightly manner whatsoever.
- 1.1.6 that no noisy, injurious or objectional trade or business of any kind shall be carried on in any such dwelling house or building or on the Commercial component and such building shall, at all times, be kept in such a state as not to be a nuisance or annoyance to any owner and/or occupier and surrounding neighbours.
- 1.1.7 build any fires for braaing purposes of any sort on the common property, unless in the designated braaing areas.

1.2 An owner or occupier shall not place or do anything on any part of the common property or on the balcony, stoep or patio of his home which, in the Trustees' opinion, is aesthetically displeasing or undesirable when viewed from outside the building.

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- 1.2 An owner or occupier shall not deposit, throw or permit or allow to be deposited or thrown on the common property any rubbish, including dust, food, scraps, cigarette butts or any other litter.
- 1.3 The Owner and/or Occupier shall have the benefit of exclusive use and access for recreational purposes over the agricultural property to be retained by the Developer and the aforementioned Rules of Conduct shall control and govern the conduct of any person whilst in and/or on the agricultural property. In the event of any Member, Occupier and/or guest of any Members transgressing any of the Conduct Rules and any of the conditions set out in the Agricultural Benefits Agreement, the Trustee Committee shall have the right to terminate and/or suspend all benefits bestowed onto such Member.
- 2. DAMAGE, ALTERATIONS OR ADDITIONS TO A HOME, THE AGRICULTURAL PROPERTY AND TO THE COMMON PROPERTY**
- 2.1 An owner or occupier of a home shall not mark, paint, drive nails or screws or the like into or otherwise damage or alter any part of the common property without first obtaining the prior written consent of the Trustees.
- 2.2 To ensure uniformity of appearance, the prior written consent of the Trustees must be obtained and must be submitted to the UARCC.
- 2.3 All internal building alterations are to be approved by the Trustees Committee. An approved plan together with payment of the requisite fee, is to be submitted prior to commencement of construction. Any building construction shall be regulated and governed by the Builder's Code of Conduct which is annexed hereto marked "F".
- 2.4 Owner or occupier of a home shall ensure:
- 2.4.1 any broken window pane is replaced within 3 days of breaking from whatsoever cause;
- 2.4.2 that all curtains are to be lined with a white or cream fabric. Blinds are to have a white or cream backing unless they are wooden blinds.
- 3. BEHAVIOUR OF OWNERS, OCCUPIERS, GUESTS**
- 3.1 All owners and occupiers shall ensure that their use of their property, the Agricultural Property, the commercial property and the common property and its facilities is at all times conducted in such a manner as not to:
- 3.1.1 cause a nuisance, disturbance or inconvenience or annoyance to any other owner or occupier, particularly in the form of loud music, radio or TV or irritable audible noisome sound. This rule shall not be applicable to the Hotel and the commercial component.

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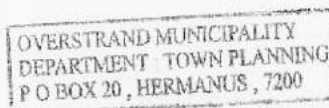
- 3.1.2. detrimentally affect the rights and interests of other owners or occupiers.
- 3.2. Owners and occupiers shall be responsible for the behaviour of their children and guests and shall be liable for any damage caused by them. Any damage caused by such children or guests shall be repaired at the cost of the owner or occupier concerned, within 14 days of notice by the Trustees, to the satisfaction of the Trustees.
- 3.3. No children are permitted to play in the parking area, stairwells & landings or any common property that may be designated by the Trustees from time to time.

4. REFUSE DISPOSAL

- 4.1. An owner or occupier of a property shall:
 - 4.1.1. maintain in a hygienic and dry condition, a receptacle for refuse within his property.
 - 4.1.2. ensure that before refuse is placed in such receptacle it is securely wrapped, or in the case of tins or other containers, completely drained.
 - 4.1.3. for the purpose of having the refuse collected, place such receptacle within the area and at the times designated by the Trustees.
 - 4.1.4. when the refuse has been collected, promptly return such receptacle to his property.
 - 4.1.5. ensure that no garbage and/or garden rubble may be left outside the property except for collection on the date of collection. It may not be left out overnight.

5. VEHICLES

- 5.1. No owner or occupier shall park or stand any vehicle upon the common property or permit or allow any vehicle to be parked or stood upon the common property without the written consent of the Trustees. The Trustees may cause to be removed, wheels clamped or towed away from the development at the risk and expense of the owner of the vehicle parked, standing or abandoned on the common property without the Trustees' written consent.
- 5.2. Owners and occupiers of their properties shall ensure that their vehicles and the vehicles of their visitors and guests do not drip oil or brake fluid and/or any other fluid or liquid of whatever nature on the common property or in any other way deface the common property. If dripping occurs, its removal will be for the account of the owner or occupier concerned.
- 5.3. No owner or occupier will be permitted to dismantle or effect major repairs to any vehicle on any portion of the common property, but may be permitted to attend to minor repairs and reconditioning of vehicles in enclosed garages only.



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- 5.4 Only vehicles owned by owners or occupiers may be washed on the common property. The use of hose pipes and taps for the purpose of washing vehicles is restricted to owners or occupiers.
- 5.5 Hooters shall not be sounded within the Development other than in emergencies.
- 5.6 Vehicles may be parked only on such areas of the scheme as are specifically designated or approved by the Trustees for that purpose and in such a way that the flow of traffic and access to and egress from driveways are not obstructed.
- 5.7 No trucks, caravans, trailers, boats or other heavy vehicles may be parked within the Development without the prior written consent of the Trustees. It is recorded that the H.O.A shall be the registered owner of one of the jetties and all of the boat houses. The H.O.A shall monitor the usage and allocate mooring rights accordingly to the Members. The H.O.A shall enter into agreements of lease with its Members for the leasing of such boat houses.
- 5.8 Vehicles parking or entering the Development are subject to the express condition that it is parked at the owner's risk and responsibility and that no liability shall attach to the Trustees or its agents or any of their employees for any loss or damage of whatever nature which the owner, or any person claiming through or under him, may suffer in consequence of his vehicle having been parked on the common property.
- 5.9 Motor vehicles of visitors may only be parked on such areas as are specifically demarcated for that purpose. Where parking areas are demarcated for visitors, such areas may only be used for visitors parking and under no circumstances may any owner or any Member of their families park their vehicles in such areas.
- 5.10 Owners shall ensure that their visitors park in the correct place and do not cause any obstruction either in relation to garages or otherwise.
- 5.11 Bicycles, motor cycles, tricycles, roller skates, skateboards and the like may not be left on any portion of the common property.

6. PARKING

- 6.1 Parking is to be confined to the specified parking area allocated to each owner/occupier and owners and/or tenants are under no circumstances and/or without specific permission of the Trustees allowed to park in the visitors' parking bays whatsoever.
- 6.2 Guests are to use only those bays reserved and specifically demarcated for visitors. A breach of this rule will entitle the Trustees to have any offending vehicle towed away from the Development at the risk and at the expense of the owner of the vehicle or alternatively the owner of the property.
- 6.3 Under no circumstances will parking in front of any fire hydrants be permitted. A breach of this rule will likewise entitle the Trustees to have any offending vehicle removed or towed away to a public road.

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or garage at the expense and Risk of the owner of the vehicle or alternatively the owner of the property

7. ANIMALS, REPTILES AND BIRDS (DOMESTIC PETS, RESTRICTED TO DOGS)

- 7.1 No animals, reptiles, birds (other than a bird in a cage) shall be kept or harboured in the estate unless expressly authorised in writing by the Trustees subject to the provisions of clause 7.2 herein. When granting such authority, the Trustees may prescribe any reasonable condition. Should any prescribed condition be breached, the Trustees may immediately withdraw such authority.
- 7.2 Any owner shall be restricted to two domestic pets only. In the event of such owner on date of occupation having more than two domestic pets, the owner shall immediately notify the Trustees hereof. Such domestic pets, providing that it does not exceed three pets, shall be entitled to remain in the development for the duration of their life. On the demise of such pets, the owner shall not be entitled to replace them and shall thereafter be restricted to having two domestic pets as aforementioned herein.
- 7.3 Any pet that causes any nuisance, disturbance, inconvenience and/or annoyance to any other owner and/or occupier, particularly in the form of barking, shall be permanently removed from the development.
- 7.4 Any owner/occupier who has been granted authority to keep or harbour any animal, reptile or pet shall ensure that such animal, reptile or pet does not foul any part of the common property or otherwise cause any nuisance. Owners/occupiers concerned will be responsible for cleaning up any fouled common property and/or for any damages incurred by such animal.
- 7.5 Cats are specifically not allowed on the Estate due to the abundant bird life which is prevalent to the Bird Life Reserve. Any pets in the agricultural property and the other common areas must be under control at all times. The Members shall be aware of the sensitive areas pertaining to the flora and fauna and shall ensure that their pets do not in anyway cause damage thereto. Dogs shall not be allowed into the grazing areas, being erf 242 without a leash, in order to protect and preserve the existing buck. The H.O.A reserves the right to restrict these rights should it find that the dogs are creating a disturbance.
- 7.6 It is further provided that the grazing areas and nature reserve shall be protected with electrical fencing and the H.O.A shall not in any way whatsoever be liable for any damages and/or injuries sustained by the Members, any occupiers and/or guests and/or the Members' pets and/or any other animals whatsoever brought onto the estate.

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8. LEVIES

- 8.1 Levies are due in advance on the first day of each month and are payable within 7 days after which interest at a rate determined by the Trustees will be payable thereon.
- 8.2 The Members shall be obliged to sign a Debit Order, which is annexed to the Agreement of Sale, to ensure such timely payment of the aforementioned levies.

9. INSURANCE

- 9.1 The Home Owners' Association shall have no responsibility whatsoever for the insurance of the contents of any particular property, which shall at all times be the sole responsibility of the owner/occupier in question.
- 9.2 An owner/occupier shall not do or permit to be done on his property or on the common property anything which will or may increase the rate of premium payable by the trustees on any insurance policy or which may tend to vitiate any such insurance policy nor bring onto the premises or building any hazardous substances and/or any form of machinery whatsoever.
- 9.3 An owner/occupier shall not store or harbour upon the common property or any part thereof or in his property any goods which may vitiate any fire insurance policy held by the Homeowners Association or increase the premium payable in respect of such policy.

10. LETTING OF UNITS

- 10.1 All tenants of residential homes and other persons granted rights of occupancy by any owner of the relevant erf are obliged to comply with these conduct rules, notwithstanding any provision to the contrary contained in any lease or any grant of rights of occupancy, which Consent shall not be unreasonably withheld.
- 10.2 No letting shorter than 6 [six] months shall be allowed whatsoever, without the written consent of the Trustees. The owner shall be obliged to notify the Trustees of any short term occupancy for security purposes.

11. ERADICATION OF PESTS

- 11.1 An owner shall keep his property free of white ants, borer and other wood destroying insects and to this end shall permit the trustees, the managing agent and their duly authorised agents or employees, to enter upon his property from time to time for the purpose of inspecting the property and taking such action as

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may be reasonably necessary to eradicate any such pests. The costs of inspection, eradicating any such pests as may be found within the property, replacement of any woodwork or other material forming part of such property which may be damaged by any such pests shall be borne by the owner of the property concerned. Any Member intending to use any pesticides must first obtain the written approval of the agricultural property owner, being the Developer, to ensure that such pesticide is not harmful to the vineyards.

12. WALKWAYS

The walkways giving access to the vineyards, the lavender fields and olive trees are for the exclusive use and enjoyment of the Members and for the use of maintenance/gardening staff and may not be used by any member of the public for gaining access or used as a thoroughfare.

During the periods of chemical treatments and/or extensive maintenance period of harvesting and pruning of the vineyards, which may result in access to such vineyards being temporarily closed and access to all pets being denied to ensure their safety, Written Notice shall be furnished to all the Members prior to the chemical treatment of the vineyards.

13. ACTIVITIES ON COMMUNAL AREAS

No hobbies or other activities may be conducted on the communal areas if they cause nuisance to other owners and/or occupiers. The Trustees shall be the final adjudicators resolving complaints of this nature.

14. JETTY AND MOORING SLIPWAY

14.1 An owner/occupier/his visitor/s and/or children shall not be allowed to attend and/or partake of the following on such aforementioned areas.

- 14.1.1 No glass bottles or containers are allowed.
- 14.1.2 No braaing, except in designated areas.
- 14.1.3 No loud music.
- 14.1.4 Only authorised personnel are permitted access so designated by the Trustees.
- 14.1.5 Littering is not permitted, all refuse is to be removed.
- 14.1.6 Only controlled games shall be permitted, with parents overseeing any children under the age of 12 [twelve] years old.
- 14.1.7 No animals are allowed, without being accompanied by its owner.
- 14.1.8 An owner and/or occupier shall be obliged to accompany any guest.

OVERSTRAND MUNICIPALITY
 DEPARTMENT: TOWN PLANNING
 P O BOX 20, HERMANUS, 7200

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Benguela Cove

- 14.1.9 The use of such area shall be reserved for owners and/or occupants and their guests.
- 14.1.10 The operating hours of such area are between 06H00 to 21H00. Any usage after 21H00 to 06H00 shall be regarded as a violation of the conduct rules.
- 14.1.11 Any child under the age of 12 (twelve) must be accompanied by an adult at all times and have the appropriate life preserver strapped onto his body whilst in the Bot River.
- 14.1.12 Certain Boat Storage Areas shall be built by the Developer on the common areas on behalf of the H.O.A, which may be rented from the H.O.A at a levy which shall be a market related rental and such levy to be agreed upon between the parties.
- 14.1.13 All Members shall comply with the rules of operation of their boats and the lakes as laid down by the appropriate authority and duly governed by the Overberg District Council, By-Laws relating to the control and use of the Bot River Estuary as framed under PN. 480/1996 dated the 15th November 1996, and annexed hereto marked Annexure "e"

15. GENERAL

- 15.1 The Board of Trustees or its agents shall not be liable for any injury or loss or damage of any description which any owner or occupier of property or any Member of his family, his employee or servant or his relative, friend, acquaintance, visitor, invitee or guest may sustain, physically or to his or their property, directly or indirectly, in or about the common property or in the individual property by reason of any defect in the communal area, its amenities or for any act done or for any neglect on the part of the Trustees or any of the Trustees employees, servants, agents or contractors.
- 15.2 The Trustee or its agent's representatives and servants shall not be liable or responsible in any manner whatsoever for the receipt or the non-receipt and delivery or non-delivery of goods, postal matter or any other property.
- 15.3 No firearms or pellet guns may be discharged in the development whatsoever.
- 15.4 An owner shall not use or permit his home to be used for any purpose which is injurious to the reputation of the development.
- 15.5 All complaints, violation of these rules, or any other cause of concern must be in written form, addressed to the Chairman of the Home Owners' Association.

16. COMMERCIAL UNIT

- 16.1 The Developer reserves a right to further amend its rules so as to accommodate the Hotel on Erf 228, the Commercial Component and Public Facilities being Erf 229, which comprises of the winery, the Public

Benguela Cove
LADERS FINE ESTATE

tasting facilities, the restaurant, the conference facilities, the farm stall, sales and manager's office and chapel and the like, once such components have been built

16.2 It is recorded that the Hotel, Wine Cellar, the Tasting Rooms, Restaurant, the Farm Stall, the Chapel and Conference Facilities etc, are designated for Commercial Use and may be utilised as a bed and breakfast facility, private functions including weddings, various functions and film shoots

Signed by the Purchaser on the _____ day of _____

OVERSTRAND MUNICIPALITY
DEPARTMENT: TOWN PLANNING
P O BOX 20, HERM. MUS. 7200

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ANNEXURE H

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR AMENDMENT OF SITE DEVELOPMENT PLAN: PTN 229 OF
FARM NO.575, BENGUELA COVE (2948/2019)**

Stormwater (SW)	:	According to the master plan by the Developer
Electricity	:	Eskom
Water	:	According to the master plan by the Developer
Sewer	:	According to the master plan by the Developer
Roads and traffic	:	In order

Conditions:

1. that the applicant must comply with all statutory requirements that may be applicable to the undertaking of the proposed development;
2. that only the existing municipal services and service connections will be available to the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
3. that the developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 140400 – P: 2010: Drainage
4. that the developer indemnifies and keep the Council indemnified against all actions, proceedings, claims and demands, costs, damages and expenses arising out of the establishment of the development, the provision of services to the development or the use of servitude areas or municipal property;
5. that the developer may enter into an agreement with the Council to install or upgrade bulk and/or link municipal services and amenities at an agreed cost, subject to the following:
 - 5.1 such costs to be established in accordance with a system which is fair, equitable, transparent, competitive and cost effective;
 - 5.2 such costs shall be set-off against (part or full) development contributions payable in respect of engineering services;
 - 5.3 to the extent that such costs exceed the development contributions payable, the Council will refund the developer the difference with interest calculated at the prime rate, when funds are available.

p.p. A. Cichew
 DENNIS HENDRIKS
 SENIOR MANAGER:
 ENGINEERING SERVICES

07/08/2019
 DATE

ANNEXURE I

Loretta Gillion - Re: DRINGEND : Versoek vir kommentaar : Portion 229 of Farm 575, Benguela Cove (2948/2019)

From: Penelope Aplon
To: Gillion, Loretta
Date: 21/11/2019 01:48 PM
Subject: Re: DRINGEND : Versoek vir kommentaar : Portion 229 of Farm 575, Benguela Cove (2948/2019)

Good afternoon,

The construction and operation of the waterpark does not trigger any NEMA EIA listed activities. Water is recycled in the system and no discharge is taking place within the estuary. The site is still within the "Special zone" as it was approved in the ROD issued to Benguela cove.

Regards,
 Penelope

Penelope Aplon
 Environmental Manager
 Environmental Management Section
 Directorate: Infrastructure and Planning
 Overstrand Municipality
 T: +27 (0) 28 316 3724 Ext: 8272 F: +27 (0) 28 316 4953
 C: +27(0) 72 394 9641 E: paplon@overstrand.gov.za

>>> Loretta Gillion 2019/11/19 04:24 PM >>>

Middag Penelope

Bognoemde aansoek verwys.

Henk is tans besig om die Item op te stel, en word u dringend versoek om kommentaar te lewer in hierdie verband. (Tydens die sirkulasieproses is geen kommentaar ontvang nie.)

Die beswaarmakers dui aan dat die aansoek "trigger" 'n EIA proses. Kan u asb u opinie lewer op hierdie stelling.

Spoedige terugvoering sal hoogs waardeer word.

Groete

ANNEXURE J



**Western Cape
Government**

Transport and Public Works



ROAD NETWORK MANAGEMENT

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

*TR A Theart
(H Olivier)*

REFERENCE: 16/9/6/1-21/149 (Job 25925)
ENQUIRIES: Ms GD Swanepoel
DATE: 25 June 2019

The Municipal Manager
Overstrand Municipality
PO Box 20
HERMANUS
7200

Attention: Mr H Olivier

Dear Sir

FILE NO:	<i>Ptn 229/575</i>
SCAN NO:	
COLLABORATOR NO:	<i>1299070</i>

PORTION 229 OF FARM 575, BENGUELA COVE: TRUNK ROAD 28: APPLICATION FOR AMENDMENT OF APPROVED SITE DEVELOPMENT PLAN: WRAP ON BEHALF OF BENGUELA COVE INVESTMENTS (PTY) LTD

1. Your letter dated 3 June 2019 refers.
2. The subject property is located 2 km north of Fisherhaven and takes access off Trunk Road 28.
3. This application is for the amendment of the approved site development plan in order to erect a water play park, wooden deck and seating area.
4. This Branch offers no objection to the application in terms of the Land Use Planning Act, No 3 of 2014.

Yours faithfully

SW CARSTENS
For CHIEF DIRECTOR: ROAD NETWORK MANAGEMENT



FILE NO: Ptn 229/575
SCAN NO:
COLLABORATOR NO: 1302043



TR A Theart
(H Olivier)

Division of Telkom SA SOC Ltd

10 Jan Smuts Drive
Pinelands
7404

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

Our Ref.: WWIP_WHMN2167_19
Your Ref.: Ptn 229/575 HBENG

10 July 2019

Attention: S Muller

Overstrand Municipality
HERMANUS

PLANT AFFECTED:

APPLICATION FOR AMENDMENT OF THE SITE DEVELOPMENT PLAN: PORTION 229 OF FARM NO 575, BENGUELA COVE, HERMANUS

With reference to your application received May 2019.

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

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

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

Approval is granted, subject to the following conditions.



61 Oak Avenue, Highveld, Techno Park, Centurion 015
Private Bag X881, Pretoria, Gauteng, 0001

As per sketch attached, Open Serve infrastructure will be affected, consequently the conditions below and on the attached legend will apply.

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

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


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

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

Should Open Serve infrastructure be damaged while work is undertaken, kindly contact our representative immediately.

All Open Serve rights remain reserved.

Yours faithfully



pp Selwyn Bowers
Operations Manager
Wayleave Management: Western Region

PLANT AFFECTED : COPPER

This wayleave, Reference Number WWIP WHMN2167 19 is valid for 12 months from date hereof and is subject to the following conditions:

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

Date: 2019/07/10

By: C Spammer
For Regional General Manager
Western Cape

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



Loretta Gillion - Re: Versoek vir kommentaar - Gedeelte 229/575 Benguela Cove (2948/2019)

From: Louis Coetzee
To: Loretta Gillion
Date: 20/11/2019 09:58 AM
Subject: Re: Versoek vir kommentaar - Gedeelte 229/575 Benguela Cove (2948/2019)
Cc: Tania Fisher; Gerrit coetzee; Henk Olivier

Goeie dag,

My antwoord onderaan in Engels.

(1) In terms of the National Building Regulations, a Building plan application is required for the water-park, decks and other structures on site (mushrooms sculptures, jungle gyms or timber decks with ladder and roof, etc).

Such an application to comply with all applicable law including pool safety (see attached document). An Engineers Appointment and/or completion certificate is required to confirm the structural stability of the tall mushroom sculptures and any other structure that may require a rational design.

(2) A Notice was not served because a Town Planning application was lodged.

Building Control believes that the best solution to rectify unauthorise structures is to allow for the regularisation thereof by submitting a Building plan application.

The submission of the Town Planning application is regarded as part of the process to regularise the unauthorised work.

Below is the definition of a building from the NATIONAL BUILDING REGULATIONS AND BUILDING STANDARDS ACT 103 OF 1977.

"building" includes:

- a) any structure, whether of a temporary or permanent nature, and irrespective of the materials used in the erection thereof, erected or used in connection with
 - 1) the accommodation or convenience of human beings and animals;
 - 2) the manufacture, processing, storage, display or sale of goods;
 - 3) the rendering of a service;
- 4) the destruction or treatment of refuse or other waste materials; and
- 5) the cultivation or growing of plants or crops;
- b) a wall, swimming bath, swimming pool, reservoir or bridge or any structure connected therewith;
- c) a fuel pump or tank used in connection therewith;
- d) any part of a building, including a building as defined in (a), (b) or (c); and
- e) any facilities or system, or portion thereof, within or outside but incidental to a building, for the provision of a water supply, drainage, sewerage, stormwater disposal, electricity supply or other similar service in respect of the building.

**OVERSTRAND MUNICIPALITY
BUILDING CONTROL DEPARTMENT**



NATIONAL BUILDING REGULATION D4: SWIMMING POOLS AND SWIMMING BATHS

- (i) The owner of any site which contains a swimming pool shall ensure that access to such pool is controlled.
 (ii) Any owner who fails to comply with the requirements of subregulation (i) shall be guilty of an offence.

Regulation D5; The requirements of D4 shall be satisfied where access to the swimming pools complies with Part D of Section 3 of SANS10400.

Deemed to satisfy rules SANS10400-D

4.4 SWIMMING POOL AND SWIMMING BATHS

- 4.4.1 A wall or fence shall be provided by the owner of a site which contains a swimming pool or a swimming bath to ensure that no person can have access to such pool or bath from any street or public space or any adjoining site other than through:
- (a) a self-closing and self-latching gate with the provision for locking in such a wall or fence, or
 (b) a building, where such building forms part of such wall or fence.
- 4.4.2 A wall or fence shall be provided in any interconnected complex which contains a swimming pool or swimming bath to ensure that no person can have access to such pool or bath from any street or public place or anywhere within the complex other than through a self-closing and self-latching gate with the provision for locking in such a wall or fence.
- 4.4.3 Such wall or fence and any such gate therein shall be not less than 1.2m high measured from the ground level, and shall not contain any opening which will permit the passage of a 100mm-diameter ball.
- 4.4.4 The constructional requirements of such fence or gate shall comply with the requirements contained in SANS1390.

I, the undersigned, being the registered owner of erf situated at

do hereby certify that I have read the relevant sections of Regulations D4 and D5 of the National Building Regulations, and agree to comply with the relevant requirements thereof which apply to the proposal depicted on the attached plan.

Signed Date

- Note: (i) Failure or refusal to sign this form will not exempt the applicant from legal action in the event of failure to provide adequate protection.
 (iii) Swimming pool is not to be filled with water until pool protection has been installed.

ADDITIONAL ENGINEERING COMMENTS 2020

>>> Ricardo Andrew 2020/10/07 08:22 AM >>>
Goeie Dag

Jy kan my kommentaar net so gebruik. Ek het die vanoggend met Dennis bevestig.

Groete

Ricardo Andrew
Manager: Engineering Services
Tel: (028) 313 5073
Fax: (028) 313 0760
E: randrew@overstrand.gov.za

Overstrand Municipality

A: 1 Magnolia Street, Hermanus, 7200 | P: P.O Box 20, Hermanus, 7200
T: +27 (0) 313 8000 | F: +27 (0) 312 1894
E: enquiries@overstrand.gov.za | W: www.overstrand.gov.za

Vision Statement: "To be a centre of excellence for the community"

>>> Ricardo Andrew 2020/08/26 12:03 PM >>>
Henk,

Ek het laasmaand vir Dennis 'n konsep-antwoord ge-e-pos. Hy het nog nie dit goedgekeur nie. Kyk asb. hierna.

a) The proposed additional land uses will not have a meaningful impact on municipal services, including water supply.

b) There will be no meaningful, direct impact on the municipal road network because the main access routes to Benguala Cove are provincial and national roads.

c) We support the notion of the applicant that the proposed additional land uses are "ancillary and subservient" to the restaurant (main land use), which imply that are not the exclusive or primary reason that guest visit the site under consideration.

d) There is therefore no legal basis to charge additional bulk levies or to amend the services agreement.

Regards

Ricardo Andrew
Manager: Engineering Services
Tel: (028) 313 5073
Fax: (028) 313 0760
E: randrew@overstrand.gov.za

Overstrand Municipality

A: 1 Magnolia Street, Hermanus, 7200 | P: P.O Box 20, Hermanus, 7200
T: +27 (0) 313 8000 | F: +27 (0) 312 1894
E: enquiries@overstrand.gov.za | W: www.overstrand.gov.za

Vision Statement: "To be a centre of excellence for the community"

ANNEXURE M 1/4

TP - A. Theart
(H. Olivier)

Loretta Gillion - Fwd: Portion 229 of Farm 575 - Commercial District - events/markets / water park @ Benguela

From: Martin Diessner <martin.diessner@gmail.com>
To: Loretta Gillion <lpage@overstrand.gov.za>, Henk Olivier <holivier@overst...>
Date: 29/12/2018 05:14 AM
Subject: Fwd: Portion 229 of Farm 575 - Commercial District - events/markets / water park @ Benguela
Cc: "Karsten Wellner Dr." <karsten.wellner@gmail.com>, Sean McCarthy <sean@s...>
Attachments: BCI Commercial District council request-comment-BCHOA.pdf; IMAGE.jpg; SKMBT_C36018120408210.pdf

Dear Loretta & Henk,

Best regards for the festive season, hoping that you are enjoying some relaxing time with your families.

Please find attached response from BCHOA's lawyer - it appears the BCHOA trustee committee does not need to comment/provide consent for this application of departure and amendment to the SDP based on the constitution.

Our recommendation is that Overstrand town planning does **strongly consider** the responses by home owners when making a decision.

It appears that the applicant - ahead of any town planning decision communicated - has already decided to go forward with the introduction of rock events and open air concerts at Benguela Cove, with tickets being sold via CompuTickets:

<http://www.benguelacove.co.za/rocking-the-lagoon/>

<http://www.benguelacove.co.za/andrew-young/>

[http://cms.computicket.com/web/events/search/Venue:Benguela Cove Lagoon Wine Estate](http://cms.computicket.com/web/events/search/Venue:Benguela+Cove+Lagoon+Wine+Estate)

Please keep us informed via email about the decision making process and the outcome.

On a different note, a number of home owners question the new water park that has been installed - this 'feature' (<http://www.benguelacove.co.za/benguela-splash/>) was **not** included on the approved plans for the commercial district (Plan ref 32318, which do require HOA consent). Questions have been raised about the use of water for amusement park during times of draught and water restrictions, both at the new water park and the pirate golf course.

Looking forward to your response,

Best regards

Martin Diessner

FILE NO: Ptn 229, Farm 575 Benguela
SCAN NO:
Farm 575
COLLABORATOR NO: 1243792

TP
03 JAN 2019

file:///C:/Users/loretta/AppData/Local/Temp/XPgrpwise/5C2702AAHermanusMunpo... 2019/01/03

Begin forwarded message:

From: "Loretta Gillion" <ljpage@overstrand.gov.za>
Subject: Portion 229 of Farm 575
Date: 04 December 2018 at 08:52:24 SAST
To: <martin.diessner@gmail.com>

Dear Mr Diessner

Attached please find a self-explanatory letter for your attention.

Regards

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

Overstrand Municipality

A: 1 Magnolia Street, Hermanus, 7200 | **P:** P.O. Box 20, Hermanus, 7200
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Vision Statement: *"To be a centre of excellence for the community"*

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action in terms of this e-mail. By replying to this e-mail or opening any attachment you agree to be bound by the
provisions of the disclaimer.

Please consider the environment before printing this correspondence.

From: **E Jeerey** eej@lslaw.co.za
 Subject: RE: BCI Commercial District - council request
 Date: 18 December 2018 at 09:25
 To: Martin Diessner martin.diessner@me.com

Hi Martin,

I've taken a look at the constitution again and I can't find anything which requires the HOA (or trustee committee) consent for an amendment to the SDP and departure.

Clause 31 prohibits the rezoning of an erf, but this is not applicable as 229 is already zoned for commercial use.

31. NO SUBDIVISION OR REZONING AND NOT MORE THAN ONE DWELLING

31.1 No Member shall be entitled to subdivide or rezone his erf, it being noted that that Erf 228 has been zoned as the Hotel and Related Facilities Development, together with the Agricultural Enterprise, which shall enjoy a separate zoning status commensurate with its function as main farm complex for the cultivation, harvesting, processing and marketing of the produce of the agricultural property, together with the Commercial Component, being Erf 229, comprises of with the Winery, Restaurant, Farm Stall, the Chapel, Conference facilities being zoned as Commercial.

The Conduct Rules does prevent require trustee committee consent for any objectionable trade or business. Is a "farmers' market" objectionable?

34. CONDUCT RULES

USE OF PROPERTY AND/OR COMMON PROPERTY AND/OR AGRICULTURAL PROPERTY AND/OR COMMERCIAL COMPONENT

1.1 No owner or occupier of an Erf may, without the prior consent of the Trustees:

1.1.6 that no noisy, injurious or objectional trade or business of any kind shall be carried on in any such dwelling house or building or on the Commercial component and such building shall, at all times, be kept in such a state as not to be a nuisance or annoyance to any owner and/or occupier and surrounding neighbours.

Ultimately, clause 34.16 provides that the commercial enterprise may be used for "farm stall" and "wedding functions". I feel that this right has been reserved to the developer in terms of the Conduct Rules to the Constitution.

16. COMMERCIAL UNIT

16.1 The Developer reserves a right to further amend its rules so as to accommodate the Hotel on Erf 228, the Commercial Component and Public Facilities being Erf 229, which comprises of the winery, the Public tasting facilities, the restaurant, the conference facilities, the farm stall, sales and manager's office and chapel and the like, once such components have been built.

16.2 It is recorded that the Hotel, Wine Cellar, the Tasting Rooms, Restaurant, the Farm Stall, the Chapel and Conference Facilities etc, are designated for Commercial Use and may be utilised as a bed and breakfast facility, private functions including weddings, various functions and film shoots.

Any of the owners is still free to raise objection.

I hope this assist.

Regards
 Eddie



LAAS &
 SCHOLTZ

Laas & Scholtz Inc.
 Reg. No. 1995/000239/21
 Tel: +27 21 975 0801
 Fax: +27 21 975 0816
 Email: eej@lslaw.co.za
 Website: www.lslaw.co.za
 Disclaimer: www.lslaw.co.za/Disclaimer.html

From: Martin Diessner [<mailto:martin.diessner@me.com>]

Sent: Monday, 17 December 2018 14:19
To: E Jearey <ecj@slaw.co.za>; jearey@webafrika.org.za
Subject: Fwd: BCI Commercial District - council request

Sent from my iPhone

Begin forwarded message:

From: Martin Diessner <martin.diessner@me.com>
Date: 04 December 2018 at 09:33:05 SAST
To: Eddie Jearey <ecj@slaw.co.za>
Cc: "Karsten Wellner Dr." <karsten.wellner@gmail.com>, Sean McCarthy <sean@siujan.co.za>, Ronel Davidowitz <secretary@mybenguela.com>
Subject: BCI Commercial District - council request

Hi Eddie,

Please find attached PDF letter from Overstrand Council.

They are requesting us to confirm if we (BCHOA) require consent to the proposed amendment of site development plan and departure, as per this letter sent in March 2018:

https://mybenguela.com/wp-content/uploads/2018/02/20180216_BCI_Proposed_Amendment_approved_Site_Development_Plan_and_Departure-1.pdf

Can you please advise on this?

I am not 100% sure if this is constitutional or not.

Would be great if you could either provide an answer to this, or advise who else we must use.

The latest link to constitution is here:

https://mybenguela.com/wp-content/uploads/2018/04/20180420_Benguela_Cove_Constitution.pdf

Thanks
Martin

Begin forwarded message:

From: "Loretta Gillion" <lpage@overstrand.gov.za>
Subject: Portion 229 of Farm 575
Date: 04 December 2018 at 08:52:24 SAST
To: <martin.diessner@gmail.com>

Dear Mr Diessner

Attached please find a self-explanatory letter for your attention.

Regards

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