

4.8

PORTION 3 (DE GANG) OF FARM 575, AFDAKSRIEVER, CALEDON DIVISION, OVERSTRAND MUNICIPAL AREA: PROPOSED DEPARTURE AND CONSENT USE: MESSRS INTERACTIVE TOWN AND REGIONAL PLANNING ON BEHALF OF AFDAKSRIEVER (PTY) LTD

**Ptn 3 of Farm 575, RCAL
(4103)**

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12 October 2020

1. EXECUTIVE SUMMARY

An application has been received on 13 July 2018 from Messrs Interactive Town and Regional Planning on behalf of Afdaksrivier (Pty) Ltd on Portion 3 (De Gang) of Farm 575, Afdaksrivier for the following:

- ❖ Departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 for the following:
 - to accommodate a gatehouse of 6m² in lieu of 5m²;
 - to relax the eastern lateral building lines from 30m to 10m to accommodate the dwelling units and staff quarters;
 - to relax the eastern lateral building lines from 30m to 4,5m to accommodate a gatehouse in excess of 5m² in extent;
 - to relax the western street building line from 30m to 0,9m to accommodate a gatehouse in excess of 5m² in extent;
- ❖ Consent Use in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 to accommodate five (5) additional dwelling units.

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 is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUD / SITE HISTORY

The farm is zoned Agriculture Zone I and measures approximately 50,9608 ha in extent.

There is one (1) existing cottage on the property.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is as follows:

- The application is to develop five (5) additional dwelling units (each 250m² in extent) as an additional right, and also further construct a main dwelling 250m², a farm shed, farm manager dwelling (120m²) and two (2) additional labourers'

- cottages (60m² in extent each). There is also one (1) existing historical labourer's cottage (60m²) on the farm, which is not habitable.
- Application is also made that new accommodation units and a proposed gatehouse be constructed over the 30m building lines, up to 10m, 4,5m and 0,9m from the property boundaries.
 - All accommodation units will be single storey.
 - Specialized agriculture is proposed in the form of vineyards, protea plantations and cash crops on a smaller scale.
 - Application is also made to construct a 6m² gatehouse at the entrance point of the property.
 - The property is situated 1,5km north of Fisherhaven, and obtains access from the Karwyderskraal Road, 2,5km from the Karwyderskraal / R43 Intersection.
 - The farm is zoned Agriculture Zone I and surrounded by other farms.
 - The farm is earmarked for Core Agriculture and Conservation 2 in terms of the Overstrand Municipality SDF, 2006. Development will comply with environmental requirements and according to an Environmental Consultant no Environmental Impact Assessment (EIA) is required.
 - Council's Policy on additional dwelling units and accommodation for farm workers, 2009. The proposal complies with the policy requirements, as it would be developed in a linear clustered farm on land with low agricultural potential, and will be closer (10m) to the farm boundary to reduce impact on farming operations, and will also be outside the set-back line of water courses.
 - The Infrastructure Scoping Report provided the following information regarding access and services.
 - **Main Access** - Will be moved eastwards to improve access.
 - **Routes and Roads** – Existing road next to the eastern boundary will be utilized (upgraded) to provide access to all accommodation units, staff quarters, the main dwelling and the shed.
 - **Access and Security** – The construction of security fencing, boom/gate and provision of CCTV to be investigated.
 - **Storm Water Management** – Will be managed by road network and removing invasive and alien growth.
 - **Water Supply** – The registered water use from Afdakrivier is 45 140kl/annum, which is sufficient for the agricultural and other developments on the farm.
 - **Electricity** – Farm's housing units will be off-grid and Eskom power will be used for the storage (shed) area, workshop and water pumping station.
 - **Solid Waste Management** – Organic material will be used as compost, whilst non-biodegradables will be transported to the Overberg Dump Site.
 - **Fire Management** – Fire breaks will be created and maintained and a fire fighting water tank with pump that fits onto a bakkie will be on-site.
 - The farming activities are labour intensive, therefore one (1) manager's unit (120m²) and two (2) staff quarters (60m² each) are also required.
 - The internal road will be 4m wide, and parking will be provided at all units and staff quarters.
 - Eco-friendly farming and building practices will be used.
 - In terms of need:
 - Development will provide a valuable service in terms of agricultural produce providing grapes for wine making, providing proteas to export and smaller cash crops.
 - Farm land which is currently vacant will be optimally utilized in terms of its original potential, provide housing for farm workers and dwelling houses for the owners of the property.
 - Will provide employment for farm workers as well as the secondary economy.

- Only 3546m² footprint of buildings will be created.
- In terms of desirability:
 - the farm character of the area will be preserved and local sourced material and skilled labour will be used.

Planning Principles:

Spatial Justice

Will expand the agriculture sector providing employment and also accommodation for farm employees.

Spatial Sustainability

Units will only be constructed on areas with low agricultural potential, and the proposal will revitalise previously cultivated land.

Efficiency

Cluster development will be used to maximize agricultural use and the proposed internal road keeping existing crossings over water courses is sufficient.

Spatial Resilience

The new employment opportunities and improvement of the natural environment would provide more opportunities in livelihood, and contribute to buffer or absorb economic or environmental setbacks.

Good Administration

The Municipality followed a consultative process and the application was also advertised.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Notices	Yes	11 January 2019	15 February 2019
Ward councillor	Yes	28 December 2018	15 February 2019
Total comments	One (1)		
Total letters of support	None		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			Yes
Was the application processed correctly (if no, elaborate below):			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			Yes

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

Name	Date received	Summary of comments
Municipal Environmental Branch	28/02/2019	No objection.

Building Department	14/02/2019	No objection.
Fire Department	28/01/2019	No objection, subject to compliance with Fire Regulations.
Engineering Services Department	5/03/2019	See Annexure F.
Telkom	7/02/2019	See Annexure G.
Eskom	28/01/2019	See Annexure H.
Heritage Western Cape	21/01/2019	See Annexure I.
EADP (Planning) : Western Cape	8/02/2019	See Annexure J.
Overberg District Municipality	14/02/2019	See Annexure K.
Cape Nature	22/03/2019	See Annexure L.
EA&DP : Environmental Western Cape	18/02/2019	See Annexure M.
Western Cape Government : Agriculture	24/04/2019	See Annexure N.
BGCMA	3/10/2019	See Annexure O.
Republic of South Africa : Department of Agriculture National	30/08/2019	See Annexure P.
Western Cape Government : Transport & Public Works	22/05/2019	See Annexure R.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION, APPLICANT'S REPLY TO COMMENTS AND MUNICIPAL ASSESSMENT OF COMMENTS

One (1) letter of comment/objection was received from the public.

Negative comments were also received from the following government departments:

- Western Cape Government : Environmental Affairs and Development Planning;
- Directorate Development Management, Overberg District Municipality (*hereafter referred to as ODM*), and
- Western Cape Government : Agriculture.

Note that the National Department of Agriculture did provide a comment, but it was only submitted six (6) months after it was circulated to them, and is therefore considered a late comment and will thus not be dealt with.

It is to be noted that the Town Planning Consultant provided comments on the objection and comments from state departments. A legal opinion on some of the matters was also attached to the response to the objection letter, and there is some duplication in these documents. Therefore only the most prominent facts/points will be summarised in addressing the objections/comments.

It is important that the decision maker duly consider the above legal opinion. It relates to powers of various spheres of government and also the Municipality's functions as a decision making authority.

The objections/comments, the applicant's response and the Municipal Town Planners response is summarized as follows:

7.1 Objection : By Public

No mention was made in the application of a servitude for a water channel over the property providing water for irrigation and farm workers. The concern is that provision will not be made to control sewerage above such water channel, leading to the pollution of the water channel.

Applicant's Response

A commitment is made that sewerage will strictly be dealt with in terms of municipal requirements to ensure no sewerage will be deposited into the water channel.

Town Planner's Response

The comments are noted. Also note that BGCMA supports the application considering the concern is related to possible pollution of a water channel. The applicant will have to comply with all relevant legislation regarding sewerage disposal.

7.2 Objection: EA&DP and Department of Agriculture

The additional dwellings should in terms of the Provincial Rural Areas Guideline be placed on previously disturbed footprints within or adjacent to the farm "werf" and not cultivated or agricultural land.

Applicant's Response

The land was previously cultivated for wheat production. An area of 8 ha was cleared of alien vegetation, which will now be cultivated. The only disturbed footprint is around the existing labourer's cottage in the southern portion of the property. The dwellings were arranged linear to minimise impact on agricultural activities, and a soil suitability study (for vineyards) indicated four (4) units will be placed on land with low to medium vineyard suitability, and three (3) units on land with high vineyard suitability. The distance from Karwyderskraal Road and the Waste Disposal Site was also considered with placement of the units. The footprint of all the buildings will only be 0,3 ha, and the additional units are an integral financially supportive component for the financial investment in the agricultural component development.

Town Planner's Response

The farm is only developed with one (1) small cottage (60m²), and was previously utilized for wheat farming.

The comments are duly noted. The application must also be considered in terms of the Policy on Guidelines and Requirements in respect of applications for the erection/establishment of additional dwelling unit and accommodation for farm workers/staff on agricultural land units within the jurisdiction area of the Overstrand Municipality.

The Western Cape Government : Agriculture indicated that they do not support the application for dwellings on cultivated land. In terms of the above-mentioned policy "written permission from the Provincial Department of Agriculture to the effect that the position of the proposed units are not located on high potential agricultural land, must accompany the relevant application."

Written consent is not provided by the Western Cape Government : Agriculture. The mentioned policy then further requires that dwelling units should be placed on localities where it will not interfere with daily agricultural activities, and will not impact the farming unit or surrounding agricultural practices (such as spray drift, etc.).

The property owner will have to construct the additional dwellings and also the shed, a main dwelling, manager's unit and staff quarters (which are primary rights) on "cultivated land". The concern of the Western Cape Government : Agriculture is therefore not unfounded.

Ultimately the decision will have to be made to either stringently apply Council's Policy for additional dwelling units on farms and Department of Agriculture's opinion to ensure no cultivated land will be lost, or possibly affect the whole development not to be proceeded with. This matter and the applicant's opinion regarding the status of the Provincial Rural Area Guidelines will be dealt later in this report under Evaluation/Desirability.

7.3 Objection: EA&DP and Western Cape Government : Agriculture

In terms of the nature of the additional dwellings, the "Rural Area Guidelines" indicates additional dwelling units are intended to support rural tourism and diversify farm income (EA&DP). Additional units should cater for short-term transient quest accommodation (Department of Agriculture: Western Cape).

Applicant's Response

The Provincial Rural Areas Guideline is only a guideline to assist the decision maker, and not legally/statutory enforceable. The Overstrand Municipality is more tailored for specific conditions and needs in the area. The Municipality must make decisions that benefit the local community, within the framework of all relevant national and provincial legislation, policies and guidelines. In terms of the Agriculture Zone I zoning in the relevant Zoning Scheme, "additional dwellings" mean dwellings which are not required for the accommodation of bona fide persons involved in the agricultural practice on the property concerned, and additional dwelling units may be used for long or short-term accommodation purposes. Although the Policy (municipal) on additional dwelling units states that it is intended to guide decisions to expand rural tourism, it nowhere states it is exclusively for tourism.

Also, although the additional dwellings will not involve rural tourism, it could lay the groundwork for rural tourism through shareholders getting involved in wine tasting and other small-scale tourist facilities in the area, subject to municipal approval.

Municipal Town Planner's Response

The comments are noted. The applicant's opinion that the Overstrand Municipality's Policy for additional dwelling units on farms does not limit such units to tourist accommodation is correct. The policy also requires that it needs to be indicated for what purpose the additional dwellings will be used, and what other planning applications will be triggered. This was inserted in the policy, as an additional application is required for self-catering tourist units, as later is confirmed in point 13 of such policy.

In terms of the Overstrand Municipality Zoning Scheme Regulations, it is also not specified whether additional dwelling units on farms must be limited to tourist accommodation. On some farms in the rural area of Overstrand, additional dwelling units are leased out for longer terms to obtain additional income. The Zoning Scheme also indicates that the additional units may be used for long- or short-term accommodation. This shows it was not only directed at tourist accommodation, but also for long-term rentals, etc.

The applicant's opinion that the development should have a positive impact on rural tourism is not unrealistic. The residents staying in these additional units will in all probability support surrounding tourist facilities, farm shops, farm stalls, etc. and will have a positive economic impact on the area. It will, to a certain extent, also diversify farm income, as shareholders in the farm will in all probability also have other income basis, ensuring more funding for the farming activity to first be developed and then be maintained.

The comment on the status of the Provincial Rural Guidelines will be addressed later in this report under the heading Evaluation of Desirability.

7.4. Objection: EADP and Western Cape Government : Agriculture

The size of the additional dwellings exceeds 120m². It should be limited to 175m² in terms of the Provincial Rural Area Guidelines.

Applicant's Response

In terms of the Overstrand Policy for additional dwelling units, units and outbuildings may not have a footprint exceeding 250m². There is compliance with the municipal policy.

The provincial guidelines are merely guidelines, whilst the municipal document is a policy.

No NEMA Regulations are also triggered by the application.

Municipal Town Planner's Response

The applicant is correct in his comments regarding the allowable 250m² footprint for additional dwelling units with outbuilding on farms in terms of the Policy on Guidelines and Requirements in respect of applications for the erection/establishment of additional

dwelling units and accommodation for farm workers/staff on agricultural land units within the jurisdiction area of the Overstrand Municipality.

It is to be noted that the Municipality already approved the abovementioned Policy on Additional Dwelling Units on farms in 2008, and that there was consultation with Cape Nature, and the Department of Agriculture: Western Cape when the policy was drafted. It is also fact that additional dwelling units with a footprint of 250m² have been approved in the Overstrand area in line with this policy.

It is acknowledged that the Provincial Rural Area Guidelines specify additional dwelling units on farms should be limited to 175m². It is also to be noted that in the extract from the definition of additional dwelling units in the Provincial Rural Area Guidelines, which states the following: “A maximum floor area, including garaging of 175m² and building height of one (1) storey (6.5m) is encouraged,...”. It therefore does appear to allow some discretion.

An opinion on the status and enforceability of the mentioned Provincial Rural Area Guidelines will be later discussed in the evaluation of Desirability.

7.5. Objection: Overberg District Municipality (ODM)

The development will be close to the Karwyderskraal Waste Management Site, and in terms of the conditions of the waste landfill site permit requires that no further residential areas be allowed within the buffer area.

Applicant's Response

ODM states they do not support the application. This is not a substantive, unqualified or valid objection. The comments made by ODM are vague and do not bind or limit the powers of the Municipality to decide on the application.

The precise meaning of “residential areas” is questioned as in the IEA Report done for the facility (dumpsite) there is reference to “residential areas of Fisherhaven and Hawston”. It is the opinion that the residential area referred to relates to residential suburbs such as Fisherhaven and Hawston. The proposal is for agriculture and to construct additional dwelling units, which are subservient to the agricultural use, and is thus agricultural development.

The meaning of “residential area” in terms of a Case Law is interpreted as “the character of areas within which a zoning scheme is established by the zoning applicable to the properties in that area”. The property and surrounding properties are zoned Agricultural, the development of five (5) residential units was incorrectly equated by ODM as residential area. It is correctly defined in the Provincial Zoning Scheme Model By-Law (October 2014) and also the Saldanha Bay Municipality By-Law. The development does not constitute a residential area, thus ODM's point does not apply to the development.

Secondly, the so-called “buffer zone” restricts the land use rights on the subject property according to the Overstrand Zoning Scheme, 2015. The so-called buffer is not mentioned in the Overstrand Zoning Scheme or Overstrand Municipal Wide SDF.

The only reference to “buffer zone” is in the Draft Environmental Impact, 1999 and Amendment of the Operating Permit for the Karwyderskraal Landfill in 2005. The Draft EIA also only indicated the following two impacts on the area, being impact on groundwater quality to be controlled by mitigating measures, and odours which would

be dispersed by strong winds year-round and mitigating measures further minimizing odours. There would still be a 800m distance between additional dwellings and the landfill site.

Further consultation took place with the Directorate Waste Management of DEA&DP and their recommendation was that an air pathway study be done to determine exact distances measurements. This study is considered unnecessary due to the low-impact of the development, and the 800m distance between the dwellings and landfill site further ensure an insignificant impact.

No specific radius distance is stated for the buffer area, merely “closer to the facility than any existing residential areas during the operative life of the facility”. The extent of the buffer is not indicated in the permit for Karwyderskraal Waste Disposal Site.

The Gauteng Provincial Environmental Management Framework Standard, 2018 states “*Best case buffer of 400m and worst case buffer of 200m must be maintained for general landfill sites (communal, small, medium and large)...*”

ODM’s letter for not supporting the application is not valid, and the Municipality can exercise its discretion to consider the application.

It is also to be noted that an environmental scan was also done for the development and EA&DP: Environmental Section indicated that no listed activities are triggered. It is the opinion that no Buffer Zone exists.

Municipal Town Planner’s Response

The comments of the applicant are duly noted, and the opinion that the permit conditions regarding the application of the Karwyderskraal Landfill Site is vague and open for interpretation.

A legal opinion was then also obtained which provide the interpretation of the condition regarding the “buffer” is legal terms.

The legal opinion was forwarded to the Municipal Legal Branch for an opinion and this will be further elaborated under Evaluation.

7.6. Objection: ODM

The relaxation of the 30m eastern lateral building line to 10m and 4,5m should not be considered, as the buffer area between the waste disposal facility and development should be maximised.

Applicant’s Response

This is a confusing statement as ODM seems to support the application subject to no building line relaxation condition.

Relaxation of building lines from 30m to 10m would only place dwelling units 20m closer to the landfill site. The approximately 800m from the landfill site would still be almost double the best case buffer (400m) stipulated in the abovementioned Gauteng Pollution Buffer Zones Guidelines.

Municipal Town Planner's Response

The comments are duly noted.

7.7. Objection: ODM

ODM required confirmation by the developer that he is aware of and accepts the regional waste disposal facility on Portion 79 and expansion of the facility towards the southern boundary in future.

Applicant's Response

The developer confirmed in writing he accepts the condition and has no objection against current or future operations, subject thereto that ODM operates according to international best practice and no informal settlements will be allowed.

From this condition it appears that ODM is seemingly conditionally supportive, although some comments appear that they do not support the application.

Municipal Town Planner's Response

The comments are duly noted. The applicant's opinion that his condition creates an impression that ODM is conditionally supportive is confusing, considering the comments regarding the buffer zone and building line departures.

It is however noted that the applicant accepted the condition.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7.

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

See Paragraph 7.

Internal Departments

See Paragraph 7.

**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

The application for additional dwelling units and building line relaxation does not have a direct impact on Spatial Justice, but will indirectly financially help establish a farm with job opportunities and accommodation for labourers on-site.

Spatial Sustainability

The proposal will be done in an environmentally sensitive way and would fit in with the scenic and cultural landscape. The development is however on valuable agricultural land which must be protected, which therefore could have a negative impact on Spatial Sustainability.

Efficiency

The development is considered efficient in that existing roads will be used for the farm access, and the placement of the units close to the boundary would lessen the impact on agricultural activities to a certain extent. It is however still proposed on existing valuable agricultural land and not limited to one (1) large footprint (werf), but is placed approximately 30m to 50m apart, thereby requiring land to be cultivated to be set back from each unit.

Spatial Resilience

The proposal is in line with what uses are allowed on agricultural land. It should however comply with certain requirements. In the Overstrand Municipality SDF, 2006 one of the key objectives identified was to “protect areas with high agricultural production potential” and to protect prime and unique agricultural land, also to provide guidelines to assist in assessing applications outside the urban edge.

A specific policy was also approved by Council in 2008 to assess additional dwelling units on farms. The policy stipulates that the Department of Agriculture must be in support of applications for additional dwelling units, to ensure high potential agricultural land is not affected.

The Western Cape Province has also prepared a Provincial Rural Area Guideline document (dated 2019). This guideline also stipulates the protection of valuable agricultural land.

Considering the above and the fact that the Western Cape Government : Agriculture (the specialist considering the value of agricultural land) does not support the application, leaves the conclusion that the proposed development is not in line with the aims of the Overstrand Municipality SDF, 2006, the Policy on Guidelines and Requirements in respect of applications for the erection/establishment of additional dwelling units and accommodation for farm workers/staff on agricultural land units within the jurisdiction area of the Overstrand Municipality or the Western Cape Province Rural Area Guidelines (2019).

Good Administration

The application followed the required planning procedures to ensure that a proper public administration process was followed, and all relevant state departments and institutions were provided an opportunity to provide their comments on the application.

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

Same as Point 10.2 above.

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

The comments under Point 10.2 related to Spatial Resilience are relevant. The proposal is not considered in line with the Overstrand SDF or the policy for additional dwelling units.

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

The comments under Point 10.2 relating to Spatial Resilience are relevant. The proposal is not in line with the Western Cape Province Rural Area Guidelines.

10.6 Impact on Municipal Engineering Services

This area is not serviced by the Municipality.

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

No EIA Regulations are triggered.

10.8 Existing and proposed zoning comparisons and considerations

N/A

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12. THE DESIRABILITY OF THE PROPOSAL

The application for additional dwelling units, a gatehouse larger than 6m² and building line departures must be considered on its own merit. It is, however additional privileges being applied for.

The construction of a gatehouse of 6m², and over building lines is considered a minor application. The proposal is also supported by the Western Cape Government : Transport and Public Works. It is therefore considered desirable.

The second part of the application is to construct five (5) additional dwelling units of 250m² in extent. The Overstrand Zoning Scheme provides therefore that an application can be made by way of a consent use, and the Policy on Guidelines and Requirements in respect of applications for the erection/establishment of additional dwelling units and accommodation for farm workers/staff on agricultural land units within the jurisdiction area of the Overstrand Municipality, provides criteria that must be complied with to obtain a positive result. The Western Cape Province also approved the Provincial Rural Area Guidelines that must be considered.

The applicant in his response to the objections and comments by state departments did provide a legal opinion over the role of the state departments, District and Local

Municipalities in taking decisions on municipal level. The legal opinion also included statements relating to the Provincial Guidelines.

In short, the legal opinion states that the Municipality has exclusive powers in terms of the Constitution to manage municipal planning. It is stated that Municipalities must regulate the criteria for deciding on land use applications. Municipalities must “have regard” to applicable SDF’s, structure plans, planning principles (In Chapter VI LUPA), desirability of the land use and also guidelines issued by the Provincial Minister regarding desirability of land use. It was also stated from case law that “have regard” means “bear in mind” or “do not overlook”, and courts stated guidelines should not be applied rigidly or inflexibly and thereby fitters its decision on the decision-maker.

Considering the above, in terms of the legal opinion there is some flexibility when it comes to Provincial Guidelines.

To determine the desirability of the comments and opinions, the following matters will be further discussed:

- ODM’s reason for not supporting the application.
- Statements that additional dwelling units may not be used for tourist accommodation.
- The maximum size of additional dwelling units.
- The placement of additional dwelling units considering impact on valuable agricultural land.

The comment by ODM is vague with regard to the fact that no clear buffer was provided in the permit, and it also relates to residential areas which is debatable if it relates to additional dwelling units. It is also not clear how the Overstrand Municipality will then have to consider the placement of main farm dwellings, manager’s dwelling and labourers’ cottages which are primary rights on land zoned Agricultural Zone I. It is therefore debatable how the Overstrand Municipality can enforce such a vague condition on any surrounding property owners considering their primary rights, and when considering secondary (consent use) rights.

The second matter is the fact that EA&DP: Planning Section and the Western Cape Government : Agriculture indicated that additional dwelling units may only be used for tourist accommodation.

In the Western Cape Province Rural Area Guidelines (March 2019) the following Guidelines are stated:

Under 8.1

“Encourage the economic viability of agricultural purposes through the introduction of non-agricultural land uses including tourist accommodation and facilities and additional dwelling units”.

“Additional dwelling units may not be alienated, whether by individual erven, sectional title, share block or any other means”.

Under Chapter 10

“The following accommodation types should be avoided at all costs:

Multiple residences of owners of farms, nature reserves or resorts where the owner is an entity with more than one shareholder”.

It is clear from the above quotes that the Provincial Rural Area Guidelines is not supportive of this type of application.

The definition of additional dwelling units in terms of the Overstrand Municipality Zoning Scheme, 2013 states:

“Means dwellings in the Agriculture Zone I, which are not required for the accommodation of bona fide persons involved in the agricultural practice on the property concerned, and additional dwelling units may be used for long or short-term accommodation purposes”.

The Zoning Scheme Regulations also provide therefore under Agriculture Zone I zone that application can be made for tourist accommodation. This means that additional dwellings are not limited to tourist accommodation in terms of the Overstrand Zoning Scheme, and specific reference is made to leasing it out as long and short-term rental property.

The Policy on Guidelines and Requirements in respect of applications for the erection/establishment of additional dwelling unit(s) and accommodation for farm workers/staff on agricultural land units within the jurisdictional area of the Overstrand Municipality, 2008 also do not specify that additional units may only be utilized for tourist accommodation.

It is therefore, the opinion that the comments from Western Cape Government : Agriculture and EA&DP : Planning Branch that additional units are to be used for rural tourism and not specified as such in the Municipality’s Planning Documents.

The General Section 8 Zoning Scheme Regulations that were applicable to farm areas since 1986 also provided for application for additional dwelling units, and it was not specifically limited to tourist accommodation. It was used to construct dwellings for family members, or lease out for rental income.

The concerns of the above-mentioned departments relate more to the specific format of this application. The creation of an estate type development is where the main focus will be more to create residential opportunities than the development of a productive farm. This concern is not unfounded as the Municipality does receive complaints from residents in residential type developments in the Hemel & Aarde Valley of some farming activities negatively impacting on them. These residents also have certain expectations, which could influence the potential for agricultural land.

The third concern from EA&DP : Planning and Department of Agriculture: Western Cape is the size of the additional dwelling units. This is due to the Western Cape Rural Area Guidelines (March 2019) specifying a footprint maximum of 175m² for additional dwelling units with their garaging.

The extract from the additional dwelling unit definition in terms of the Provincial Rural Areas Guideline is as follows:

“A maximum floor area, including garaging of 175m² and building height of one (1) storey (6.5m), is encouraged...”

It is clear that this is only a guide, considering the wording “encouraged”.

The Overstrand Municipality has approved its own policy on additional dwelling units in 2008, which is considered an acceptable norm for the Overstrand area. This criterion has been applied since 2008, and is thus the acceptable norm in this area. The 250m² footprint for additional dwellings, including garaging, for which the applicant is applying for, is therefore considered in line with area specific criteria, and is considered acceptable.

The final matter in which the Department of Agriculture: Western Cape as well as EA&DP: Planning provided a negative comment on is the proposal to utilize cultivated agricultural land and not disturbed footprints to place the additional units on.

In terms of the Rural Area Guidelines, farm buildings and associated structures should be clustered within the farmstead precinct and should not be on cultivated land.

Another definition provided in the Provincial Rural Area Guidelines is “high potential agricultural land”, which states:

“Means the best land available for, suited to and capable of consistently producing optimum yields of a wide range of agricultural product (food, feed, forage, fibre and oil seed), with minimum damage to the environment.”

Then, in terms of the Overstrand Municipality SDF, 2006, one strategy specifies that land having high primary production potential should be retained for agricultural use and not sterilised by alternative forms of development.

The Overstrand Municipal Policy to consider Additional Dwelling Units, approved by Council in 2008, also captured the importance of this strategy with specific criteria that had to be complied with to ensure the protection of high potential agricultural land.

One of the criteria that was created to ensure compliance, was that Provincial Department of Agriculture had to confirm that the position of the proposed units were not located on high potential agricultural land. Criteria such as the clustering together of additional dwelling units and placement of units where they will not interfere with the daily agricultural activities (e.g. the plough and harvest routes of farming implements), or do not impact on the farming unit and surrounding farming units (e.g. in regard to dust generation or product security), and do not impact on surrounding agricultural practices (e.g. through spray drift).

The Western Cape Government: Agriculture is not supportive of the application as the units are proposed on “cultivated” land. In terms of that Department’s GIS mapping the Dry Land Potential for the property is considered very high.

The applicant did motivate that the only disturbed footprint on the farm is around the existing labourers’ cottage. It was also indicated that four (4) of the units will be placed on land with low to medium soil suitability for vineyards and three (3) units on land with high soil suitability for vineyards. This further confirms the agricultural potential of the land, but also the lack of other land with disturbed footprints.

The units were placed on the periphery of the farm in an attempt to further limit impact on agricultural land, but the units are still 40m to 50m apart, and not clustered in a werf to limit impact on additional activities. This then requires that a buffer area

around each additional dwelling unit will have to be provided, thereby further affecting agricultural land.

Considering the above, in relation to the protection of agricultural land, the application is not considered compliant with the Rural Area Guidelines, the Overstrand Municipality SDF or the Overstrand Municipality's Policy for Additional Dwelling Units.

The opinion of the Municipal Legal Department were also obtained on the application due to the fact that a legal opinion was submitted with the application.

The Legal Department indicated although there is agreement with the applicant with regard to what constitutes or does not constitute "residential", "tourism" and "buffer", and the ODM's opinion is vague and unsubstantiated, the applicant always was going to have a problem to comply with the requirements of National and Provincial Government Policies regarding the physical placement/location and impact of the five (5) dwellings on the farm.

The Legal Department furthermore states that in terms of Section 42(1)(b), and to a lesser extend (c); and read with Sections 6(1)(c) and 7(b)(ii) of SPLUMA, the MPT "must adhere to its provisions i.e. make a decision which is consistent the National and Provincial Government Policies, and the MPT has no discretion in this regard, because if it approves the consent use application, its decision will be inconsistent with National and Provincial Government Policies. (See Legal Department's comments attached as Annexure O.)

The applicant's motivation, comments on objections and the legal opinion submitted were duly considered. Considering the above, the policies and guidelines of National and Provincial Governments' advise Local Governments SDF's and Policies, and Local Governments must comply with National/Provincial Policies/Guidelines. Where National/Provincial Policies/Guidelines provide discretion in such documents such discretion can be applied in areas where the Municipality is the decision maker. It is however clear that DEA&DP's Rural Area Guidelines and the Department of Agriculture's mandate to protect high potential agricultural land are not being complied with.

Section 42 of SPLUMA which states that when a Municipal Planning Tribunal consider an application, it must "*make a decision which is consistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies,...*"

Should the Municipality as decision maker therefore approve this application, it will be inconsistent with provincial government policies, and also not consistent with the measures designed to protect and promote the sustainable use of agricultural land. Such a decision will therefore not be in line with Section 42 of SPLUMA.

It is therefore the opinion that the applicant did not prove the construction of five (5) additional dwelling units on the property to be desirable.

The application entails the departure to relax a 30m farm building line to 10m to accommodate a new farm main dwelling, the five (5) additional dwelling units, a manager's dwelling and also two (2) labourers' cottages. As indicated above, the application for five (5) additional dwelling units is not supported, but the other buildings are primary rights. The placement of these buildings closer to the boundary could reduce its possible impact on agricultural activities, and such relaxation should therefore be supported.

The final recommendation is that the departure application for building line relaxations other than for the five (5) additional dwelling units be supported, and the consent use for five (5) additional dwelling units is not supported.

13. RECOMMENDATION

1. that the application in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for a consent use for five (5) additional dwelling units on Portion 3 (De Gang) of Farm 575 Afdaksrivier, Caledon District, **not be approved** in terms of the provisions of Section 61 of the By-Law.
2. that the application in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for a departure to accommodate a gatehouse larger than 5m² in extent, measuring 6m² in extent; also a departure to relax the 30m eastern lateral building line to 4,5m and 10m to accommodate a gatehouse and other farm buildings respectively, and to relax the 30m western street building line to 0,9m to accommodate the gatehouse, **be partially approved**, in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
 - (a) that the approval does not include the five (5) additional dwelling units;
 - (b) that the buildings be placed as indicated on Site Development Plans AA QS (4 plans) for the gatehouse and other buildings, excluding the additional dwellings;
 - (c) that the conditions in the Services Report (attached as Annexure F), be complied with;
 - (d) that the conditions by Telkom (attached as Annexure G), be complied with;
 - (e) that all the conditions by Eskom (attached as Annexure H), be complied with;
 - (f) that all Fire Regulations in terms of SANS 10400 T: 2011, be complied with;
 - (g) that building plans be submitted to the Municipal Building Branch for all buildings, for their consideration and approval;
 - (h) that this is not an approval in terms of any other relevant legislation;
 - (i) that the labourers' cottages and farm manager's unit be limited to one (1) storey, as indicated in Council's Policy for Farm Buildings.
3. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above conditions of approval."

14. REASONS FOR RECOMMENDATION**Point 1:**

- ❖ The application is not supported by EA&DP: Planning Western Cape as the proposal is not in line with the Western Cape Rural Area Guidelines.
- ❖ The application is not supported by Department of Agriculture: Western Cape, who is the authority on value of agricultural land, as the additional dwelling units are proposed on cultivated agricultural land.
- ❖ The proposal for the additional dwelling units is not in line with Council's approved Policy for the establishment of Additional Dwelling Units, as the required consent of the Department of Agriculture was not obtained, who consider the land to be of such high potential that they do not support the application.
- ❖ The units are also clustered together or on or near the farm werf, which could increase the impact on the potential of the agricultural land.
- ❖ The proposal is not in line with the Planning Principle of Spatial Sustainability, as it would impact on valuable agricultural land, and not be in line with Section 42 of SPLUMA.

Point 2:

- ❖ It is only partially approved as the additional dwelling units are not supported.
- ❖ The Department of Transport and the Engineering Department support the application, therefore it is not foreseen that the gatehouse would have a negative impact on the Karwyderskraal Road.
- ❖ The main farm dwelling, farm manager's dwelling and labourers' cottages are primary rights as long as they are used for bona fide agricultural activities.
- ❖ The placement of the above-mentioned buildings closer to the farm boundary ensures less valuable agricultural land will be impacted.
- ❖ The relaxation of the building line to accommodate the above-mentioned buildings would not have a negative effect on surrounding neighbours, as the buildings will still be 10m from the boundary line.
- ❖ These structures are considered bona fide farm buildings, not residential buildings, and the ODM's proposed 800m radius for "residential development" should not be considered relevant.
- ❖ The above-mentioned buildings will not have a negative impact on the character of the area, and is therefore desirable.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Objection received (public)
Annexure E:	Applicant's response to objections and negative state institution comments
Annexure F:	Services Report
Annexure G:	Comment: Telkom
Annexure H:	Comment: Eskom
Annexure I:	Comment: Heritage Western Cape
Annexure J:	Comment: EA&DP: Planning Section
Annexure K:	Comment: Overberg District Municipality (ODM)
Annexure L:	Comment: Cape Nature
Annexure M:	Comment: EA&DP: Environmental Branch
Annexure N:	Comment: Western Cape Government: Agriculture

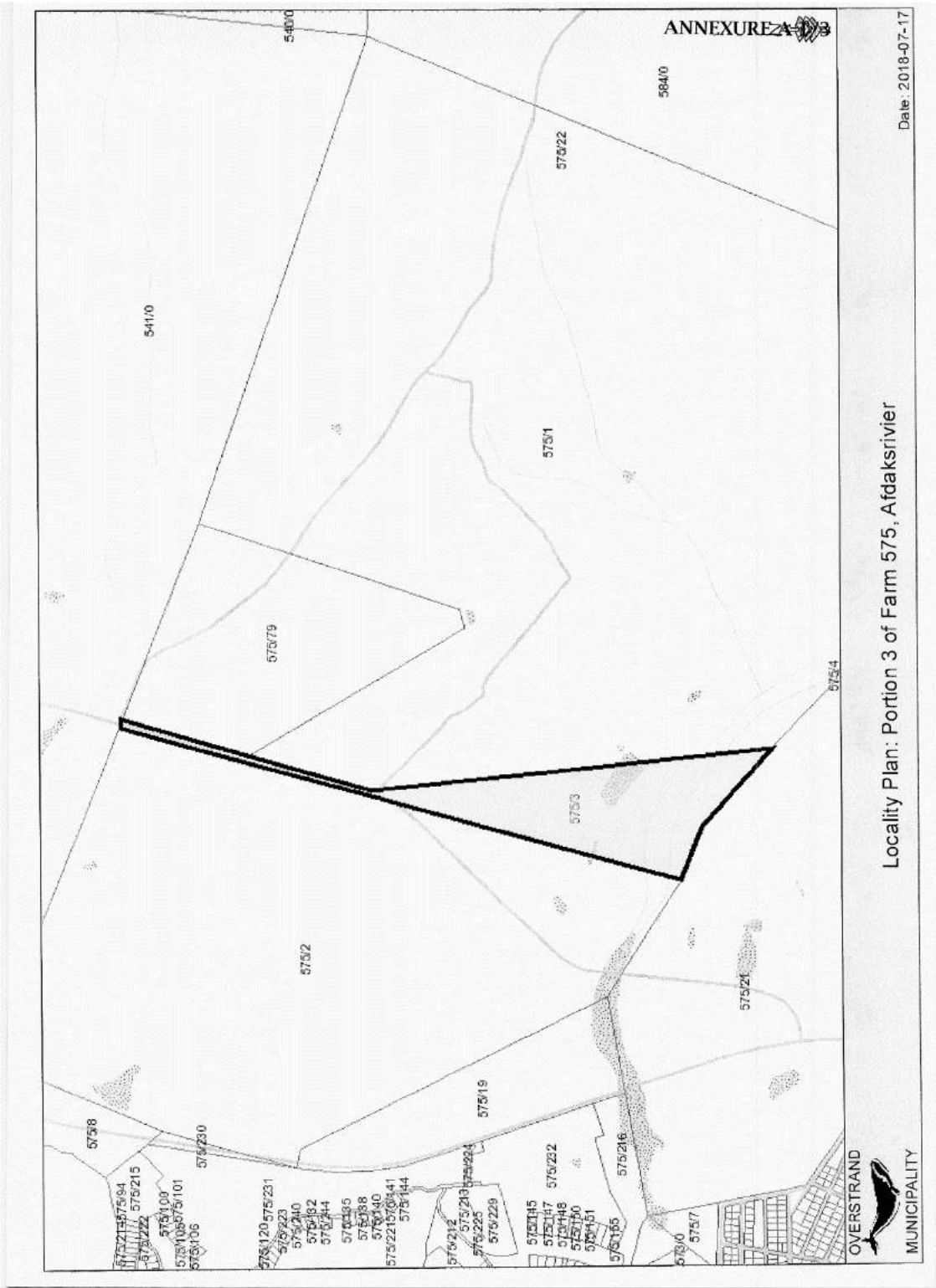
Annexure O: Comment: BGCMA
Annexure P: Comment: Department of Agriculture: National (Late)
Annexure Q: Comment: Western Cape Government: Transport & Public Works
Annexure R: Overstrand Municipality Policy on Additional Dwellings on farms
Annexure S: Comments Municipal Legal Department

SIGNATURES**REGISTERED PLANNER:**

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: _____

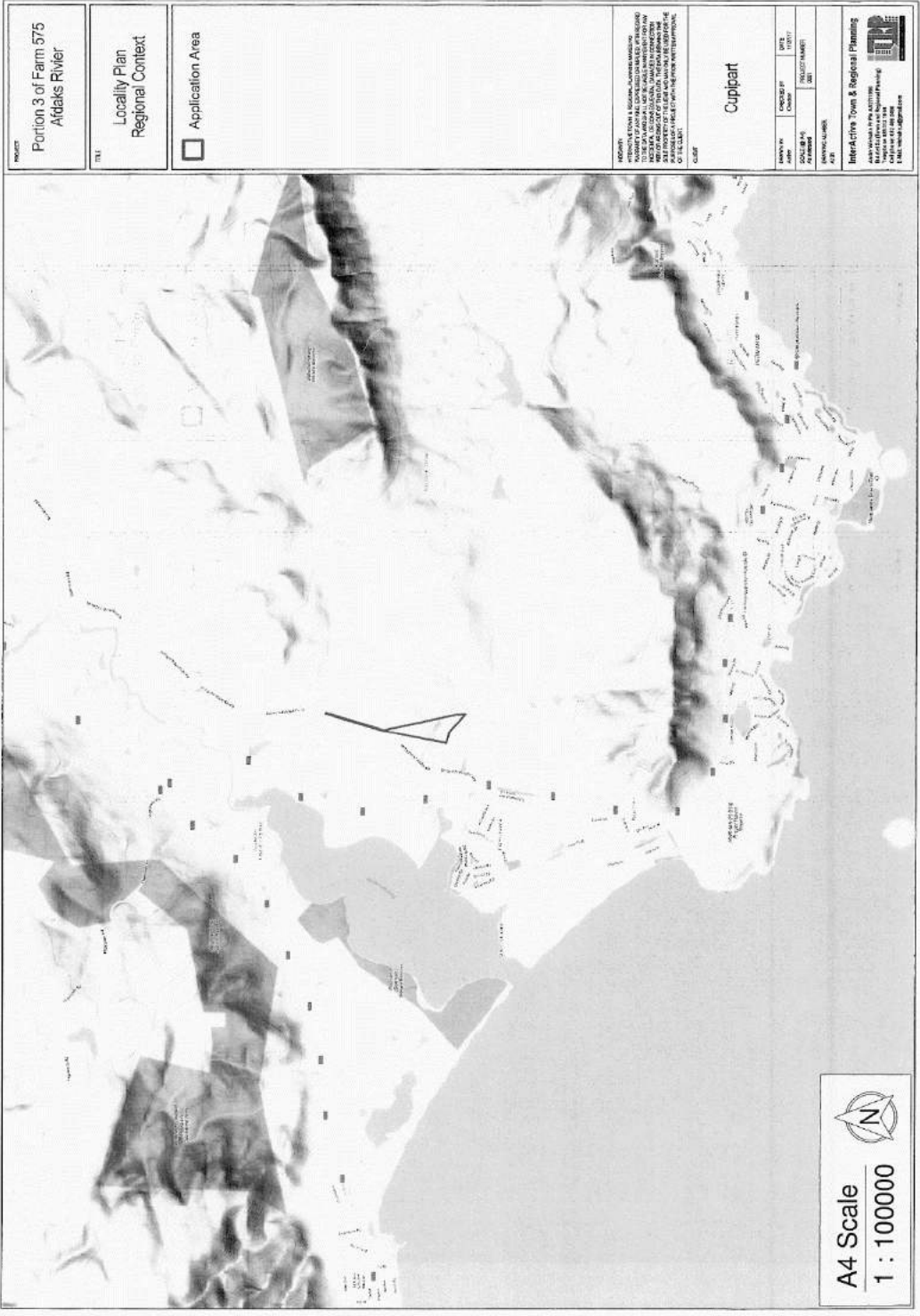




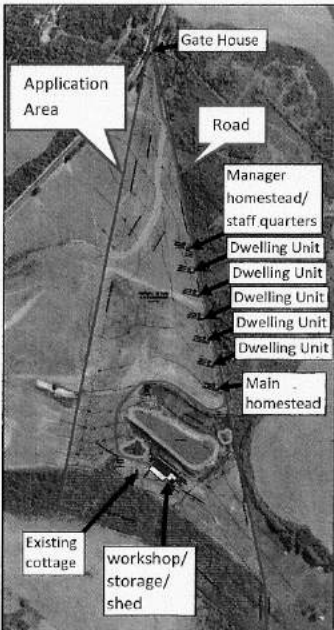
Locality Plan: Portion 3 of Farm 575, Afdakrivier

Date: 2018-07-17



ANNEXURE ZA-3

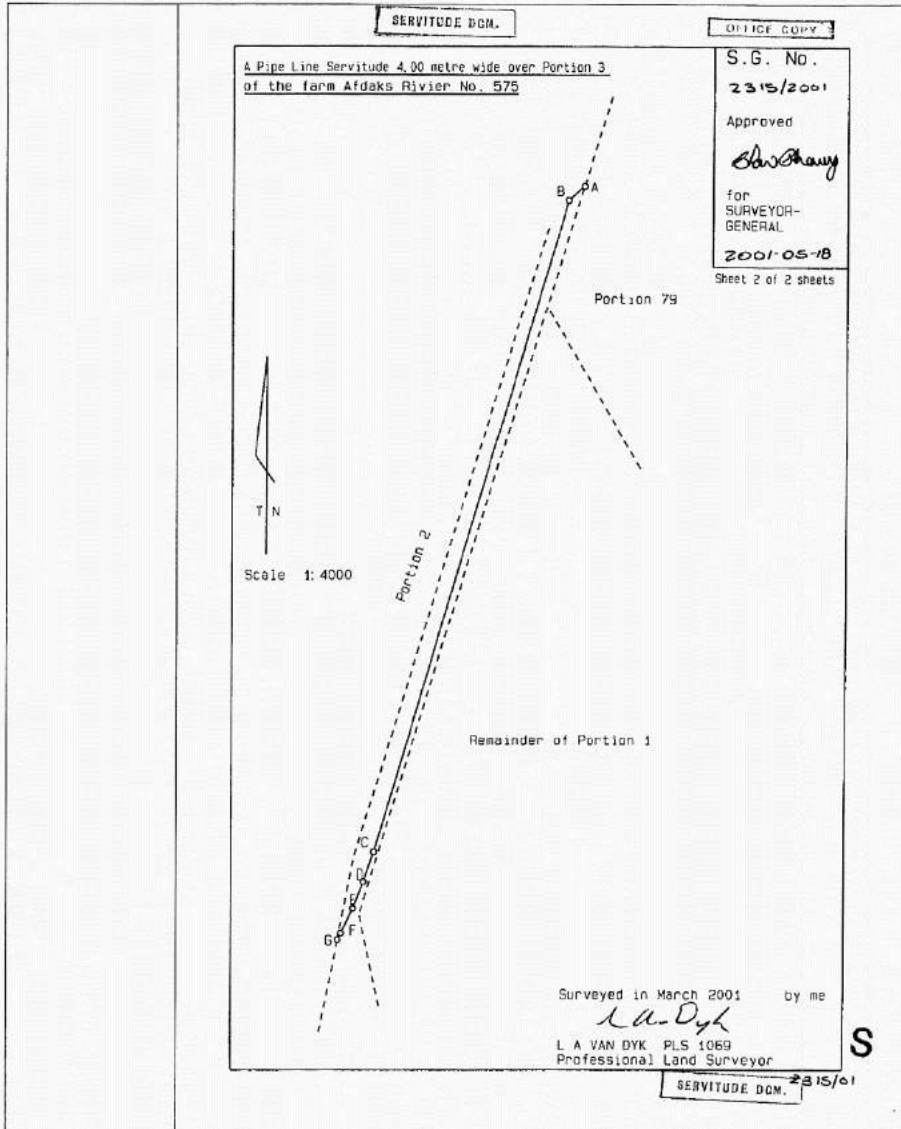


1. Introduction	
<p>a. Brief and Background:</p> <p>Refer to Annexure A for the Power of Attorney.</p>	<p>Interactive Town and Regional Planning was appointed by owner of the property Cupipart Pty Ltd, to prepare and submit an application for a departure to permit a gatehouse of 6m², a departure to relax the 30m eastern side building line to 10m to permit dwelling units and staff quarters, a departure to relax the 30m eastern side building line to 4.5m and the 30m western street building line to 0.9m to accommodate a gatehouse in excess of 5m² in extent and a consent use for 5 additional dwelling units on Ptn 3 of Farm 575 Afdaks Rivier, Overstrand, in terms of Chapter IV, Section 16(2)(o)&(f) of the Overstrand By-Law on Municipal Land Use Planning 2015.</p>
<p>b. The development proposal</p>	<p>The development proposal is to use the application area primarily for specialized agricultural production purposes based on scientific principles and eco-friendly farming methods and a workshop/storage/shed in support of the agricultural activities, as well as for accommodation purposes in the form of a main homestead, staff quarters and houses for property shareholders. A gatehouse of 6m² in lieu of 5m² is also proposed at the entrance gate. Subsequently this application for additional dwellings, departure to permit a gatehouse in excess of 5m² in extent and departure to relax the eastern side building and western street building line to accommodate dwelling units, staff quarters and a gatehouse, is applicable.</p> <div style="display: flex; justify-content: space-around;">   </div> <p>Figure 1: Photographs of the Application Area</p> <div style="display: flex;"> <div style="flex: 1;">  </div> <div style="flex: 1; padding-left: 10px;"> <p>The specialized agricultural component is proposed to consist mainly of vineyards and protea plantations and on a much smaller scale some cash crops, as well as a workshop/storage/shed, which supports the main agricultural activities. This proposal is to be accommodated by the <u>current zoning for agriculture.</u></p> <p>The accommodation component consists of:</p> <ol style="list-style-type: none"> a. Main homestead for farmer (250 m²) b. Manager/care taker homestead for a full-time manager (120 m²) c. 2 x staff quarters for permanent skilled service staff (60 m² each) d. 5 Additional dwelling units for shareholders of the application area (250m² each) <p>The main homestead, managers' homestead and staff quarters are to be accommodated as <u>primary land-uses</u> in terms of the <u>existing zoning being Agricultural 1.</u></p> </div> </div> <p>Figure 2: Site Development Plan</p>

	<p>The 5 additional dwellings are proposed to be accommodated by virtue of a <u>consent use</u>. The main homestead, manager homestead, staff quarters and additional dwellings exceed the 30m eastern side building line to 10m and are proposed to be accommodated by a <u>departure to relax the eastern side building line</u> from 30m to 10m to accommodate dwelling units and staff quarters and to reduce the impact of dwellings on farm operations.</p> <p>A <u>security gatehouse</u> of approximately 6m² in extent with manual sliding steel gate is proposed at the entrance. A security gatehouse of only 5m² is permitted as a primary use, therefore an application for a <u>departure</u> to permit a gatehouse in excess of 5m² in extent, is applicable. Furthermore the gatehouse exceeds the eastern and western building lines from 30m to 4.5m and 0.9m respectively which necessitates a <u>departure</u> to relax the eastern side building line from 30m to 4.5m and the western street building line from 30m to 0.9m to accommodate the gatehouse.</p>				
2. Summary of Application:					
<p>a. Development Criteria:</p> <p>The development parameters for the Ptn 3 of Farm 575 Afdaks Rivier, Overstrand as per the Zoning Scheme Regulation, are summarised as follows:</p>	Parameters	Existing Zoning	The proposal	Comments	
	Zoning	Agriculture Zone 1 (AGR1)	Agriculture Zone 1 (AGR1)	Consistent	
	Primary Uses	<u>Agriculture, dwelling house, day care centre, guest rooms, home occupation;</u>	Agriculture, Dwelling house, Staff quarters	Consistent	
	Consent Uses	<u>Additional dwelling units, agricultural industry, animal care centre, aquaculture, crèche, farm shop/stall, guest house, hotel, institution, intensive animal farming, intensive horticulture, mining, place of assembly, place of entertainment, place of instruction, plant nursery, riding stables, rooftop base station, service trade, tourist accommodation, tourist facilities, transmission tower, utility services, wellness centre, 4 x 4 trail.</u>	5 Additional dwelling units,	The application is for consent use	
	Maximum floor space	5000 m ²	3546m ²	Consistent	
	Coverage	n.a	n.a		
	Height	12m for agricultural buildings and 8m for all other buildings.	12m for agricultural buildings & 8m for all other buildings.	Consistent	
	Building lines	Street	30m (larger than 10ha)	0.9m for gatehouse	The application is for departure to relax building line
		Side	30m (larger than 10ha)	10m for dwelling units & staff quarters and 4.5m for gatehouse	The application is for departure to relax building line
		Rear	30m (larger than 10ha)	30m	Consistent
	Additional dwelling units	5 allowed as a consent use	5 proposed	Consistent	
	Parking	2 bays per dwelling unit	2 bays per dwelling unit	Consistent	

<p>b. Definitions applicable to application area</p>	<p>"Agriculture" means the cultivation of land for crops and plants including plantations, the keeping and breeding of animals, beekeeping, bird farming or the operation of a game farm, and comprises natural veld, and <u>includes only such activities and buildings as are reasonably connected to the main farming activities such as residential accommodation for the farmer, farm manager and farm labourers, the packing of agricultural produce grown on the property</u>; but excludes intensive horticulture, intensive animal farming, agricultural industry, and a farm shop;</p> <p>"Additional dwelling units" means dwellings in the Agriculture Zone 1, which are not required for the accommodation of bona fide persons involved in the agricultural practice on the property concerned; and additional dwelling units may be used for long or short-term accommodation purposes;</p> <p>"Staff quarters" means a building, whether attached or detached from the main unit for the sole purpose of the housing of staff, and where Council can request proof of necessity of staff quarters;</p>
<p>c. Application:</p> <p>The application form is attached as Annexure D and the Site Development Plan as Annexure I</p>	<p>Application is hereby made in terms of the Overstrand By-Law on Municipal Land Use Planning 2015, for the following on Ptn 3 of Farm 575 Afdaks Rivier, Caledon District:</p> <ol style="list-style-type: none"> 1. A consent use in terms of Section 16(2)(o) for 5 Additional dwelling units, 2. Departure in terms of Section 16(2)(b) to permit a gatehouse of 6m² in lieu of 5m². 3. Departure in terms of Section 16(2)(b) to relax the eastern side building line from 30m to 10m to accommodate the dwelling units and staff quarters 4. Departure in terms of Section 16(2)(b) to relax the eastern side building line from 30m to 4.5m to accommodate a gatehouse in excess of 5m² in extent 5. Departure in terms of Section 16(2)(b) to relax the western street building line from 30m to 0.9m to accommodate a gatehouse in excess of 5m² in extent 6. The approval of the Site Development Plan in terms of Section 16(2)(l) as per attachment Annexure I.

3. Site Information																																																																																																																																																																																																																																																																																																																			
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<p>The figure <u>A B C D E F G H I</u> represents <u>50</u> Merga <u>22256</u> square feet of land, called <u>DE GANG</u> portion of <u>Afdaks Rivier</u>, portion of <u>being that portion of the land</u> which is referred to hereunder, situated in the DIVISION of <u>Calcutta</u> PROVINCE of CAPE OF GOOD HOPE.</p> <p>Surveyed in <u>1880</u> by me <u>A. L. Hill</u> Land Surveyor.</p>																																																																																																																																																																																																																																																																																																																			
<p>This diagram is entered in Transfer Deed No. <u>22256</u> dated <u>22-10-1880</u> in the name of <u>97 Hill</u></p> <p>This original diagram is the same as the original Survey Deed No. <u>22256</u> dated <u>22-10-1880</u> in the name of <u>A. L. Hill</u> (ditto)</p>																																																																																																																																																																																																																																																																																																																			



SERVITUDE DCM.		OFFICE COPY		
SIDES Metres	ANGLES OF DIRECTION	CO-ORDINATES System: WGS 1984		S.G. No. 2315/2001
	Constants:	+	0.00	+3600 000.00
AB	22.31	47 41 20	A	- 14 590.12 + 850.46
BC	719.52	16 10 50	B	- 14 573.62 + 865.48
CD	33.47	18 42 00	C	- 14 373.10 + 1 556.49
DE	29.76	22 06 30	D	- 14 362.37 + 1 588.19
EF	29.34	24 49 40	E	- 14 351.17 + 1 615.76
FG	7.63	27 40 20	F	- 14 338.85 + 1 642.39
			G	- 14 335.21 + 1 649.32
	GEELBEKSVALLEI	11	Δ	- 11 477.40 - 4 940.01
	AFDAKSRIVIER	52	Δ	- 12 667.63 + 1 209.61

Approved
L.A. Van Dyk
for
SURVEYOR-
GENERAL
2001-05-18
Sheet 1 of 2 sheets

Description of Beacons
A, B, C, D, E, F, G : 20mm Iron peg

The line A B C D E F G
represents the North Western boundary of a Pipe Line Servitude
4.00 metre wide over Portion 3 of the Farm
Afdaks Rivier No. 575

situate in the Overstrand Municipality
Administrative District of Caledon
Province of Western Cape
Surveyed in March 2001 by me *L.A. Van Dyk*
L A VAN DYK, PLS 1069
Professional Land Surveyor

This diagram is annexed to No. <i>K1299/2002</i> d.d. j.f.o. Registrar of Deeds	The original diagram is S.G. No. <i>A-1022/1930</i> Transfer <i>1931-7999</i> Grant	File <i>2 Ldn. 575</i> S.R. <i>E 930/2001</i> S.P. Corp. A1-34DC (3350) <i>A1-2A (3344)</i>
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SERVITUDE DCM. 2315/2001

SERVITUDES/LEASEHOLD AREAS				
SURVEY RECORD	DIAGRAM NO.	DESCRIPTION	DEED	INITIALED
E 930/2001	2815/2001	The line a b c d e f g represents the north western boundary of a pipe line servitude 4,0m wide	K1500/2000	JK

Figure 3: Extracts of the Surveyor General Plan for the application site

b. Title Deed
Refer to Annexure C for the Conveyancer Certificates.

The Conveyancer Monica Korf issued a certificate confirming that there are no restrictive title deed conditions against the proposal.

c. Location:
Refer to Annexure F for the locality plans.

Regional Context:

Within the regional context, the application area, a 50.9 ha farm, is located on Karwyderskraal Road and is situated approximately 1.5km north east of Fisherhaven, a residential suburb of Hermanus, which borders on the Botrivier lagoon. The proposed entrance of the application area is about 2.5km north of the intersection with the R43 Provincial Road between Cape Town and Hermanus.

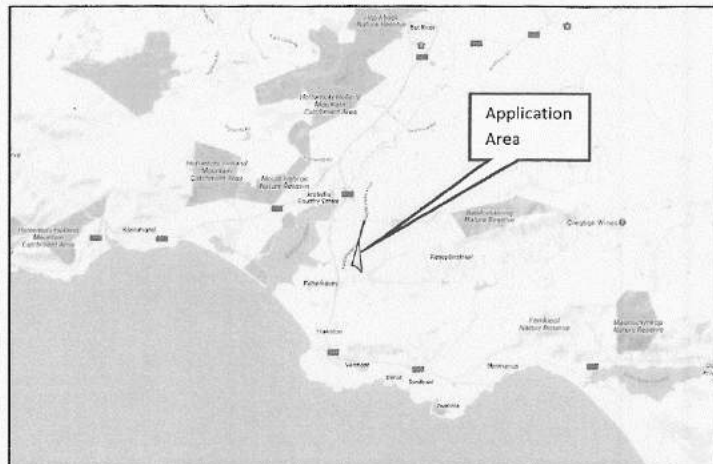
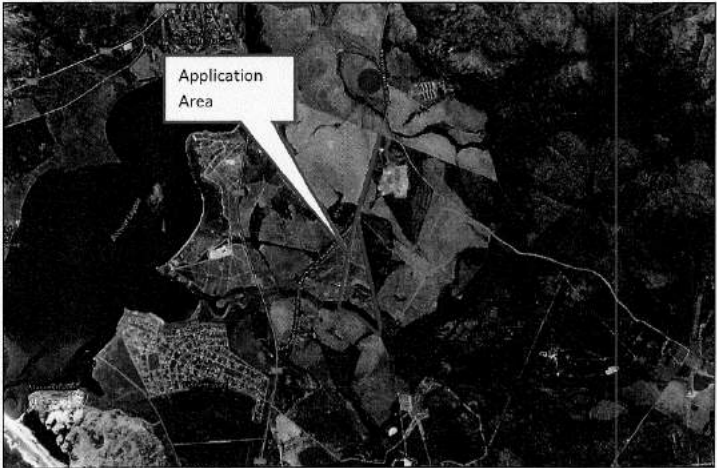
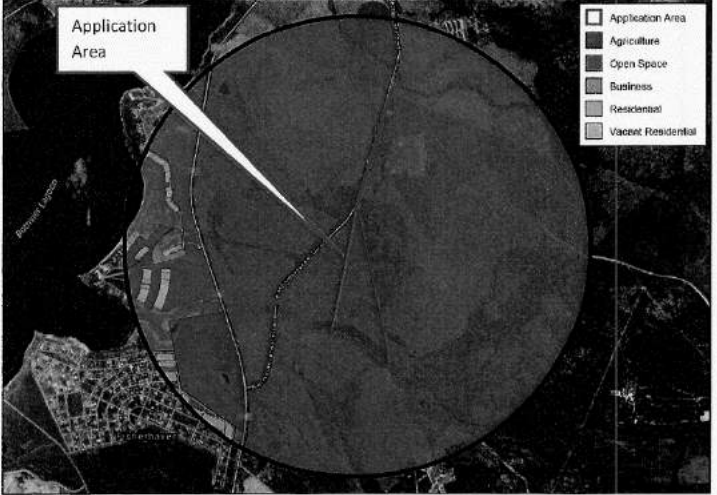
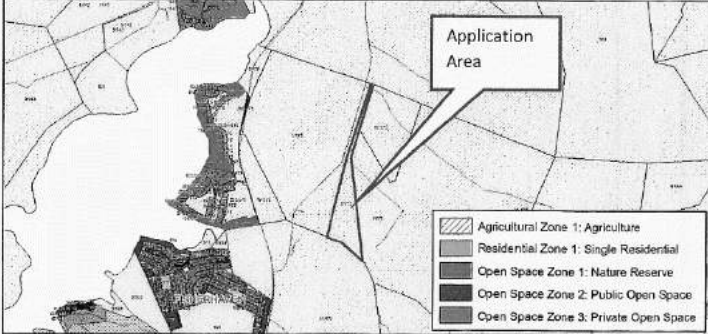
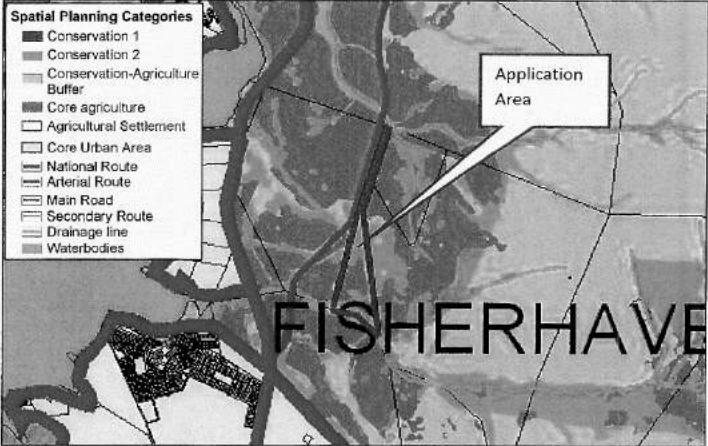


Figure 4: Locality Plan – Regional Context

	<p>Local Context:</p> <p>Within the local context the application area is located on the northern bank of the Afdaks River. The Karwyderskraal Road, from which access to the farm is gained, runs along the long western boundary of the application area.</p>  <p>Figure 5: Locality Plan – Local Context</p>
<p>d. Land Use:</p> <p>Refer to Annexure H for the Land Use Plan.</p>	<p>The land use of the application area is agriculture similar to the surrounding farms.</p>  <p>Figure 6: Google Image illustrating the residential land-use activities of the application area and surrounding properties</p>

<p>e. Zoning:</p> <p>Refer to the Extract of Hermanus Final Zoning 2014 map attached as Annexure G</p>	<p>The application area, Ptn 3 of Farm 575 Afdaks Rivier, Overstrand is zoned Agricultural Zone 1: Agriculture. The surrounding properties are zoned Agricultural Zone 1: Agriculture as well. No change in zoning is proposed and the application is aligned with the zoning of the area.</p>  <p>Figure 7: Extract from the Overstrand Municipality: Hermanus Final Zoning 2014 map</p>
<p>f. Laws and policies relevant to the consideration of the application and forward planning and land use documents</p>	<p>The following policy is applicable to the application area.</p> <p>i. Overstrand Municipal Spatial Wide Development Framework, 2006</p> <p>The purpose of this policy, among others, is to protect and support agricultural and conservation worthy land units.</p> <p>The application area is mostly classified for Core agriculture but has areas classified as Conservation 2 as well.</p>  <p>Figure 8: Spatial Development Framework Spatial Proposals Plan</p> <p>a. Core Agriculture characterizes rural landscapes of largely transformed areas which may contain remnants of Critically Endangered or Endangered natural vegetation, which have value in terms of food production, maintaining ecosystem services, and protecting heritage assets. Land is in private ownership. These areas can allow farming, ecotourism and farm-based tourism.</p> <p>b. Conservation 2 characterizes areas of the highest conservation status.</p>

	<p>The following strategies, policies and guidelines exist for Core Agriculture and Conservation 2 areas:</p> <ul style="list-style-type: none"> • No transformation of Critically Endangered or Endangered natural areas. • Where natural vegetation is affected, a full botanical assessment should be carried out. • Any development should minimize the negative impact on the environment. • Land with high primary production potential should be retained for agricultural use. • Any development application for this area should be subject to an environmental assessment. • On-the-farm non-agricultural related development should only be supported where the development contributes towards the sustainability of the farming unit • Reduce negative impacts on agricultural activities and complement and support the rural and agricultural communities • Rural residential – Maximum size: 3000m²/unit & maximum size: 5ha • If desirable, the following land uses could be supported, namely dwelling unit and additional dwelling. <p>All critical biophysical features on the application area are considered and will be protected effectively and sustainably.</p> <p>The application area has been cultivated over the years with limited to no indigenous vegetation except for the watercourse riparian areas that consist of intact vegetation. There will be no development within riparian areas as development is proposed outside the 32m setback line of watercourses. Therefore a full botanical assessment is not required.</p> <p>According to an Environmental Scan conducted by PHS Consulting, it was concluded that no Environmental Impact Assessment is required for the proposed development. An application is currently in process for an exemption from the Department of Environmental Affairs. Refer to Annexure K: Environmental scan: Applicability of the NEMA EIA Regulations, 2014 (As Amended).</p> <p>ii. Policy on additional dwelling units and accommodation for farm workers, 2009</p> <p>The purpose of this policy is to enable the Overstrand municipality to properly assess applications on agricultural land units and to be able to make well informed decisions.</p> <p>The guidelines and requirements in this policy pertain to the purpose, quantity, layout, architecture and size of additional dwelling units and staff quarter units and the rights of farm workers as well as engineering services, fire protection measures and the impact on the environment and agricultural activities.</p> <p>The application proposal adheres to each of these guidelines and requirements to present a sustainable and efficient layout proposing that dwelling units and staff quarters are situated in a linear cluster on portions of land with low agricultural potential, 10m away from the eastern erf boundary to reduce the impact of dwellings on farming operations and outside the set-back line of water courses.</p>
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<p>g. Municipal engineering services</p> <p>Refer to Annexure J for Engineering Services Report and Annexure L for National Register of Water Use Registration Record.</p>	<p>The infrastructure scoping report was prepared by Jon Lijnes Pr.Eng. Please also refer to the site development plan for infrastructure development on the application area. The following components were addressed in the infrastructure scoping report:</p> <p>MAIN ACCESS The existing main access to the farm is from the Karwyderskraal road about 2.5km north of its intersection with the R43 provincial road between Cape Town and Hermanus. It is proposed that the main gate be moved circa 15m – 20m eastwards on the dirt road in order to improve access to the farm. This may entail discussions with the neighbouring farm owners using the same access and road to reach a common agreement.</p> <p>ROUTES AND ROADS There is an existing dirt road on the application area which currently operates as a service road. It is proposed that the main on-site access road will run along the eastern boundary of the farm down to the canal and then follow the canal to the west up to the existing canal crossing and then across the stream down to the southern corner of the farm. This configuration will also double up as a firebreak on the border where fire risk is at its highest. Additional short link roads will be required to access the individual housing, staff quarters, dam outlet and the workshops and stores areas. The road geometry is to comply with the typical standards required for a 20km/hr design speed and to accommodate for the passage of up to a 5 ton truck.</p> <p>ACCESS AND SECURITY General security requirements such as security fencing (type and extent) need to be investigated. The need for an access security gate/boom is to be investigated. It may be necessary to provide an electrically operated security gate with remote controls held by authorised residents and staff members. The provision of CCTV cameras at strategic locations is to be investigated for viability, taking into account possible reduction in insurance premiums.</p> <p>STORM WATER MANAGEMENT All roadworks and parking facilities will be designed so as to accommodate stormwater run-off without damaging the integrity of the roads. Similarly, all Invasive and alien growth in and along the Afdaks River, where it runs through the farm, is to be removed and replaced by indigenous plants as appropriate.</p> <p>WATER SUPPLY Up to 4 types of water demands are expected to be catered for on the development, viz potable for human consumption, washing and personal hygiene, treated grey water and/or rain water for flushing of toilets and gardening, raw untreated water for irrigation of crops, ecological demands, fire-fighting demands. A preliminary water balance has been carried out and the projected water demands are summarised in the table and graphically illustrated below: The current registered water use for the farm from the Afdaks river is 45 140 kl per annum, which is some 1 296 m3/annum more than the expected annual requirement during the establishment of the crops and some 16 421 m3/annum more than the expected annual requirement after the crops have all been established and the farm is fully developed. Refer to Table 1 for Projected Water Demands and Figure 10 for Preliminary Water Balance. Water quality requirements are to be met. Please refer to Annexure L for the National Register of Water Use Registration Record.</p>
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Year	Irrig	Farm Domestic	Farming Activities	Add - itional	Total Water
	m3/ann	m3/ann	m3/ann	m3/ann	m3/ann
2018	11 666	226	11 892	0	11 892
2019	28 392	624	29 015	0	29 015
2020	40 787	624	41 410	933	42 343
2021	41 783	624	42 407	1 437	43 844
2022	39 421	624	40 044	1 437	41 481
2023	33 223	624	33 847	1 437	35 284
2024	29 658	624	30 282	1 437	31 719
2025	26 658	624	27 282	1 437	28 719
2026	26 658	624	27 282	1 437	28 719
2027	26 658	624	27 282	1 437	28 719

Table 1: Projected Water Demands

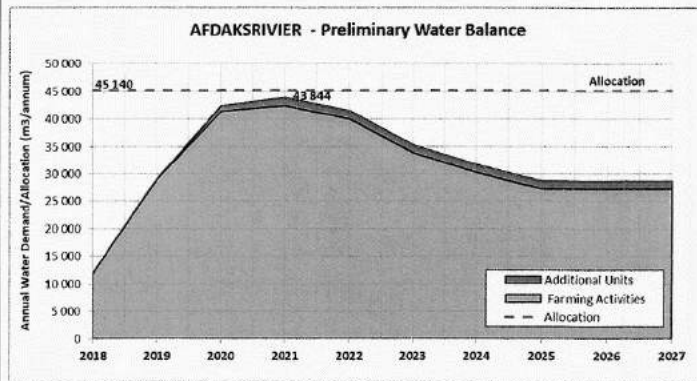


Figure 9: Preliminary Water Balance

It is thus evident that the supply/ availability of water is more than the projected demand/ requirements.

SEWAGE

It is proposed that as much effluent emanating from the development as possible is to be appropriately treated and re-used on site where economically viable.

ELECTRICAL DEMANDS

It is envisaged that the entire farm's housing units will be fully "Off-Grid" and that ESKOM power will be utilized only for the Storage area, Workshop area and water pumping station. All such demands are located directly south of the existing dam.

SOLID WASTE MANAGEMENT

At each point of origin all solid waste will be separated into organic/biodegradable component, glass component, and other non-biodegradable. Compost will be used in landscaped gardens and in vineyards, olive groves etc. The glass component will be recycled. The non-biodegradable component will be transported to Overberg District dump site.

	<p>WORKSHOPS AND STORES The location of the workshops, offices, stores and temporary labour accommodation is proposed to be to the south of the existing dam. The exact requirements are to be finalised, taking into account the required storage facilities, maintenance requirements for the mechanical equipment required to carry out maintenance of the various elements comprising the development and whether a centralized sewage treatment facility, electrical energy storage and/or water management system is required.</p> <p>FIRE MANAGEMENT It is envisaged that the development will be served by a specially constructed rig that fits on the back of a bakkie or trailer. Such a rig will be equipped with a water tank and pressure pump, available 24/7 for fire-fighting purposes. It is expected that the main access road along the eastern boundary fence, will also form a fire-break from the adjoining farm. No significant growth exists along the other boundaries, but it is proposed that a 5m wide strip be maintained free of any vegetation along those boundaries also.</p>
<p>h. Environmental Scan Refer to Annexure K</p>	<p>PHS Consulting was commissioned to conduct an environmental scan of Afdakrivier farm in order to determine if an Environmental, Heritage or Water Act application would be required for the intended future development.</p> <div data-bbox="518 784 1189 1160"> </div> <p>Figure 10: Critical Bio-diversity Areas (CBA)</p> <p>According to the Environmental Scan it was concluded that no Environmental Impact Assessment is required for the proposed development. An application is in process for an exemption from the Department of Environmental Affairs which is attached as Annexure K: Environmental scan: Applicability of the NEMA EIA Regulations, 2014 (As Amended).</p>

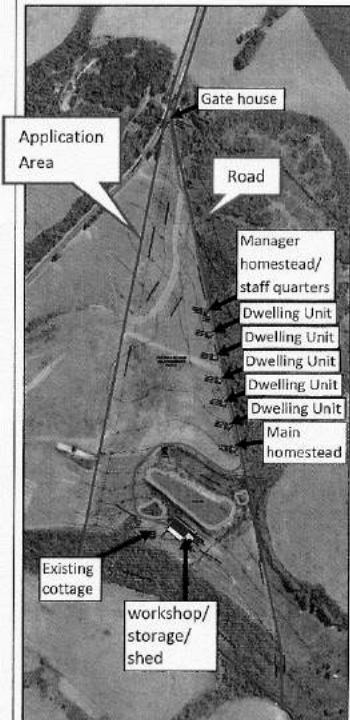
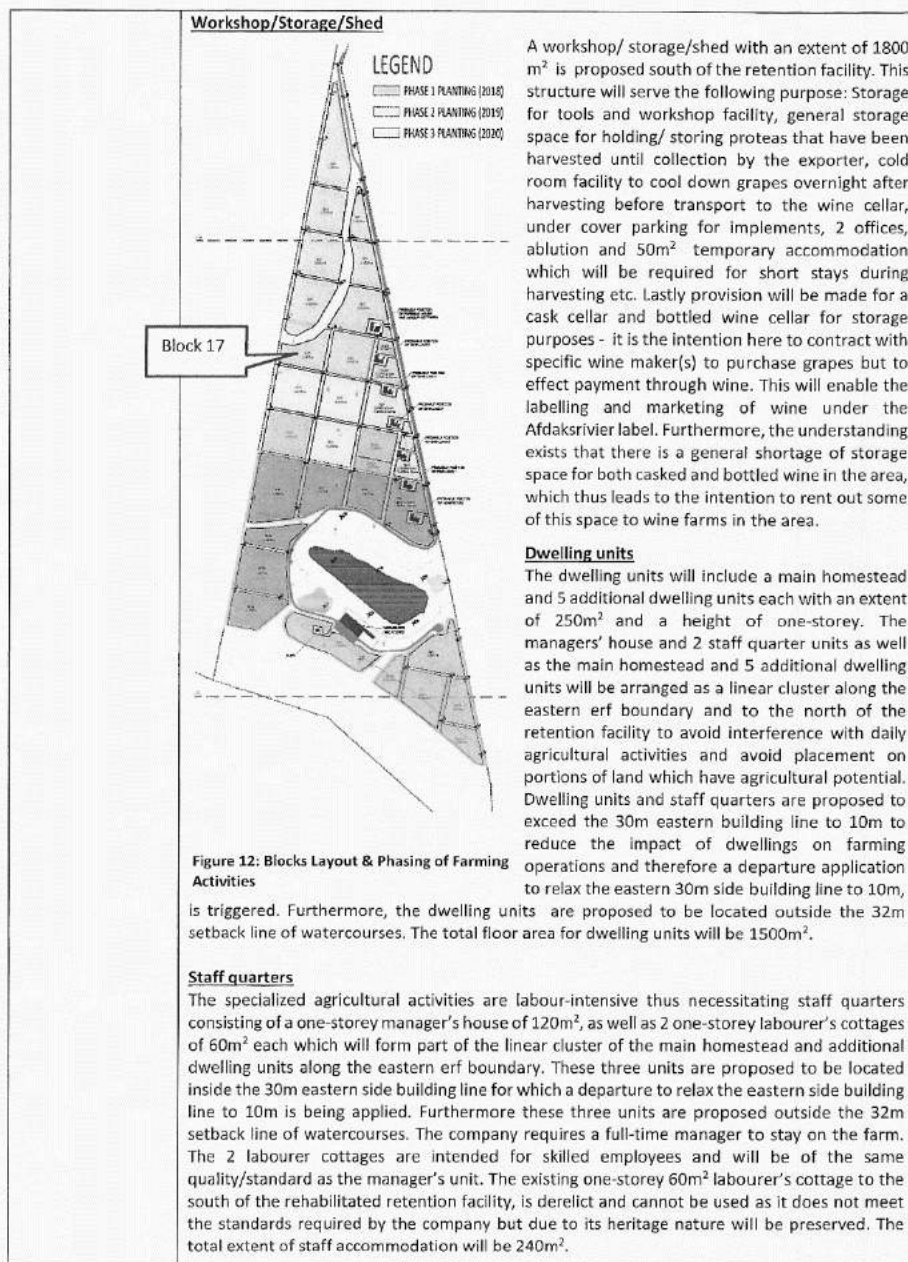
4. The application motivation	
<p>Motivation for the application:</p> <p>Refer to Annexure I for the Site Development Plan, Entrance Gate Plan and Blocks Layout and Phasing Plan for Agricultural Activities</p>	<p>a. Introduction and background</p> <p>The proposed development of the approximately 50.9ha application area consists of the specialized agricultural component which includes vineyards, proteas and on a much smaller scale some cash crops and a workshop/store/shed as well as the accommodation component which includes the main homestead, farm managers' dwelling unit, staff quarters as well as 5 additional dwelling units for the consortium of shareholders for which a consent use for additional dwellings and departure to relax 30m eastern building line to 10m for dwelling units and staff quarters, is being applied. The security component includes a security gatehouse with an extent of approximately 6m² and manual steel sliding gate for which a departure to permit a gatehouse in excess of 5m² in extent and departure to relax 30m eastern side building line and western street building line to 4.5m and 0.9m respectively, are being applied.</p> <p>Currently the application area is vacant, although previously cultivated. The only existing structure on the property is a 60m² heritage worthy cottage which will be conserved and remain unchanged.</p> <p>b. Development Proposal</p> <div style="display: flex; align-items: flex-start;"> <div style="flex: 1;">  </div> <div style="flex: 2; padding-left: 10px;"> <p>The proposal is to use the application area primarily for specialized agricultural production purposes based on scientific principles and eco-friendly farming methods, including buildings as are reasonably connected to the main farming activities. The application proposal further includes consent use for five additional dwelling units, a departure to permit a security gatehouse with an extent of approximately 6m² and departure to relax eastern and western 30m building lines to accommodate dwelling units, staff quarters and a security gatehouse.</p> <p>Agriculture</p> <p>The proposed agricultural activities include the planting of vineyards for wine production as well as proteas for export purposes and on a much smaller scale some cash crops. Of the 50.9 ha extent of De Gang, around 32ha is deemed arable and suitable for immediate agricultural development. Initial soil analysis has been conducted by Vinpro consultants with the view to establishing the suitability of the land for cultivation of prime wine grapes. It was found that 16ha is deemed suitable for development of prime wine grapes. Another 16ha is deemed suitable for proteas and the aim is to plant 4 cultivars and a minimum of 4 ha/ cultivar. Please refer to Figure 12 for a block layout and phasing of the farming activities envisaged on the farm. The proteas will mainly be planted on the northern blocks (17 and upwards) of the farm as well as in the riverine area which has been reclaimed by eradicating alien vegetation. The soil needs to be prepared beforehand to increase the arability for agricultural practices.</p> </div> </div>

Figure 11: Site Development Plan



Access, Internal Road and Parking

Access to the application area is gained from the Karwyderskraal road to the northwest of the application area and about 2.5km north of its intersection with the R43 provincial road between Cape Town and Hermanus. Refer to Figure 13 indicating the access position off Karwyderskraal road and security gatehouse and entrance gate position.

The width of the road at the entrance will be sufficient to accommodate agricultural trucks. The proposed internal road will be 4m wide and will run along the eastern erf boundary, cross the canal at the existing crossing and then run further along the eastern erf boundary up to the south of the retention dam where it will veer to the west and run along the retention facility just outside the 32m watercourse set-back ending in a turn circle/parking space at the workshop/storage/shed south of the retention facility. Short link roads for access as well as parking will be provided for each dwelling unit and staff quarter units.

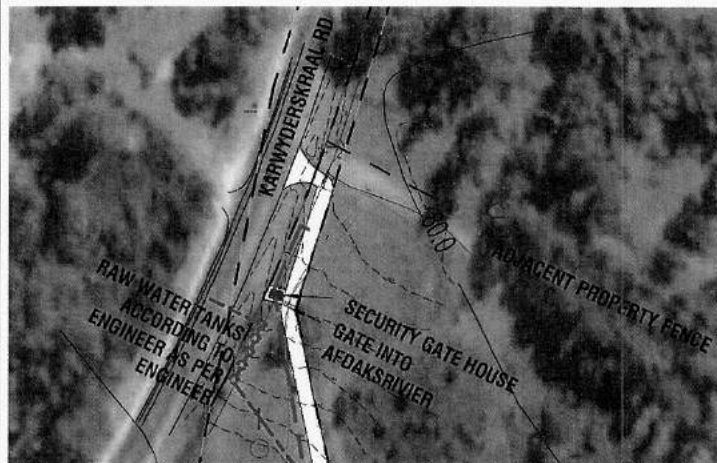


Figure 13: Access Position and Security Gatehouse and Entrance Gate Position to Afdakrivier

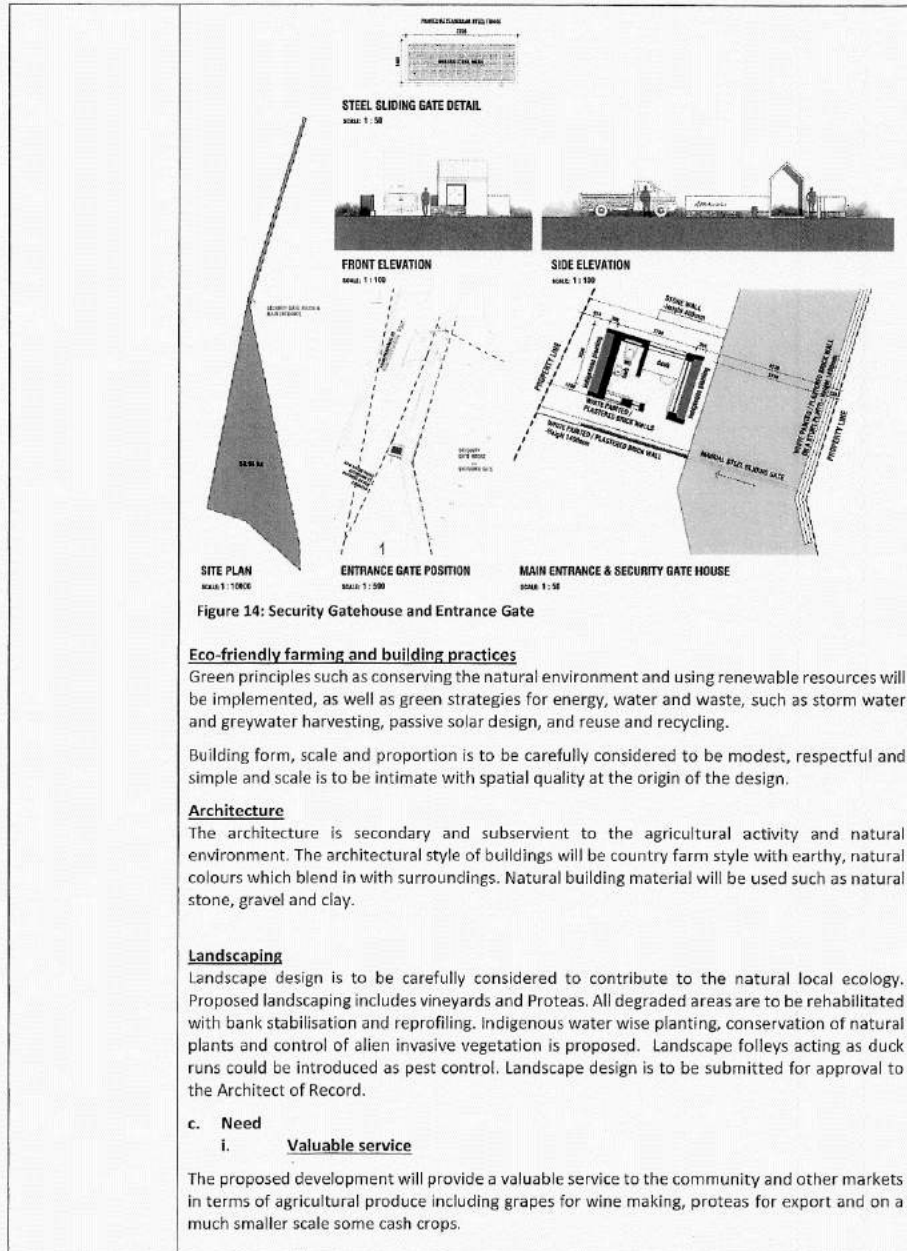
Security Gatehouse and Entrance Gate

The security gatehouse with an extent of approximately 6m² with manual steel sliding gate, will enhance the security of the application area, and is proposed to be located approximately 40m away from the access off Karwyderskraal road. As the maximum extent permitted for a gatehouse is 5m², a departure is applied for to permit a 6m² gatehouse. Furthermore, the security gatehouse exceeds the 30m eastern side and western street building lines to 4.5m and 0.9m, respectively and a departure to relax these building lines are being applied for.

The following will be provided for the security guard:

- Chair and table with an electrical outlet for a kettle/ microwave
- Bathroom
- Windows for visual access to any security threats
- Outside light which will illuminate the internal road – position will be discreet and inconspicuous

Refer to **Figure 14** for the security gatehouse and entrance gate plan.

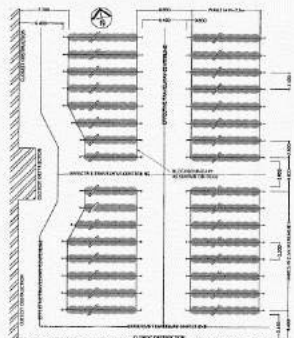
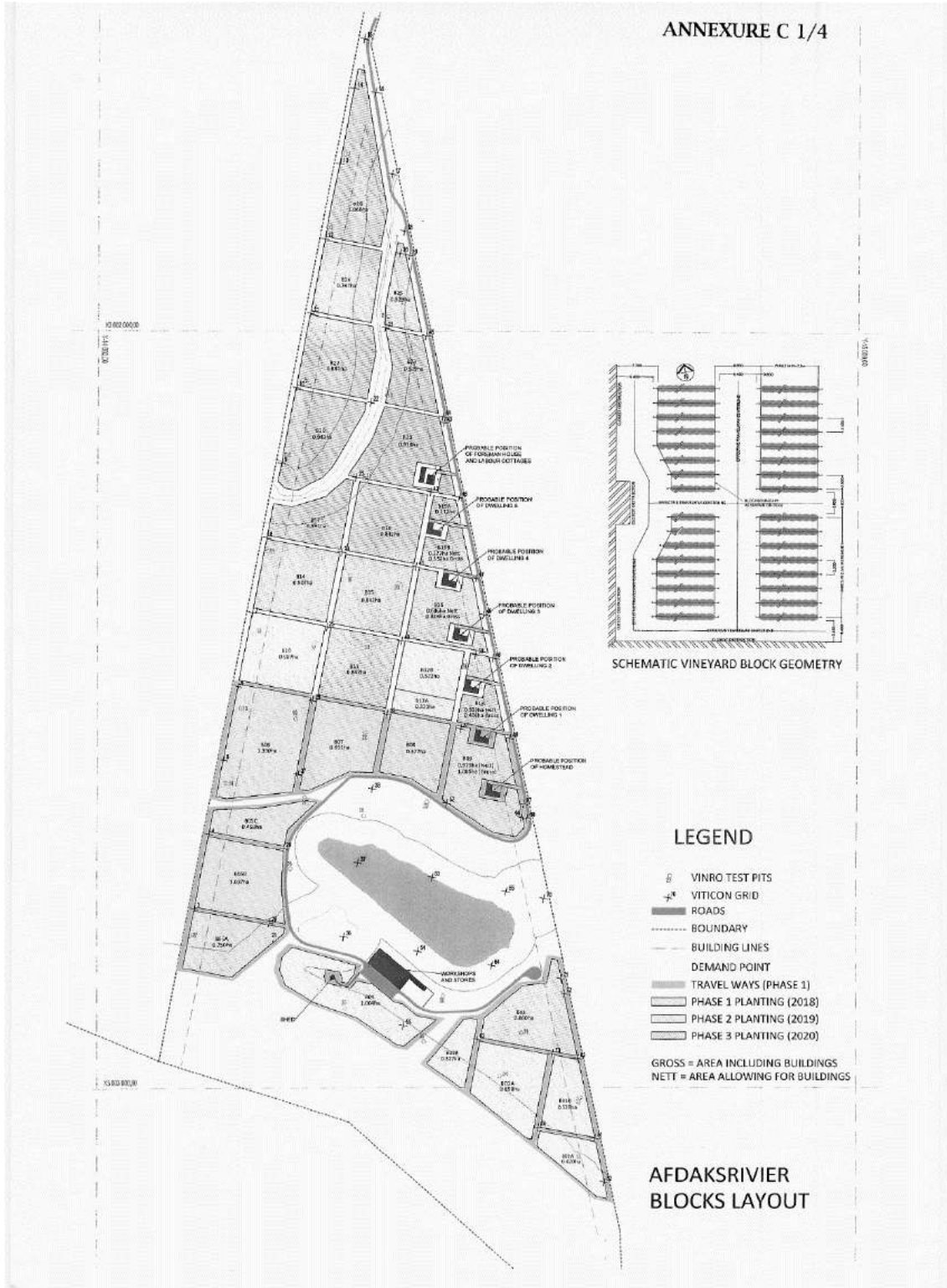


	<p>ii. <u>Optimal utilization of land</u></p> <p>Land is a scarce resource and should be optimally utilized. The proposed development will improve the land-use of the application area as it is currently vacant although previously cultivated. By developing its agricultural potential and providing housing for farm workers as well as dwelling houses for the owners of the property, it will be optimally utilized.</p> <p>iii. <u>Employment and economy</u></p> <p>The proposed development will create employment opportunities within the agricultural sector for farm workers as well as secondary economic opportunities within agricultural industry such as retail and export, thus contributing to the economy of the area. Locally sourced construction techniques and skills will be encouraged to maximise the use and inclusion of local labour and skills in the area.</p> <p>iv. <u>Eco-friendly farming methods and development</u></p> <p>The proposed development is considered environmentally friendly as it will protect and manage the environment sensibly and sustainably through the implementation of green strategies in terms of farming methods, construction and landscaping including energy, water and waste management. The scale of construction proposed is considered relatively small as the total area which will be covered by proposed buildings represents 3546m² of the approximately 50.9 ha application area. The proposal is thus considered desirable as it will represent a development which is harmonious with and supportive of the environment and surroundings and thus addresses the need for developments which are in harmony with the environment and which manage scarce resources in an effective manner.</p> <p>d. <u>Desirability of the proposal</u></p> <p>The existing farm character of the area will be preserved and enhanced by the cultivation of the land for specialized agricultural purposes, the use of eco-friendly farming methods, the placement of buildings where lowest impact on agriculture will occur, the implementation of green building principles for construction and landscaping and use of authentic architectural styles which respect the local vernacular, all of which blend in with the environment and enhance the character of the surroundings. Natural and locally sourced materials and construction techniques and skills will be encouraged to minimise the impact of the development on the natural environment while maximising the use and inclusion of local labour and skills in the area. The development proposal is thus considered desirable.</p> <p>e. <u>Planning Principles</u></p> <p>The application has also been analyzed for consistency with the planning principles prescribed by the Spatial Planning and Land Use Management Act, 2013 (SPLUMA) and also the Western Cape Land Use Planning Act, 2014 (LUPA) and the following conclusions were made:</p> <p>(a) Spatial Justice which refers to the need for redressing the past apartheid spatial development imbalances and aim for equity in the provision of access opportunities, facilities, services and land.</p> <p>Possible results of the development</p> <p>The proposal will contribute to the expansion of the agricultural sector and employment opportunities within the agricultural sector as well as provision of housing for farm employees. The application proposal therefore supports the principle of spatial justice.</p>
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	<p>(b) Spatial Sustainability which refers to the fact that a spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.</p> <p>Possible results of the development The proposed development will implement green strategies for farming activities, construction and landscaping through inter alia energy, water and waste management. The agricultural potential of the land is considered in the layout of building units and situated on portions of the land which have the least impact on agricultural activities and represent medium to low agricultural potential. This proposal involves the revitalization and recovery of previously cultivated land, as well as the riverine area which has been reclaimed for protea plantation purposes, by eradicating alien vegetation which threaten the natural indigenous vegetation of the area. The land needs to be prepared and arability of the soil increased for agricultural practices. All critical biophysical features on the application area are considered and will be protected effectively and sustainably. The proposed scale of the building development is relatively small taking into consideration that the total floor area of buildings is 3546m² on 50,96ha of farm land. The proposed development therefore adheres to spatial sustainability.</p> <p>(c) Efficiency which refers to the manner in which settlements themselves are designed to function in such a way that there will be a minimum need to travel long distances to access services, facilities and opportunities.</p> <p>Possible results of the development The entire development is proposed as a green development and centers around the specialized agricultural activities.</p> <p>Furthermore, all the buildings, as is evident in the Site Development Plan, are proposed to be concentrated within the different functionality areas to enhance the efficiency of the proposed development. Proposed cluster development is in support of the functionality of the farm to maximize the agricultural use thereof and is in support of fire safety requirements. The accommodation will be separated from the workshop/store/shed by the retention facility or dam.</p> <p>Proposed internal road layout and geometry is efficient, retaining existing crossings over water courses with sufficient space for trucks to load and transport agricultural products as well as for emergency vehicles.</p> <p>Thus, the proposed development is considered sufficiently efficient from different perspectives.</p> <p>(d) Spatial Resilience which, in the context of land use planning, refers to spatial plans, policies and land use management systems which should enable communities to be able to resist, absorb and accommodate any economic and environmental shocks which might occur in a timely and efficient manner.</p> <p>Possible results of the development The development activities proposed on the application site will subsequently following the proposed development ensure some employment opportunities for the local community and improvement of the natural environment expecting to lead towards a positive ripple effect causing a series of new economic and environmental opportunities in terms of livelihood. Such proposals as per the application will contribute towards the buffer / safeguard / defense to resist, absorb and accommodate economic and environmental setbacks for the community in order to recover therefrom in a timely and efficient manner.</p> <p>(e) Good Administration which, 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 that a joint planning approach is pursued.</p>
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	<p>Possible results of the development</p> <p>Consultative practices are being followed in this application as it is done in consultation with the Planning Department of the Municipality who will also advertise the application in such a manner as to enable the government and the general public to participate in the eventual decision-making process. The guidelines and requirements of the municipal policy for additional dwelling units on agricultural land are followed. All relevant specialists are involved in planning and implementation of the proposed development. Therefore, the principle of good administration is adhered to.</p> <p>f. Conclusion</p> <p>The application is consistent with all policies and strategic plans, will have no negative effect on the character of the area or the abutting properties. The development proposal will minimize the impact on the environment by implementing green strategies for the development, protecting critical biophysical features on the application area, developing the agricultural potential and implementing eco-friendly farming methods and proposing a relatively small-scale building development on the application area.</p>
<p>5. Conclusion</p>	
<p>The application as motivated in this report is regarded desirable within its local context and well-integrated within the existing community land-use activities. It is therefore recommended that this application made in terms of the Overstrand By-Law on Municipal Land Use Planning 2015, for the following on Ptn 3 of Farm 575 Afdaks Rivier, Caledon District be approved:</p> <ol style="list-style-type: none"> 1. A consent use in terms of Section 16(2)(o) for 5 Additional dwelling units, 2. Departure in terms of Section 16(2)(b) to permit a gatehouse of 6m² in lieu of 5m². 3. Departure in terms of Section 16(2)(b) to relax the eastern side building line from 30m to 10m to accommodate the dwelling units and staff quarters 4. Departure in terms of Section 16(2)(b) to relax the eastern side building line from 30m to 4.5m to accommodate a gatehouse in excess of 5m² in extent 5. Departure in terms of Section 16(2)(b) to relax the western street building line from 30m to 0.9m to accommodate a gatehouse in excess of 5m² in extent 6. The approval of the Site Development Plan in terms of Section 16(2)(l) as per attachment Annexure I. 	

ANNEXURE C 1/4



SCHEMATIC VINEYARD BLOCK GEOMETRY

LEGEND

- VINRO TEST PITS
 - VITICON GRID
 - ROADS
 - BOUNDARY
 - BUILDING LINES
 - DEMAND POINT
 - TRAVEL WAYS (PHASE 1)
 - PHASE 1 PLANTING (2018)
 - PHASE 2 PLANTING (2019)
 - PHASE 3 PLANTING (2020)
- GROSS = AREA INCLUDING BUILDINGS
NETT = AREA ALLOWING FOR BUILDINGS



Roosvord
 Pookas bos
 Hermsd.

TRATheart 6-2-2019
 (H Olivier)

I.S.

Negamingsgebruik op Ged. 3 (De Gang) nr. 575 Plaas.

Meneer,
 Ek is die eienaar van Ged. 2, 19, 8 nr. Plaas 575
 Ek sien in het ingelaat om aan te hou dat
 daar in sewitant watakanale ons gedulde 3 jaar
 watwater in bespreking in huisingebuit in plaas
 en in nettes voorsien

Ek hou dit op aangelegte kaat.
 Wat my bekomme is dat daar nie aandag gegee
 is oor wat met die rioolwater gemaak gaan
 word wat na die huise bokant die kanaal
 geleë is.

Het kan die water wat in die kanaal
 vloei besoed aengien dit ook in huisingebuit
 dien.

Ek hoop u sal die probleem met die
 aansoekers Dandjerna kan aflos.

baie dankie

J. J. DEHOOP jplpnt.

foon huis 028-3151550
 sel nr. 0827162509.

FILE NO:	Ged 3 / 575 ✓
	AFdaksr.
SCAN NO:	
	PLAAS 575
COLLABORATOR NO:	
	1254847

TP - 8 FEB 2019

SCHEDULE OF RIGHTS

PROPERTY INFORMATION

Address: **2000 S. 10th St., Phoenix, AZ 85004**

Parcel: **000-000-000**

Map: **100-000-000**

DEVELOPMENT CONTROL MEASURES

Measure	Method	Notes
Setback	Front	10 feet
Setback	Side	5 feet
Setback	Rear	5 feet
Height	Maximum	35 feet
Area	Maximum	10,000 sq. ft.
Use	Permitted	Residential Single-Family

DATE: **10/1/2000**

LEGEND

[Symbol]	Proposed Building
[Symbol]	Proposed Driveway
[Symbol]	Proposed Pool
[Symbol]	Proposed Deck
[Symbol]	Proposed Patio
[Symbol]	Proposed Walkway
[Symbol]	Proposed Fencing
[Symbol]	Proposed Landscaping
[Symbol]	Proposed Irrigation
[Symbol]	Proposed Storm Drain
[Symbol]	Proposed Sewer Line
[Symbol]	Proposed Water Line
[Symbol]	Proposed Gas Line
[Symbol]	Proposed Electric Line
[Symbol]	Proposed Telephone Line
[Symbol]	Proposed Cable Line
[Symbol]	Proposed Utility Easement
[Symbol]	Proposed Right-of-Way
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PROPOSED BUILDING AREA

Area	Area
Proposed Building	10,000 sq. ft.
Proposed Driveway	500 sq. ft.
Proposed Pool	1,000 sq. ft.
Proposed Deck	200 sq. ft.
Proposed Patio	100 sq. ft.
Proposed Walkway	50 sq. ft.
Proposed Fencing	100 sq. ft.
Proposed Landscaping	100 sq. ft.
Proposed Irrigation	100 sq. ft.
Proposed Storm Drain	100 sq. ft.
Proposed Sewer Line	100 sq. ft.
Proposed Water Line	100 sq. ft.
Proposed Gas Line	100 sq. ft.
Proposed Electric Line	100 sq. ft.
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Proposed Cable Line	100 sq. ft.
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Proposed Encroachment	100 sq. ft.
Proposed Encroachment Easement	100 sq. ft.
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SITE PLAN
10/1/2000



GENERAL NOTES

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF PHOENIX ZONING ORDINANCES AND THE PHOENIX SUBDIVISION MAP ACT.
2. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF PHOENIX.
3. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARIZONA DEPARTMENT OF WATER RESOURCES.
4. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY.
5. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARIZONA DEPARTMENT OF TRANSPORTATION.
6. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARIZONA DEPARTMENT OF AGRICULTURE.
7. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARIZONA DEPARTMENT OF LAND USE.
8. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARIZONA DEPARTMENT OF MINES AND METALS.
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11. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARIZONA DEPARTMENT OF LABOR.
12. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARIZONA DEPARTMENT OF REVENUE.
13. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARIZONA DEPARTMENT OF TREASURY.
14. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARIZONA DEPARTMENT OF VETERANS AFFAIRS.
15. THE DEVELOPER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE ARIZONA DEPARTMENT OF WILDLIFE.
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GENERAL NOTES

Area	Area
Proposed Building	10,000 sq. ft.
Proposed Driveway	500 sq. ft.
Proposed Pool	1,000 sq. ft.
Proposed Deck	200 sq. ft.
Proposed Patio	100 sq. ft.
Proposed Walkway	50 sq. ft.
Proposed Fencing	100 sq. ft.
Proposed Landscaping	100 sq. ft.
Proposed Irrigation	100 sq. ft.
Proposed Storm Drain	100 sq. ft.
Proposed Sewer Line	100 sq. ft.
Proposed Water Line	100 sq. ft.
Proposed Gas Line	100 sq. ft.
Proposed Electric Line	100 sq. ft.
Proposed Telephone Line	100 sq. ft.
Proposed Cable Line	100 sq. ft.
Proposed Utility Easement	100 sq. ft.
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Proposed Landscaping	100 sq. ft.
Proposed Irrigation	100 sq. ft.
Proposed Storm Drain	100 sq. ft.
Proposed Sewer Line	100 sq. ft.
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Proposed Landscaping	100 sq. ft.
Proposed Irrigation	100 sq. ft.
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Proposed Encroachment Easement Easement Easement	100 sq. ft.
Proposed Encroachment Easement Easement Easement Easement	100 sq. ft.

Stoughton + Partners

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SITE PLAN
10/1/2000



InterActive Town & Regional Planning

PO Box 980

Hermanus

7200

Reference: Afdakrivier: Objection Response

Date: 23 April, 2020

PORTION 3 OF FARM 575, AFDAKSRIVIER: RESPONSE TO OBJECTIONS

Your letters received, dated the 19th of February 2019 and the 24th of April 2019, requesting written response to the objections against the proposed development on Portion 3 of Farm 575, Afdakrivier from the **DEA&DP Planning**, the **Overberg District Municipality** and the **Department of Agriculture**, refers.

In response to the above-mentioned objections, kindly find attached hereto the following documents:

- 1. ITRP's Response to Objections**
 - 1.1 Report
 - 1.2 Annexures
- 2. Advocate's Response to the Objection from the Overberg District Municipality**
 - 2.1 Report

Kind Regards

Andre Wiehahn Pr Pln A/927/1996
B Art et Sc (Town and Regional Planning)



InterActive Town & Regional Planning

PO Box 980

Hermanus

7200

Reference: Portion 3 of Farm 575, Afdakrivier

Date: April 2020

PORTION 3 OF FARM 575 AFDAKSRIEVER: RESPONSE TO OBJECTIONS

The purpose of the subject proposal is to establish a specialized Agricultural Development which caters to the modern-day market demand.

The letter received from the Overstrand Municipality dated the 19th of February, 2019, requesting written response to the objections received from both the DEA&DP Planning and from the Overberg District Municipality as well as from the Department of Agriculture received by the Overstrand municipality on the 24th of April 2019, refers.

All relevant documents are attached as follows: **Annexure A** consists of the objections, **Annexure B** consists of the relevant supporting comments, **Annexure C** consists of further e-mail correspondence with the objectors and **Annexure D** consists of relevant other supportive documents.

The methodology used to respond to the objections consist of a summary of the application proposal, a summary of the objections followed by a response to the objections, a town planning perspective supporting the application proposal and a conclusion.

A. Summary of the application

The development proposal is to use the application area primarily for specialized agricultural production purposes based on scientific principles and eco-friendly farming methods and to erect a workshop/storage/shed in support of the agricultural activities, as well as to provide accommodation in the form of a main homestead, staff quarters and houses for the property shareholders. A gatehouse of 6m² in lieu of 5m² is also proposed at the entrance gate.

Subsequently the application for 5 additional dwellings of 250m² each, departure to permit a gatehouse in excess of 5m² in extent and departure to relax the eastern side building and western street building line to accommodate dwelling units, staff quarters and a gatehouse, is applicable.

The specialized agricultural component is proposed to consist mainly of vineyards and protea plantations and on a much smaller scale, cash crops, as well as a workshop/storage/shed, which supports the main agricultural activities. This proposal is to be accommodated by the current zoning for agriculture. Refer to Figure 1 for the phasing of vineyard, protea and cash crop plantations over a course of 3 years.

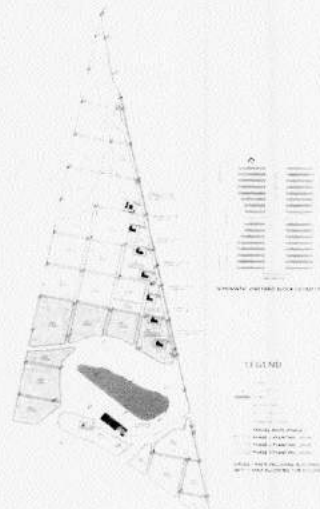


Figure 1: Agricultural Phasing Plan

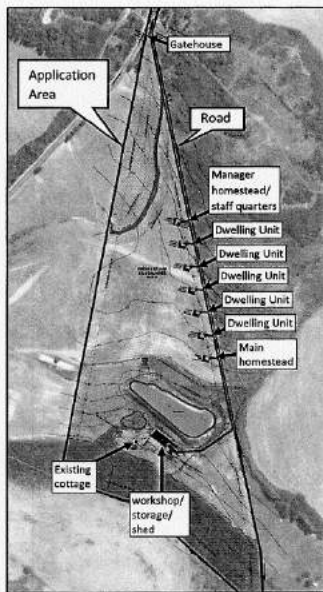


Figure 2: Site Development Plan

The proposed accommodation component as illustrated in Figure 2 consists of:

- a. Main homestead for farmer (250 m²)
- b. Manager/care taker homestead for a full-time manager (120 m²)
- c. 2 x staff quarters for permanent skilled service staff (60 m² each)
- d. 5 Additional dwelling units for shareholders of the application area (250m² each)

The main homestead, managers' homestead and staff quarters are to be accommodated as primary land-uses in terms of the existing zoning being Agricultural 1.

The 5 additional dwellings are proposed to be accommodated by virtue of a consent use. The main homestead, manager homestead, staff quarters and additional dwellings exceed the 30m eastern side building line to 10m and are proposed to be accommodated by a departure to relax the eastern side building line from 30m to 10m to accommodate dwelling units and staff quarters. The main purpose of the building line relaxation is to reduce the impact of dwellings on farm operations and thus to optimize the agricultural land.

A security gatehouse of approximately 6m² in extent with manual sliding steel gate is proposed at the entrance. A security gatehouse of only 5m² is permitted as a primary use, therefore an application for a departure to permit a gatehouse in excess of 5m² in extent, is

applicable. Furthermore, the gatehouse exceeds the eastern and western building lines from 30m to 4.5m and 1m respectively which necessitates a departure to relax the eastern side building line from 30m to 4.5m and the western street building line from 30m to 1m to accommodate the gatehouse.

B. Summary of objections

Objections are submitted by the DEA&DP Planning, Overberg District Municipality and the Provincial Department of Agriculture.

In the following table the objector and objections are provided, followed by ITRP's response, on behalf of the developer, to the objections.

Objector	Objections (Attached as Annexure A)	Response to objection
<p>DEA & DP Planning & Department of Agriculture</p>	<p><u>Position of Additional Dwellings</u></p> <p>1. <u>The additional dwelling units are placed on previously cultivated land.</u></p> <p>According to the newly approved "Rural Areas Guideline", new buildings should be located on previously disturbed footprints within or adjacent to the farm "werf" and not on cultivated or agricultural land.</p>	<p>The land was previously cultivated for wheat-production but is now intended to be cultivated mostly for vineyards and protea plantations. An area of more than 8ha was <u>cleared of alien vegetation</u> to provide land for the newly intended agricultural production.</p> <p>The only existing building and therefore previously disturbed footprints is a labourer's cottage in the south of the application area.</p>

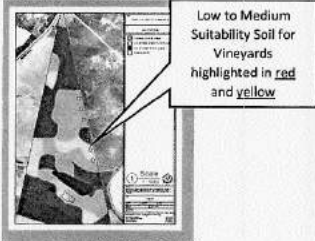
	<p>All dwelling units are proposed to be arranged as a linear cluster along the eastern erf boundary and to the north of the retention facility to avoid interference with daily agricultural activities and to minimize placement of units on portions of land with high agricultural potential.</p> <p>A Study was undertaken by the owner, Cupipart (PTY) Ltd, to determine the soil suitability for vineyards.</p> <p>As illustrated by Figure 3 below, <u>four of the dwelling units are situated on low to medium vineyard suitability soil with three situated on high-suitability soil.</u></p> <div data-bbox="858 1010 1174 1249"><p>Low to Medium Suitability Soil for Vineyards highlighted in red and yellow</p></div>
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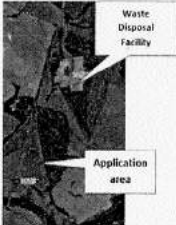
Figure 3: Soil Suitability & Dwelling

		<p>Decisions for the placement of dwelling units were therefore based on the careful consideration of all relevant factors, including the distance from the Karwyderskraal Road to the west and the waste disposal facility to the north-east, soil suitability and the minimization of interference with daily agricultural activities.</p> <p>Furthermore, the footprint of the additional dwellings is approximately 0.3 ha which represents a relatively small-scale building development.</p> <p>The buildings are subservient to the primary agricultural activities and are a crucial and integral financially supportive component of the total agricultural development. The financial model is set up in such a way that the financial investment in the agricultural component of the development is dependent on the approval of the additional dwellings for the shareholders/ investors.</p>
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<p>DEA&DP Planning & Department of Agriculture</p>	<p><u>Nature of Additional Dwellings</u></p> <p>2. In addition to the formal comments, the DEA&DP Planning stated in further correspondence attached as Annexure C that the "Rural Areas Guideline" indicates the additional dwelling units are intended to <u>support rural tourism and to diversify farm income.</u></p> <p>3. According to the Department of Agriculture the perspective is that additional dwelling units cater for <u>short term transient quest accommodation.</u></p>	<p>It should be noted that the Rural Areas Guideline is merely a <u>guideline</u> to assist the decision maker and is therefore not <u>legally/statutory enforceable.</u></p> <p>The local municipal policies and guidelines which govern the Overstrand municipal area are tailored more to the specific conditions and needs of the application area than are the provincial policies and guidelines which serve a much broader area. The Overstrand municipality as decision-maker is most familiar with the local surrounds and aims to reach decisions which benefit the local community and surroundings, within the framework of all relevant national and provincial legislation, policies and guidelines.</p> <p>According to the Overstrand Zoning Scheme, "additional dwellings" mean dwellings in Agriculture Zone 1, which are not required for the accommodation of bona fide persons involved in the agricultural practice on the property concerned and additional dwelling units may be used for <u>long or short-term</u></p>
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		<p><u>accommodation purposes</u>. The subject application aligns with this definition.</p> <p>Although the Overstrand Policy for Additional Dwelling Units states that this policy is intended to guide decisions in view of the expanding rural tourism industry, <u>nowhere in this policy is it stated that additional dwellings are exclusively for this purpose and that those dwellings not directly supporting rural tourism, are prohibited</u>.</p>
DEA&DP Planning & Department of Agriculture	<p><u>Size of Additional Dwellings</u></p> <p>4. The dwelling units exceed 120m².</p> <p>5. Further correspondence from DEA&DP stated that according to the "Rural Areas Guideline", additional dwelling units should be limited to 175m² maximum floor area including garaging. Refer to <u>Annexure C</u> for the e-mail correspondence in this regard.</p> <p>6. The Department of Agriculture states that in their view the additional dwellings should not exceed 175m².</p>	<p>According to the "Overstrand Policy for Additional Dwelling Units", the units and accompanying outbuildings may not exceed a total footprint of <u>250m²</u>. The main farmhouse and each additional dwelling unit, together with their outbuildings, is <u>250m²</u>.</p> <p>Therefore, the application is <u>aligned with the Overstrand municipal policy</u> in terms of the maximum extent permitted for additional dwelling units.</p>

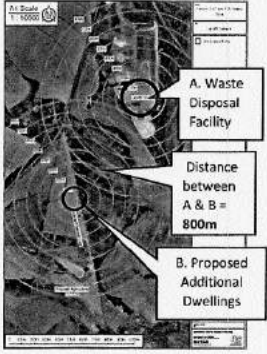
	<p>The provincial guidelines are merely guidelines whereas the Overstrand document is a <u>policy</u>.</p> <p>Furthermore, to re-iterate, the footprint of additional dwellings is approximately 0.3 ha which represents a relatively small-scale building development.</p> <p>The proposed dwellings are an inextricable component of the total agricultural development.</p> <p><u>No NEMA regulations</u> are triggered by the application proposal either. Refer to the supporting comment from Directorate: Development Management (Region 1) <u>Annexure B</u> in this regard.</p>
<p>Conclusion: The objections regarding the position, nature and size of additional dwellings should therefore be <u>rejected</u> in view of the bigger picture in which the proposed development will enhance the local economy. The additional dwellings represent a very small, though crucial part/ footprint of the total agricultural development while the <u>predominant area of the land with the highest agricultural potential is utilized for agricultural production</u>.</p> <p>Furthermore, the relevant municipal guidelines, policies and requirements <u>do not explicitly prohibit additional dwellings not intended for rural tourism purposes</u>.</p>	

<p>OVERBERG DISTRICT MUNICIPALITY</p>	<p>Position of Additional Dwellings and Karwyderskraal Waste Disposal Facility</p> <p>7. The objection by the Overberg District Municipality as set out in their letter of 14 February 2019, refer to Annexure A, stated the following:</p> <p>a. "The ODM is the owner of Portion 79 of farm 575 Afdakrivier on which the ODM manages a regional waste disposal facility and which is located in close proximity to the subject property as indicated in Figure 4 below.</p>  <p>Figure 4: Location of Waste Disposal Facility</p>	<p>Firstly, the condition 4.6 of the Permit is <u>vague</u> in terms of a. <u>the exact distance of the buffer zone</u> as well as in terms of b. <u>the exact meaning or interpretation of "residential areas"</u>.</p> <p>a. <u>No specific distance</u> is stated for the buffer zone in the condition and the boundary is merely described as not being "<u>closer to the Facility than any existing residential areas during the operative life of the Facility.</u>"</p> <p>b. Regarding the <u>precise meaning of "residential areas"</u>, refer to Annexure D for the underlined extract from the GIBB Africa "Summary of Draft Environmental Impact Report May 1999" stating that: "<u>The Karwyderskraal site is privately owned land and is located.....approximately 5km from the residential areas of Fisherhaven and Hawston.</u>"</p>
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	<p>With reference to the license conditions of the site, consideration should be given to the following condition 4.6 of the Permit of the Karwyderskraal Waste Disposal Facility:</p> <p><i>The Permit Holder shall take all reasonable steps, such as suitable zoning and/or written agreements with adjacent land-owners, to prevent the development of further residential and/or light industrial areas closer to the Facility than any existing residential areas during the operative life of the Facility. Heavy industries or industries which may create nuisance conditions may be permitted within the buffer zone in terms of the appropriate legislation.</i></p> <p>Kindly refer to a copy of the Permit condition 4.6, attached in Annexure D.</p>	<p>Furthermore, also in Annexure D, refer to the underlined extract from GIBB Africa "Karwyderskraal Waste Disposal Site Permit Application Report October 1999" stating that "Karwyderskraal is in an agricultural area which provides a suitable buffer zone with the <u>nearest farmhouse</u> 1.2km away."</p> <p>When observing the specific wording used in condition 4.6 of the Permit, it may therefore be concluded that referral to "residential areas" is interpreted as meaning <u>residential suburbs</u> such as Fisherhaven and Hawston.</p> <p>Furthermore, the primary use right on the property is for "<u>agriculture</u>" and the additional dwellings are subservient to the agricultural use. Therefore, the proposed additional dwelling units should be interpreted as representing a portion of an "<u>agricultural development</u>", and not constituting a "residential area".</p> <p>The wording within the clause is thus <u>vague</u> and <u>causes confusion</u>.</p>
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		<p>Secondly, the so-called "buffer zone" restricts the land-owner's rights on the subject property zoned for Agricultural Zone 1 for which an application for a consent use for additional dwellings is allowed according to the <u>Overstrand Zoning Scheme, 2015</u>.</p> <p>Neither the Overstrand Zoning Scheme, 2015 nor the Overstrand Municipal Wide Spatial Development Framework, 2012 makes any mention of a so-called "buffer-zone" in this area.</p> <p>The only mention made of a "buffer zone" which was able to be pinpointed is in the "Amendment of the Operating Permit Karwyderskraal Landfill: Composting Facility", approved on the 23rd of November 2005, the GIBB Africa "Summary of Draft Environmental Impact Report May 1999" and the GIBB Africa "Karwyderskraal Waste Disposal Site Permit Application Report October 1999". Refer to Annexure D for the relevant extracts from these reports.</p>
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		<p>Thirdly, the EIA for Karwyderskraal Waste Disposal Site finalized in September 1999 indicated only the following two impacts which are relevant to the subject application proposal, namely:</p> <ul style="list-style-type: none">a. <u>groundwater quality</u> of which the impact was to be significantly reduced by <u>mitigating measures</u>, as well asb. <u>odours</u> which would be dispersed by strong winds year-round in this area and <u>mitigation measures</u> which would further minimize odours generated on the Karwyderskraal Waste Disposal Facility site. <p>Fourthly, Figure 5 on the following page illustrates the distance between the waste disposal facility and the proposed additional dwellings on the subject erf which measures approximately 800m.</p>
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	<p>b. Relaxation of the 30m eastern lateral building lines to 10m and 4.5m should not be considered, as the <u>buffer area</u> between the waste disposal facility and</p>	 <p>Figure 5: Landfill Setback</p> <p>In our opinion this distance is sufficient to further ensure that there will be <u>no significant negative impacts from the waste disposal facility on the application area</u>.</p> <p>This condition confuses the issue, as the ODM seems here to <u>support</u> the application <u>subject</u> to a "no building line relaxation" condition.</p>
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	<p>proposed development should be maximized.</p> <p>c. The ODM further states in their objection letter, dated the 14th of February 2019, (Annexure A) that the developer must confirm that he is aware of and accepts the regional waste disposal facility on Portion 79 and expansion of the facility towards the southern boundary in future.</p>	<p>The developer confirmed in a letter, dated <u>15 April, 2019</u> that he "has no objection against the current and future operation(s) of the Regional Waste Disposal Facility on Portion 79 of Farm 575 Afdakrivier ("the Facility"), as disclosed and in accordance with the proposal as set out in <u>Francois Kotze's e-mail dated the 8th of April, 2019.</u></p> <p>This confirmation is subject to the undertaking of the Overberg District Municipality that the Facility will at all times be operated according to international best practice and that no informal settlement (of any nature) will be allowed or tolerated on the Facility."</p> <p>Refer to <u>Annexure C</u> for the <u>afore-mentioned two letters</u> attached.</p> <p>Nonetheless, the ODM further confuses the issue by stating <u>Objection 7c</u> (Objections Column).</p>
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	<p>Subsequent to the objection of the ODM, which specifically referred to the restrictive condition 4.6 of the Permit, further communication occurred between the developer and the Directorate of Waste Management within the Department of Environmental Affairs and Development Planning. Refer to Annexure C in this regard.</p> <p>The purpose was for the developer to understand the <u>exact distance measurements</u> of the "buffer zone" around the Waste Disposal Facility.</p>	<p>Therefore, the ODM is seemingly <u>conditionally supportive</u> of the proposal according to Objections 7b. and 7c., although in Objection 7a. the proposal is seemingly <u>not supported</u>.</p> <p>This would create the impression that the ODM is ambivalent towards the buffer zone. Hence the applicant's referral to the "<u>ambiguity</u>" of the objection letter from the ODM, dated 14th of February 2019.</p> <p>We are of the opinion that it is completely <u>unnecessary</u> and costly for the developer to conduct an air pathway study in the light of the before-mentioned findings:</p> <ul style="list-style-type: none"> • according to the final EIR there are <u>no significant impacts</u> after mitigations and • the 800m distance between the waste disposal facility and the application area is <u>sufficient</u> to further ensure that there are no significant impacts on the proposed additional dwellings.
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	<p>The Directorate of Waste Management advised that an independent service provider be appointed to conduct an <u>air pathway study</u> for the entire Karwyderskraal WDF. Based on the results from the study, condition 4.6 of the existing Permit may then through an application by Overberg District Municipality to the Department, be amended to reflect the recommendations of the air pathway study. Within the then clearly demarcated buffer zone, no residential development and/or light industrial developments, will be permitted.</p>	<p>In addition, the Department of Environmental Affairs and Development Planning confirmed in their letter of support that the <u>proposed development on the application area</u> does not constitute any listed activities in terms of the NEMA EIA Regulations, 2014. Refer to the Departmental letter in Annexure B.</p> <p><u>Clearly from the above, it is evident that no statutory buffer zone exists.</u></p>
<p>Conclusion: The objection regarding the buffer zone and the building line relaxation should be <u>rejected</u> as the distance of 800m between additional dwellings and the waste disposal facility, together with the implementation of continuous mitigating measures for the potential impacts from the waste disposal facility is foreseen to be adequate to prevent any significant negative impact thereof on the proposed development.</p> <p>The applicant responded to the requirement from the ODM and indicated that he has no objection against the current and future operations of the regional waste disposal facility.</p> <p>The ambiguity of the objection letter from the ODM, dated the 14th of February 2019, implying both support and non-support for the proposal, could be perceived to be a <u>confirmation that no definitive statutory buffer-zone exists.</u></p>		

The Department of Environmental Affairs and Development Planning confirmed in their letter of support that the proposed development on the application area does not constitute any listed activities in terms of the NEMA EIA Regulations, 2014.

C. Town Planning Perspective

From a town planning perspective, the application proposal for an **agricultural development with a consent for 5 additional dwellings, as permitted under Agricultural 1**, is supported, as the application is consistent with all local policies, guidelines and strategic plans, will have no negative effect on the character of the area or the abutting properties and will not be affected negatively by abutting properties either.

The relatively small-scale building development-proposal as well as the agricultural development will further minimize the impact on the environment by implementing green strategies for the development, protecting critical biophysical features on the application area, developing the agricultural potential and implementing eco-friendly farming methods. Furthermore, alien vegetation has been removed and will be kept in check by implementing the proposal.

The development proposal will stimulate the local economy by creating employment opportunities and through sales and exports and could potentially lay the groundwork for rural tourism and diversification of the economy in future.

Subsequently the proposed development is thus considered *desirable*.

D. Conclusion

To conclude, the objections provided do not represent valid reasons to reject the application.

The objections are aimed mostly at the nature, position and size of additional dwelling units.

The municipal policies and guidelines do not explicitly prohibit additional dwellings which are not related to rural tourism. Even though the nature of the additional dwelling units will not involve rural tourism in terms of

accommodation, it could potentially lay the groundwork for rural tourism in future through the shareholders getting involved in wine tasting and other small-scale tourist facilities on the application area, subject to municipal approval.

The position and size of the additional dwellings do not negatively impact on the agricultural production as it represents a small footprint whereas the vast majority of the application area is utilized for agricultural production, which will stimulate the local economy and create employment opportunities.

Furthermore, the 800m buffer area and the EIR mitigating measures are foreseen to adequately ensure that the waste disposal facility will not have any significant negative impact in terms of odours or groundwater quality on the application area .

The buffer-zone is not considered statutory for the following reasons; no mention is made of a "buffer-zone" in the applicable Overstrand spatial land-use development policies and strategies, the developer and other surrounding land-owners seemed to have been unaware of the "buffer-zone" which therefore implies that public participation for the waste disposal facility did not involve all of the affected parties and the wording of the permit condition which refers to the buffer-zone is vague and confusing.

The ambiguity of the objection letter from the ODM regarding the buffer-zone, dated the 14th of February 2019, and reflecting both support and non-support for the proposal, could be perceived to be a confirmation that no statutory definitive buffer-zone exists.

Therefore, for the applicant to conduct an air pathway study as advised by the Department of Environmental Affairs and Development Planning, is deemed unnecessary and costly.

The additional dwellings are a small but integral part of the total agricultural development. The proposed development will have a significantly positive impact on the economic and physical environment in terms of economic growth, creating employment opportunities and the optimal and productive utilization of agricultural land, while minimizing the impact on the physical environment. It is therefore recommended that the proposed development be approved.

ANNEXURE A

- **Objections**
 - a. DEA & DP: Directorate: Development
Management Region 2: Objection
 - b. ODM Objection
 - c. Department of Agriculture Objection

Afdelingshoof 22/72



DIRECTORATE DEVELOPMENT MANAGEMENT: REGION 2
PRINCIPAL LAND USE MANAGEMENT REGULATOR
Mr. G van Lillie
Email : Gerhard.vanLillie@westerncape.gov.za

*TR A Theart
C Holwier*

Reference: 15/3/2/12/BO3

Director
Infrastructure and Planning
Overstrand Municipality
P O Box 20
HERMANUS
7200



Sir

DEPARTURE AND CONSENT USE: PORTION 3 FARM 575 CALEDON

1. Your letter Pin 3 of Farm 575, RCAL (4103) dated 28 December 2018 refers.
2. This Directorate does, in principle, not support the application for 5 additional dwelling units (250m² each) for shareholders of the application area.
3. Not only are the units placed on, previously cultivated land, but the size of the units far exceeds the prescribed total floor space of 120m² per unit.
4. The above-mentioned comment is based on the information received. The Department reserves the right to amend its comment should any additional or new information be obtained.

Yours faithfully

[Signature]
K MUMRO
DIRECTOR: LAND MANAGEMENT: REGION 2
DATE: *5.2.2019*

PORTION 3 FARM 575 CALEDON

FILE NO:	<i>Pin 3/575</i>
DOAN NO:	<i>MUMRO</i>
COLLABORATOR NO:	<i>1251924</i>

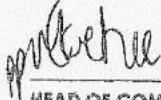
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tel: +27 21 4834588 fax: +27 21 483 3098

Private Bag X9086, Cape Town, 8000
www.westerncape.gov.za

- 5 FEB 2019

8. Your interest in the future of our environment is greatly appreciated.
9. This Department reserves the right to revise or withdraw any comments or request further information from you based on any information received.

Yours faithfully



HEAD OF COMPONENT

ENVIRONMENTAL IMPACT MANAGEMENT SERVICES: REGION 1
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

(15)

OVERBERG DISTRIKSMUNISIPALITEIT DISTRICT MUNICIPALITY UMASIPALA WESITHILI



MELD ASB/PLEASE QUOTE

Ous Verw./Our Ref.: 18/5/54

Navrae/Enquiries: Francois Kotze

Bylyn/Ext.:

Privaatsak: X22

Private Bag:
BREDASDORP
7280

Tel.: (028) 4251157

Faks/Fax: (028) 4251014

E-mail/E-pos: rvolschenk@edm.org.za



14 February 2019

OVERSTRAND MUNICIPALITY

P.O Box 20
HERMANUS
7200

For attention: Michelle Naylor

TRATHAART
(Holivier)

**RE: PORTION 3 (DE GANG) OF FARM 575, AFDAKSRIVIER, A DIVISION OF CALEDON;
PROPOSED DEPARTURE AND CONSENT USE: INTERACTIVE TOWN & REGIONAL
PLANNING (obo AFDAKSRIVIER PTY LTD)**

Ref: Ptn 3 of Farm 575, RCAL (4103)

The Overberg District Municipality's department of Environmental Management Services does not support the application for proposed departure and consent use for portion 3 of farm 575 Afdakrivier.

The Overberg District Municipality is the owner of portion 79 of farm 575 Afdakrivier which is located in close proximity of portion 3 of farm 575 Afdakrivier. The Overberg District Municipality manages a regional waste disposal facility on its property. With reference to the licence conditions of the site, consideration should be given to the following clause:

The Permit Holder shall take all reasonable steps, such as suitable zoning and/or written agreements with adjacent landowners, to prevent the development of further residential and/or light industrial areas closer to the Facility than any existing residential areas during the operative life of the Facility. Heavy industries or industries which may create nuisance conditions may be permitted within the buffer zone in terms of the appropriate legislation.

FILE NO:	Ptn 3/575
	Afdakrivier
SCAN NO:	Farm 575
REGISTRATOR NO:	1256655

Alle korrespondensie moet aan die Munisipale Bestuur gerig word.
All correspondence must be addressed to the Municipality.


14 FEB 2019

25/72

It is important to note that the regional waste disposal facility will be operational for approximately the next 55 years and future cell development will expand to the Southern boundary of the facility. It is important for the developer to take cognisance of this and to confirm that the developer will have no objection towards the future expansion of the facility.

The proposal for departure in terms of Section 16(2)(b) to relax the 30m eastern lateral building lines to 10m and 4.5m respectively to accommodate residential units should not be considered in order to maintain a maximum buffer area from the waste disposal facility.

Yours faithfully,



D. F. BERETTI
MUNICIPAL MANAGER



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

OUR REFERENCE : 20/9/2/4/2/864
 YOUR REFERENCE : Ptn 3 of Farm 575, RCA1 (4103)
 ENQUIRIES : Cor van der Walt

Overstrand Municipality
 PO Box 20
 HERMANUS
 7200

Att: H Olivier

**PROPOSED DEPARTURE AND CONSENT USE: DIVISION CALEDON
 PORTION 3 OF THE FARM NO 575**

Your application of 28 December 2018 has reference

The Western Cape Department of Agriculture (WCDoA) does not support additional dwellings on cultivated agricultural land and also deems the size of the additional dwelling units too large

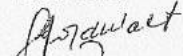
The intent from the Western Cape Department of Agriculture's perspective is that additional dwelling units cater for short term transient guest accommodation and in our view should not exceed 175m²

Please note:

- Kindly quote the above-mentioned reference number in any future correspondence in respect of the application

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

Yours sincerely



Mr. CJ van der Walt

LANDUSE MANAGER: LANDUSE MANAGEMENT

2019-04-08

Copies:

Department of Environmental Affairs & Development Planning (Helene Jansen)

1 Dorp Street

CAPE TOWN

8001

Directorate Land Use and Sustainable Resource Management

National Department of Agriculture

Private Bag X 120

PRETORIA

0001

ANNEXURE B

- Supportive Comment from DEA & DP:
Directorate Development management
Region 1



Directorate: Development Management
(Region 1)

TPA Theart
(Choliver)

REFERENCE: 16/3/3/6/E2/27/1001/19
ENQUIRIES: Ms. Sachrah Adams
DATE: 18-02-2019

The Municipal Manager
Overstrand Municipality
P.O. Box 20
HERMANUS
7200

FILE NO:	DM 3/575
SCAN NO:	
COLLABORATOR NO:	263791

Attention: M. Olivier

Tel: (028) 313 8900
Fax: (028) 313 2093

Dear Sir/Madam

RE: APPLICATION FOR DEPARTURE AND CONSENT USE ON PORTION 3 OF FARM NO. 575, AFDAKSRIVIER, CALEDON

1. The abovementioned document, dated 20 November 2018 and received by this Department on 8 January 2019, refers.
2. Further to review of the information submitted to this Department, the following is noted:
 - 2.1. The farm is located 2.5km from the Botrivier estuary and connects with the Afdakrivier on the southern border that flows to the west into the Botrivier. The Afdakrivier itself, is regarded as a Critically Biodiversity Area and the upgrade of roads that traverse this area will be limited to the existing footprint of the road.
 - 2.2. In terms of section 52 of the National Environmental Management: Biodiversity Act (NEMBA), 2004, and based on available mapping information sources, the site should comprise of Elm Feniarete Fynbos vegetation and planted pastures. This vegetation type is categorised as Critically Endangered. However, the farm has been transformed and natural areas with indigenous vegetation are restricted to the watercourses which includes wetlands south-west/south of the dam on site. No indigenous vegetation will be cleared as part of the development.
 - 2.3. The application is for departure to accommodate a gatehouse of 6m² and to relax the 30m eastern lateral building lines to 10m and 4.5m respectively to accommodate dwelling units, staff quarters and the gatehouse; including the relaxation of the 30m western street building line to 0.9m to accommodate the gatehouse.

6th Floor, 1 Dorp Street, Cape Town, 8001
Tel: +27 21 483 0773 Fax: +27 21 483 3089
Email: Sad-rah.Adams@westerncape.gov.za

Private Bag X9086, Cape Town, 8000
www.westerncape.gov.za/sadp

- 2.4. In addition to this, the proposal includes an application for consent use to accommodate the additional dwelling units.
- 2.5. It is the owner's intention to use the application area primarily for specialised agricultural production purposes based on eco-friendly farming methods and accommodation purposes in the form of a homestead, staff quarters and houses for property shareholders.
- 2.6. The specialised agricultural component is proposed to consist mainly of vineyards and citrus plantations as well as smaller cash crops.
3. On 7 April 2017 the Minister of Environmental Affairs promulgated amendments to the regulations in terms of Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA"), viz. the Environmental Impact Assessment ("EIA") Regulations 2014 and Listing Notices 1, 2 and 3 in Government Gazette No. 40772. These regulations came into effect on 7 April 2017.

4. In light of the above, your attention is drawn to the listed activities in terms of the NEMA EIA Regulations, 2014 (as amended) and Listing Notices 1, 2 and 3. Based on the information provided, the proposed departure and consent use does not constitute listed activities in terms of the NEMA EIA Regulations, 2014. However, considering the project description and the potential triggers, the Department wishes to highlight that should the proposed components exceed any of the applicable thresholds, an application for Environmental Authorisation will be required prior to commencement.

For example, if the proposed development footprint of structures or infrastructure is 100m² or more and is located within or within 32m of a watercourse, it will trigger:

Activity 12 of Listing Notice 1

The development of—

- (i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or
- (ii) infrastructure or structures with a physical footprint of 100 square metres or more;

where such development occurs—

- a) within a watercourse;
- b) in front of a development setback; or
- c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; —

excluding—

- aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;
- bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;
- cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;

- dd) where such development occurs within an urban area;
- ee) where such development occurs within existing roads, road reserves or railway line reserves; or
- ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared.

If a component of the proposed development exceeds the 10 cubic metres threshold for the infilling or removal of material within a watercourse, it will trigger:

Activity 19 of Listing Notice 1:

The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;

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

- a) will occur behind a development setback;
- b) is for maintenance purposes undertaken in accordance with a maintenance management plan;
- c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;
- d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or
- e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.

If the footprint of the proposed roads exceed a width of 4m with a reserve less than 13.5m, it will trigger:

Activity 4 of Listing Notice 3

The development of a road wider than 4 metres with a reserve less than 13,5 metres.

i. Western Cape

- i. Areas zoned for use as public open space or equivalent zoning;
- ii. Areas outside urban areas;
 - (aa) Areas containing indigenous vegetation;
 - (bb) Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined; or
- iii. Inside urban areas;
 - (aa) Areas zoned for conservation use; or
 - (bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority.

If the main house and five additional dwellings will be used for overnight accommodation that sleeps 15 people or more and is located within 5km of a protected area, it will trigger:

Activity 6 of Listing Notice 3

The development of resorts, lodges, hotels, tourism or hospitality facilities that sleeps 15 people or more.

I. Western Cape

- i. Inside a protected area identified in terms of NEMPAA;
 - ii. Outside urban areas;
 - (aa) Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans; or
 - (bb) Within 5km from national parks, world heritage sites, areas identified in terms of NEMPAA or from the core area of a biosphere reserve;
- excluding the conversion of existing buildings where the development footprint will not be increased.

If the development includes the clearance of 300m² or more of endangered or critically endangered Indigenous vegetation, it will trigger:

Activity 12 of Listing Notice 3:

The clearance of an area of 300 square metres or more of Indigenous vegetation except where such clearance of Indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.

I. Western Cape

- i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;
 - ii. Within critical biodiversity areas identified in bioregional plans;
 - iii. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line or even in urban areas;
 - iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or
 - v. On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister.
5. Therefore, if the thresholds of one or more of the above listed activities are exceeded by the proposed development, written Environmental Authorisation will be required before the activity may commence.
 6. The Application Form, as well as other relevant forms and guidelines, are available from this Department's website: <https://www.westerncape.gov.za/eacdp/resource-library>.
 7. Be advised that the applicant must comply with any other statutory requirements that may be applicable to the undertaking of the activity.

- 8. Your interest in the future of our environment is greatly appreciated!
- 9. This Department reserves the right to advise or withdraw any approval or request for the information from you based on any information received.

Yours faithfully

HEAD OF COMPONENT
ENVIRONMENTAL IMPACT MANAGEMENT SERVICES REGION 1
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

ANNEXURE C

- **E-mail Communication**
 - a. DEA & DP: Directorate: Development
Management Region 2
 - b. ODM
 - c. Developer
 - d. DEA & DP: Directorate: Waste Management

35/72

Province Department
to us

Morning Melissa

My apologies for only getting back to you now.

With regards the size of the additional dwelling units, it is acknowledged that the Overstrand Zoning Scheme limits the total floor area of the additional dwelling unit to 250m². It is, however, this Department's stance that additional dwelling units are intended to support rural tourism and to diversify farm income and should be of an appropriate scale and form, i.e. limited to 175m² maximum floor area including garaging, with a building height of 6.5m (one storey).

170m²

In terms of the newly approved Rural Areas Guideline, ancillary on-farm activities (such as additional dwelling units) should not detract from the functionality and integrity of farming practices and landscapes. Where new buildings are to be erected, these should be on previously disturbed footprints within or adjacent to the farm werf and not on cultivated land. Furthermore, said units should be non-alienable, whether individual erf, sectional title, shareblock or any other.

Not on
cultivated
land

It should be noted that the Rural Areas Guideline does not represent a rural development strategy, but is a tool to be considered by the decision-maker when assessing applications for land development outside existing built-up areas.

The planning application and the soil suitability study has been referred to the Western Cape Department of Agriculture who will provide their comment in respect of the placement of additional dwelling units, the viability of the proposed 'specialized agricultural production' and whether there is adequate water supply. The exact placement of the units will, however, be determined by the decision-maker should the application be approved, with due consideration of the input from various stakeholders.

It should be reiterated that this Department does not support the establishment of additional homes on farms for shareholders, as this undermines the intention for which additional dwelling units were permitted, i.e. to support rural tourism and to diversify farm income.

Kind regards

Helene Janser

the Footprint =
Only tool for decision maker
Exact placement - consider inputs
Rural tourism & diversify farm income

ODM Proposal

Good morning Welissa,

With the long term master plan for the site concluded we can provide you with the following detail.

- The full extent of the facility is earmarked to be utilised for the disposal of General Household Waste and diversion of Organic Waste for composting on site. The estimated life expectancy of the facility is 57 years. This means that the bulk of the 85 ha property will be developed into waste cells (final cell footprint in red) over time to accommodate waste from user municipalities within the Overberg jurisdictional area. The property border is indicated in Yellow.
- The height of the final waste body at the end of the facility's operation will be 85m above mean sea level. This will be rehabilitated over time as and when necessary to ensure that the site fit into the surrounding landscape.
- Composting will continue on site to contribute to organic waste diversion from landfill. The area utilised is indicated in a green polygon.
- A total of 10 cells will be design and operated on site within the abovementioned footprint. The development will take up all available space for the cell expansion leaving only a perimeter road between the waste body and the property border. Development and operation of these consecutive cell will stretch from April 2019 to July 2073.
- If required, due to the needs from user municipalities to provide additional landfill airspace (after the planned 57years) and the necessary EIA permission is obtained for further development of this facility's footprint, we might look at the extension of this facility toward adjacent areas. It is however to early at this stage to know if expansion will be required in the future.

I trust that the above overview provides sufficient information on the current and future operation of the facility.

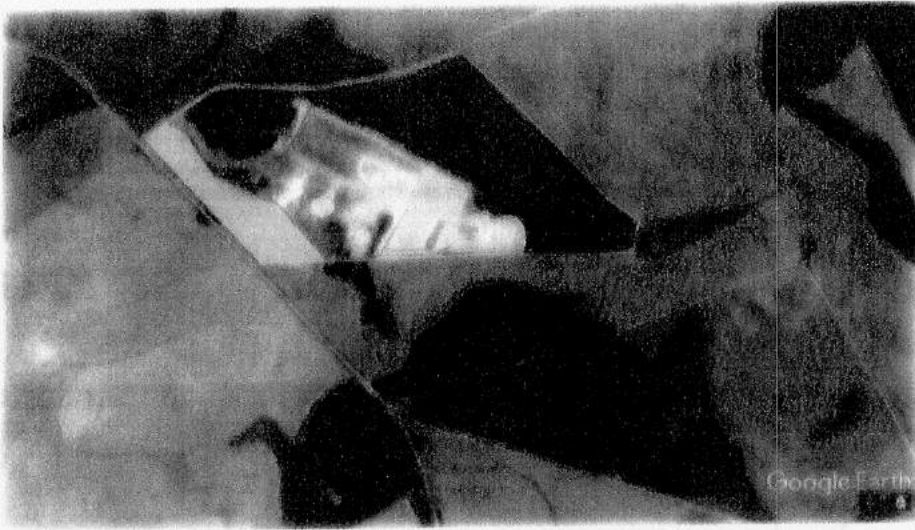
In order to ensure continuous and effective communication related to planning and operations at the facility. The ODM have established and is facilitating a Karwyderskraal Monitoring Committee meeting on an annual basis. The developer will be invited to become part of this committee as an adjacent property owner and will have access to progress and monitoring reports as well as future planning.

You are welcome to contact me if you have further questions in this regard or to make the necessary arrangement for a site visit if required.

Kind regards

Francois Kotze

37/72



Annexure

Attention: Francois Kotze Manager: Environmental Management Services Overberg District Municipality

PORTION 3 OF FARM 575, AFDAKSRIVIER: SUPPORT OF KARWYDERSKRAAL REGIONAL WASTE DISPOSAL FACILITY

I, CJ Venter, the director of Afdakrivier (Pty) Ltd ("the Company") hereby confirms that the Company has no objection against the current and future operation(s) of the Regional Waste Disposal Facility on Portion 79 of Farm 575 Afdakrivier ("the Facility"), as disclosed and in accordance with the proposal as set out in Francois Kotze's e-mail dated the 8th of April, 2019. This confirmation is subject to the undertaking of the Overberg District Municipality that the Facility will at all times be operated according to international best practice and that no informal settlement (of any nature) will be allowed or tolerated on the Facility.

Furthermore, the Company undertakes to nominate a representative to the Karwyderstraal Monitoring Committee, established by the Overberg District Municipality, as an adjacent property owner who will have access to progress and monitoring reports as well as future planning.

Kind Regards

CJ Venter

Director Afdakrivier (Pty) Ltd

(083) 625 5714

cj@afdakrivier.com

- Buffet - permissie se niks
- buidelyne ud doop

Op grond waarvan is die buffet bepaal?

Stuart-Rien

39/72



BETTER TOGETHER

DIRECTORATE: WASTE MANAGEMENT
EUGENE PIENAAR
Eugene.Pienaar@westerncape.gov.za

REFERENCE: 19/2/5/4/E2/8/WL0098/17

The Municipal Manager
Overberg District Municipality
Private Bag X22
BREDASDORP
7280

Tel: (028) 425 1157
Email: fkotze@odm.org.za

for attention: Mr. Francois Kotze

Dear Sir,

RE: BUFFER ZONE REDUCTION FOR THE KARWYDERSKRAAL WASTE DISPOSAL FACILITY
(WDF), LOCATED ON PORTION 1 OF THE FARM AFDAXSRIVIER 575

1. The notice to affected persons (reference no. Pin of Farm 575, RCAL (4103)), issued by Overstrand Town Planning on 11 January 2019, has reference. The Department of Environmental Affairs and Development Planning (hereafter "the Department") was requested to provide guidance of the implications of a proposed housing development, as described in the notice to affected parties above, on compliance with the permit condition related to the buffer zone in the Karwyderskraal WDF's Waste Management Permit (hereafter "the Permit").
2. Condition 4.6 of the Permit for the Karwyderskraal WDF states that: "The Permit Holder shall take all reasonable steps, such as suitable zoning and/or written agreements with adjacent landowners, to prevent the development of further residential and/or light industrial areas closer to the Facility than any existing residential areas during the operative life of the Facility. Heavy industries or industries which may create nuisance conditions may be permitted within the buffer zone in terms of the appropriate legislation."
3. The proposed residential development will be located closer to the Karwyderskraal WDF than existing residential areas at the time the Karwyderskraal WDF obtained authorisation. As such, should the proposed residential development be approved, the Overberg District Municipality will be in breach of Permit Condition 4.6.

6th Floor, 3 Dorp Street, Cape Town, 8001
Tel.: (021) 483 4086 Fax: (021) 483 5546

Private Bag X9086, Cape Town, 8000
www.westerncape.gov.za

10:00 - 12:00
2pm Woens

4. The Department advises that the Overberg District Municipality appoint an independent service provider to conduct an air pathway study for the entire authorised Karwyderskraal WDF. Based on the results from the study, condition 4.6 of the existing Permit may then, through an application by Overberg District Municipality to the Department, be amended to reflect the recommendations of the air pathway study. Within the then clearly demarcated buffer zone, no residential development, except light industrial developments, will be permitted.

The Department reserves the right to revise its initial comments and request further information from you based on any information received.

Yours faithfully,


EDDIE HANEKOM

DIRECTOR: WASTE MANAGEMENT

DATE: 26-06-2019

CC: Mr H Olivier (Town Planner)

holivier@overstrand.gov.za

ANNEXURE D

- **Other Supporting Documents**
 - a. **Permit p. 3**
 - b. **Karwyderskraal Waste Disposal Site Permit
Application Report p. 5-6**
 - c. **Summary Of Draft Environmental Impact
Report p. 1**

42/72


 DIRECTORATE: WASTE MANAGEMENT
 HADJIRA PECK
 Hadjira.Peck@westerncape.gov.za

REFERENCE: 19/2/5/4/E2/8/WL0098/17

 The Municipal Manager
 Overberg District Municipality
 Private Bag X22
BREDASDORP
 7280

Tel.: (028) 425 1157

Fax: (022) 425 1014

 E-mail: fkotze@odm.org.za
Attention: Mr Francois Kotze

VARIATION OF PERMIT (NO. 16/2/7/G501/D3/Z3/P374) AND AMENDMENT TO PERMIT (NO. 16/2/7/G501/D3/Z3/1) FOR THE FURTHER OPERATION OF KARWYDERSKRAAL WASTE DISPOSAL FACILITY, PORTION 1 OF THE FARM AFDAKSRIEVIER NO. 575, KARWYDERSKRAAL

A. DECISION

I, Lance McBain-Charles, in my capacity as the Acting Director: Waste Management of the Department of Environmental Affairs and Development Planning (hereafter "the Department"), in terms of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), as amended (NEM:WA), hereby repeal the existing Permit (Ref.: 16/2/7/G501/D3/Z3/P374) and Amendment to Permit (Ref.: 16/2/7/G501/D3/Z3/1) issued by the then Department of Water Affairs and Forestry (now Department of Water and Sanitation), and issue this Permit Amendment (hereafter "the Permit") to the abovementioned Permit Holder, containing an amalgamation of the conditions of the aforementioned authorisations, as well as non-substantive amendments to conditions to align this Permit with current waste legislation, for the continued operation of the Karwyderskraal Waste Disposal Facility (WDF) (hereafter "the Facility") on Portion 1 of Farm Afdaksrivier No. 575, Karwyderskraal, Overstrand Municipality.

The WMCO/ ECO must:

- 3.2.1 report any non-compliance with any Permit conditions or requirements or provisions of NEM:WA to the Licensing Authority through means reasonably available;
- 3.2.2 identify and submit potential measures to the Permit Holder and the Director in respect of waste minimisation, including the reduction, recovery, re-use and recycling of waste; and
- 3.2.3 monitor any future construction activities and ensure that the construction plans are in accordance with the approved engineering design.

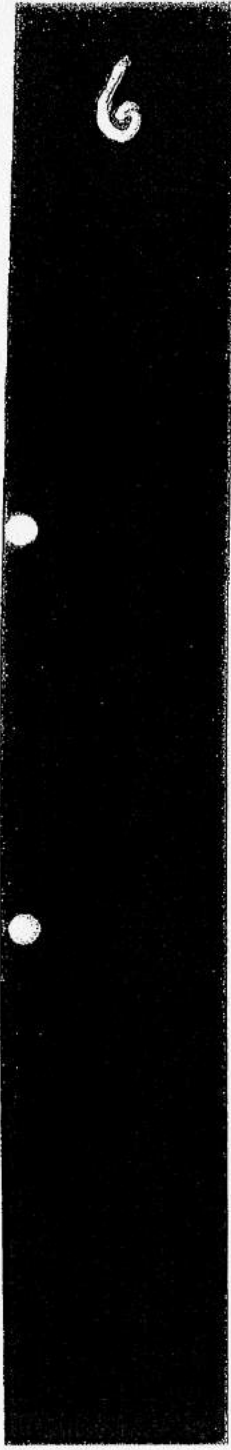
4 CONSTRUCTION

- 4.1 The Facility or any portion thereof may only be used for the disposal of permissible waste if the Facility or any such portion has been constructed or developed according to the conditions listed under condition 4 of the Permit.
- 4.2 The construction and further development within the Facility shall be in accordance with the site design and development plans (Drawing/s J19096D) dated March 2000 by Gibb Africa Consultants and within the footprint specified in condition 1.4.
- 4.3 The construction of further cells can only be undertaken by the Permit Holder after specified engineering plans have been provided to and approved by the Director according to condition 4.2.
- 4.4 Construction and further development within the Facility shall be carried out under the supervision of a suitably qualified person proposed by the Permit Holder and approved by the Director.
- 4.5 After construction of the Facility or further development within the Facility, the Permit Holder shall notify the Director thereof before disposal may commence on the Facility. The completed construction works of the Facility shall be inspected by an official of the Department and the person referred to in condition 4.4. If the Director is satisfied with the construction of the Facility or any further development within the Facility and has given written permission, the Permit Holder may use the Facility or any further development within the Facility for the disposal of waste.
- 4.6 The Permit Holder shall take all reasonable steps, such as suitable zoning and/or written agreements with adjacent landowners, to prevent the development of further residential and/or light industrial areas closer to the Facility than any existing residential areas during the operative life of the Facility. Heavy industries or industries which may create nuisance conditions may be permitted within the buffer zone in terms of the appropriate legislation.
- 4.7 Works shall be constructed and maintained on a continuous basis by the Permit Holder to divert and drain from the Facility in a legal manner, all runoff water arising on land adjacent to the Facility, which could be expected as a result of the estimated maximum precipitation during a period of 24 (twenty-four) hours with an average frequency of once in fifty years (hereinafter referred to as the "estimated maximum precipitation"). Such works shall, under the said rainfall event, maintain a freeboard of half a metre.
- 4.8 Works shall be constructed and maintained on a continuous basis by the Permit Holder to divert and drain from the working face of the Facility, all runoff water arising on the Facility, which could be expected as a result of the estimated maximum precipitation and to prevent such runoff water from coming into contact with leachate from the Facility. Such works shall, under the said rainfall event, maintain a freeboard of half a metre and be lined to the satisfaction of the Director and Director: RPW, to prevent pollution to groundwater.

44/72

6 DE VRIES *et al.*

CONSULTANTS • DESIGNERS • ENVIRONMENTALISTS



OVERBERG DISTRICT COUNCIL

HERMANUS KLEINMOND BOTRYVIER
(HKB) REGIONAL SOLID WASTE STUDY

KARWYDERSKRAAL WASTE
DISPOSAL SITE

PERMIT APPLICATION REPORT

PROJECT No: J19096B
OCTOBER 1999

Key to this process was the open and participatory approach to the study and the involvement of more than 200 interested and affected parties.

The public participation programme commenced in January 1997 with an Information brochure, newspaper advertisements, articles and meetings. During the following 18 months various meetings, discussions and site visits were held through the scoping phase, the draft Scoping Report (February 1998) final Scoping Report (November 1998), draft Environmental Impact Report (May 1999) and the final Environmental Impact Report (September 1999). In all seven information sharing meetings were held during the course of the study.

Throughout the process there was opportunity for input and comment by I&APs. At the end of the scoping phase the Karwyderskraal site was accepted by I&APs as the most suitable of the six sites identified for the development of a waste disposal site. As a result it was agreed that the environmental impact report would focus on a single site viz the Karwyderskraal site.

5 ENVIRONMENTAL IMPACT REPORT

The 100 ha Karwyderskraal site is located in an agricultural area at the junction of the District Road 1254 and Minor Road 6 (See Drawing 1).

It is well located with respect to the waste sources in Hermanus, Hawston, Fisherhaven, Kleinmond, Betty's Bay and Botrivier. The distance to the site is acceptable, it relatively well concealed, has good geological conditions and good access. It is in an agricultural area which provides a suitable buffer zone with the nearest farmhouse 1.2 km away.

Fallow land covers most of the site and there is a thick cover of alien vegetation (Port Jackson and Rookrans) in the northern and central part of the site. About 10% of the site is covered in degraded indigenous Renosterveld.

A ephemeral watercourse bisects the central part of the site, and joins the Hopies River in the north and outside the site boundary. The Hopies River flows down to the Hopies River farm dam (about 1.5 km downstream) and on to the Bot River some 2.5 km from the site. The Bot River discharges to the nearby Bot River lagoon, an environmentally sensitive and visually attractive area.

Various specialist investigations were undertaken during the course of the Environmental Report Assessment (EIA). These included:

- Agriculture
- Archaeology
- Aquatic Ecosystems
- Flora and Fauna assessment
- Geohydrology
- Hydrology and Drainage
- Traffic Study

The results were assessed and are recorded in the final Environmental Impact Report. This report was submitted to Cape Nature Conservation for their record of decision regarding the development of the site for waste disposal purposes. Their decision to support the proposed development was made in late September 1999.

The key findings of the impact assessment are recorded below:

- The majority of the impacts are related to the construction and operation of the site. These impacts are considered to be of low significance after the implementation of mitigating measures.
- The only area of concern relates to the potential impacts of the landfill on the surface water quality of the Hopies River. The Hopies River is close to the northern boundary of the site and is a tributary of the Bot River, which flows into the ecologically sensitive Bot River lagoon. If contaminated water or leachate from the site were to flow into the Hopies River and subsequently into the lagoon, unacceptable impacts on the lagoon ecosystem could arise.

If sediment laden water or contaminated water were to reach the Hopies River it would impact on the water quality, indigenous fish population and invertebrates in the lower reaches of the river.

In a worst case scenario the Cape galaxias, an indigenous fish species listed as vulnerable in the Red Data Book could disappear from the lower reaches of the river.

- The key element in eliminating or ameliorating any negative impacts on the surface water quality lie in the implementation of appropriate mitigation and monitoring measures.
- The EIA concludes that none of the potential impacts identified and evaluated during the course of the scoping and impact assessment studies are significant enough after mitigation to eliminate the Karwyderskraal as a suitable site for a landfill facility.
- The report therefore recommends that a regional waste disposal facility be established on the Karwyderskraal site, supported by waste transfer stations in the major waste producing centres.
- The above recommendation is subject to the implementation of various mitigating and monitoring measures. A list thereof is given in Appendix 1.

6 LANDFILL DESIGN AND OPERATION

The mitigating and monitoring measures provided in the EIR (and Appendix 1) have been incorporated into the design and operation of the waste disposal facility. Their inclusion will minimise the negative impacts and make the site more suited for waste disposal.

47/72

CH2E Africa
CH2E Group of Africa
CONSULTING • DESIGN • MANAGEMENT

**MUNICIPALITIES OF GREATER HERMANUS,
KLEINMOND/HANGKLIP AND BOTRIVIER**

**HERMANUS KLEINMOND BOTRIVIER (HKB)
REGIONAL SOLID WASTE STUDY**

**SUMMARY OF DRAFT ENVIRONMENTAL
IMPACT REPORT (EIR)**

**PROJECT NO: J19096B
MAY 1999**

SUMMARY OF DRAFT ENVIRONMENTAL IMPACT REPORT

1. Introduction

The towns of Hermanus, Kleinmond, Hangklip and Botrivier initiated an investigation to study different solid waste disposal options because their existing landfill sites are approaching full capacity.

In September 1997, a List of Activities and Regulations for EIAs were published by the DEA&T under Sections 21, 22 & 26 of the Environment Conservation Act (Act no. 73 of 1989). Scheduled activities, which were defined as having a potentially significant impact on the environment, were identified in the regulations. Scheduled activities require EIAs. The two scheduled activities which are relevant to this project are the "disposal of waste as required in terms of Section 20 of the Environment Conservation Act, 1989" and "the change of land use from agricultural or undetermined to any other land use".

The first stage in the waste study has been an Environmental Impact Assessment (EIA). Different waste disposal options were investigated in the EIA, including the no-go option, expansion of the current sites, incineration, composting, landfilling, rail transport and road transport.

2. Alternative waste disposal options

If an alternative disposal option or waste site(s) is not found, waste would continue to be disposed of at the existing sites in Hermanus, Kleinmond and Botrivier. These sites have all reached their full capacity and continued use would lead to unacceptable health risks for the residents in the areas surrounding the sites. This factor eliminates the no-go option.

One option may be to expand the current sites. However, DWA&F are unlikely to grant permission for expansion of the existing waste sites due to their poor location. Therefore, expansion of the existing sites is not an option. Another option could be to export the waste from the Bot River valley to the nearest licensed site which is near Cape Town. This is a considerable distance and would be costly. It is estimated that the cost to the municipalities, and thus the ratepayers of the region, could increase from R44 per m³ to R106 per m³. Cost considerations eliminate this as an option.

The most simple, cost effective option for waste disposal for the Bot River region is by landfilling. A well located and designed landfill site, supported by transfer stations in the waste generating areas, could fulfil the waste needs of the these towns for the next 40 years. The landfill should be supported by waste transfer stations in the major waste producing centres.

Of the six sites evaluated in the scoping phase of the EIA, the Karweyderskraal site held the most promise as a potential site for the landfill facility.

This site was carried forward for further investigation by selected specialists in the impact assessment phase. The Karweyderskraal site is privately owned land and is located in the north-western corner of the farm between the Old Hermanus and Karweyderskraal Road, approximately 5 km from the residential areas of Fisherhaven and Hawston. The site is approximately 100 ha in size and is underlain by Bokkeveld shale with deeply weathered and residual soils that are thickly developed and clayey in nature. A drainage divide occurs in the upper portion of the valley.

3. Specialist studies

Seven specialist studies were commissioned on the Karweyderskraal site as part of the impact assessment, namely;

- A geohydrological investigation;
- A traffic impact analysis;
- An investigation of the fauna and flora;
- An agricultural investigation;
- A hydrological investigation;
- An archaeological investigation; and
- A study of the freshwater and riverine ecology of the Hopies River.

MEMORANDUM**RESPONSE TO OBJECTIONS TO THE DEVELOPER'S APPLICATION**

1. In the application, dated October 2018, the Developer (Cupipart (Pty) Ltd) applied in terms of the Overstrand By-Law on Municipal Land Use Planning 2015, for the following consent use and departures:
 - 1.1. a consent use for 5 Additional dwelling units (in terms of section 16(2)(o));
 - 1.2. departure to permit a gatehouse of 6m² in lieu of 5m² (in terms of section 16(2)(b));
 - 1.3. departure to relax the eastern side building line from 30m to 10m to accommodate the dwelling units and staff quarters (in terms of section 16(2)(b));
 - 1.4. departure to relax the eastern side building line from 30m to 4.5m to accommodate a gatehouse in excess of 5m² in extent (in terms of section 16(2)(b))
 - 1.5. departure to relax the western street building line from 30m to 0.9m to accommodate a gatehouse in excess of 5m² in extent (in terms of section 16(2)(b))'
 - 1.6. the approval of the Site Development Plan in terms of Section 16(2)(l).

2. The relevant details of the property in question are the following:
 - 2.1. Property: Portion 3 of Farm 575 Afdaks Rivier, Overstrand

2

2.2. Title Deed: T62256/2017

2.3. Extent: 50.9608 hectares

2.4. Registered owner: Cupipart (Pty) Ltd ("Developer")

3. This memorandum deals with certain legal issues that should be taken into account when considering the comments on and objections to the Developer's application raised by the Overberg District Municipality ("ODM") and the Western Cape Government: Environmental Affairs and Development Planning.
4. This memorandum must be read with the *Response to Objections* dated January 2020, by InterActive Town & Regional Planning ("ITRP Response"), which deals with the planning issues and includes the relevant documents that must be taken into account.

JURISDICTION OF THE MUNICIPALITY

5. In terms of the Constitution and the related statutes and case law, the Overstrand Municipality has the exclusive jurisdiction to decide whether or not to grant the Developer's application.
6. The nature and extent of the Municipality's jurisdiction is relevant in order to determine:
 - 6.1. how the Municipality is required to exercise its discretion;

- 6.2. whether the Developer's application can be approved despite the objections that have been raised thereto.

Constitution

7. Section 156(1) of the Constitution confers on municipalities the exclusive executive authority and right to administer "municipal planning". Section 156(1) reads as follows

"(1) A municipality has executive authority in respect of, and has the right to administer -

- (a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and*
- (b) any other matter assigned to it by national or provincial legislation."*

8. The exclusive planning powers of municipalities was confirmed by the Constitutional Court in the case of *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others; Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v City of Cape Town and Others* [2014] ZACC 9 ("Habitat Council"), where Cameron J stated:

"[9] In terms of section 156(1)(a) of the Constitution, municipalities have executive authority in respect of, and the right to administer, "the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5". Part B of Schedule 4 includes "municipal planning".

[13] The provincial appellate capability impermissibly usurps the power of local authorities to manage "municipal planning", intrudes on the

autonomous sphere of authority the Constitution accords to municipalities, and fails to recognise the distinctiveness of the municipal sphere. . . .

[14] This makes sense, given that municipalities are best suited to make those decisions. Municipalities face citizens insistent on delivery of governmental services, since they are the frontiers of service delivery. It is appropriate that they should be responsible for zoning and subdivision. For these entail localised decisions, and should be based on information that is readily accessible to municipalities. The decision-maker must consider whether services – that are provided primarily by municipalities – will be available for the proposed development. And it must consider matters like building density and wall heights. These are best left for municipal determination.

[15] So section 44 of LUPO, which allows the Province to interfere in all municipal land-use decisions and substitute its decisions for those of the municipality, is clearly unconstitutional and invalid.

[19] . . . All municipal planning decisions that encompass zoning and subdivision, no matter how big, lie within the competence of municipalities."

9. The distinction between a district and a local municipality appears from the following definitions in section 1 of the Local Government Municipal Structures Act 117 of 1998 ("LGMS Act"):

"district municipality" means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155(1) of the Constitution as a category C municipality:

"local municipality" means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls. And which is described-in section 155(1) of the Constitution as a category B municipality:

10. The Overstrand Municipality is a category B municipality which has shared municipal executive and legislative authority in its area with the Overberg District Municipality, a category C municipality.
11. The functions and powers assigned to a local municipality are dealt with in sections 83(1) and (2) of the LGMS Act provide that:
 - (1) A municipality has the functions and powers assigned to it in terms of sections 156 and 229 of the Constitution.*
 - (2) The functions and powers referred to in subsection (1) must be divided in the case of a district municipality and the local municipalities within the area of the district municipality, as set out in this Chapter."*
12. Sections 84(2) and (3) of the LGMS Act provide that:
 - (2) A local municipality has the functions and powers referred to in section 83(1), excluding those functions and powers vested in terms of subsection (1) of this section in the district municipality in whose area it falls.*
 - (3) Subsection (2) does not prevent a local municipality from performing functions in its area and exercising powers in its area of the nature described in subsection (1)."*
13. Section 156 of the Constitution assigns executive authority and administration rights and section 229 assigns fiscal powers and functions to municipalities.

Western Cape Land Use Planning Act 3 of 2014

14. The Overstrand Municipality also has executive authority and the right to administer the matters assigned to it by provincial legislation (Constitution, section 156(1)(b)).
15. The relevant provincial legislation is the Western Cape Land Use Planning Act 3 of 2014 ("LUPA").
16. The definition of "municipality" in section 1 of LUPA, distinguishes between the functions of a "municipality" and a "district municipality" and allocates zoning and land use to local municipalities:

"municipality" means a municipality as defined in section 2 of the Municipal Systems Act and—

(a) includes a municipal department, the municipal council, the municipal manager or a decision-making authority of the municipality, where the context so requires;

(b) in relation to a zoning scheme or a land use application, refers to the local municipality or the metropolitan municipality of the municipal area in which the land concerned is situated;

(c) in relation to any other municipal function or power, refers to the metropolitan municipality, the local municipality or the district municipality, as the case may be, which has the function or power in accordance with the division of functions and powers in terms of the Local Government: Municipal Structures Act, 1998;"

17. The Overstrand Municipality is the local municipality of the municipal area in which the Developer's land is situated and is the relevant municipality to deal with zoning schemes land use applications.
18. Section 2 and 49 of LUPA provide that:
- "2(1) Municipalities are responsible for land use planning in their respective municipal areas and within their jurisdiction.*
- 2(2) A municipality must regulate at least the following:*
- (a) the development, adoption, amendment and review of a zoning scheme for the municipal area;*
 - (b) the procedures in terms of which the municipality receives, considers and decides on land use applications;*
 - (c) the procedures in terms of which the municipality facilitates public participation in its consideration of land use applications;*
 - (d) the criteria for deciding on land use applications;*
 - (e) the imposition of conditions of approval for land use applications;*
 - (f) the procedures applicable after a land use application has been approved; and*
 - (g) the enforcement by the municipality of its by-laws and decisions with regard to land use planning."*

19. The basis for the assessment of land use applications is set out in section 49 of LUPA which provides that:

"49. When a municipality considers and decides on a land use application, the municipality must have regard to at least —

 - (a) the applicable spatial development frameworks;*
 - (b) the applicable structure plans;*
 - (c) the principles referred to in Chapter VI;*
 - (d) the desirability of the proposed land use; and*

(e) *guidelines that may be issued by the Provincial Minister regarding the desirability of proposed land use.*"

20. The meaning of the words "have regard to" was interpreted in *Joffin and Another v Commissioner of Child Welfare, Springs, and Another* 1964 (2) SA 506 (T) at 508F-H, where Ludorf J said:

"The words 'have regard to' in their ordinary meaning simply mean 'bear in mind' or 'do not overlook'.

In Illingworth v Walmsey, (1900) 2 Q.B.D. 142, the words 'regard shall be had to' the difference were held to mean the tribunal must bear the difference in mind and that it had a discretion.

In Perry v Wright, (1908) 1 K.B. 441, similar words were said to be 'a guide, not a fetter'.

I quote these two cases if authority in the use of the English language be necessary but to my mind the section obviously enjoins the Commissioner to bear these matters in mind and to exercise a discretion in regard thereto."

21. The courts have also stated that guidelines should not be applied rigidly or inflexibly and thereby fetters its discretion of the decision-maker. In *National Lotteries Board v South African Education and Environment Project* (788/2010) [2011] ZASCA 154 (28 September 2011), Cachalia JA stated:

"[9] . . . Indeed, because the grant or refusal of an application involves the exercise of a discretion, our courts have recognised that it is prudent for decision-makers to apply guidelines or general criteria to assist them with this task. And, provided that these criteria are compatible with the enabling legislation, the only constraint is that they may not be applied rigidly or inflexibly in a particular case.¹ For if they are applied in this manner the decision-maker

¹ *MEC for Agriculture, Conservation, Environment & Land Affairs v Sasol Oil (Pty) Ltd* 2006 (5) SA 483 (SCA) para 19.

elevates the guideline to an immutable rule and thereby fetters its discretion, which it may not do.² “

[10] But this problem is inherent with multiple decisions, and does not relieve an administrator of the duty to consider each application individually and justify every decision. The law requires nothing less. . . . “

22. The Overstrand Municipality must, accordingly, bear in mind and not overlook the factors and guidelines referred to in section 49. However, these factors constitute a guide and do not fetter the Municipality in the exercise of its discretion when it decides the Developer's application.
23. Section 35(1) of LUPA provides that:
- “(1) A competent person who requires a rezoning, departure or consent use in respect of land must apply to the municipality.”*
24. The Developer is a competent person who requires a departure and consent use in respect of land and has applied to the Municipality.

Overstrand By-Law on Municipal Land Use Planning, 2015

25. The Overstrand By-Law on Municipal Land Use Planning, 2015 contains the following provisions that relate to “consent use” and “departure”:

- 25.1. the definitions in section 1:

“consent use” means a land use permitted in terms of a particular zoning with the approval of a Municipality;

² *Foodcorp (Pty) Ltd v Deputy Director-General, Department of Environmental Affairs & Tourism: Branch Marine & Coastal Management 2006 (2) SA 191 (SCA) para 9.*

“departure” means an altered development parameter granted on a permanent basis or a right to utilise land for a purpose granted on a temporary basis;

25.2. sections 16(2)(b) and (o):

“(2) The owner of land or a person authorised by the owner may apply in terms of Chapters IV and V to the Municipality for the following in relation to development of the land concerned:

(b) a permanent departure from the provisions of the zoning scheme;

(o) a consent use provided for in the zoning scheme;”

25.3. section 20(1)(a):

“(1) An applicant may apply as contemplated in Section 16(2) —

(a) for a departure from the development parameters of a zoning or an overlay zone;”

25.4. section 21(1):

“(1) An applicant may, as contemplated in Section 16(2), apply to the Municipality for a consent use provided for in the zoning scheme.”

Overstrand Zoning Scheme Regulations, June 2013

26. The Developer's property is zoned *Agricultural Zone 1: Agriculture.*

27. The Overstrand Zoning Scheme Regulations, June 2013, contain the following provisions that relate to the use of property zoned as *Agricultural Zone 1: Agriculture* in regulation 5.1:

"5.1 AGRICULTURE ZONE 1: AGRICULTURE (AGR1)

Use of the property

5.1.1 The following use restrictions apply to property in this zone:

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

Additional dwelling units

5.1.3 The Council may approve additional dwelling units in Agricultural Zone 1 provided that:

- (a) The additional dwelling units shall remain on the same cadastral units as the primary dwelling unit;*
- (b) The number of additional dwelling units shall not exceed the 1 unit per 10,0 ha, up to a maximum of five additional dwelling units per land unit, and*
- (c) No additional dwelling units may be erected within 100 m of the high-water mark on the coast, other than where additional dwelling units are provided as an integral part of an existing farmstead or with the special consent of Council.*

28. The consent use applied for by the Developer is, accordingly, provided for in the Overstrand Zoning Scheme Regulations.

OBJECTION BY THE OVERBERG DISTRICT MUNICIPALITY

29. The Overberg District Municipality ("ODM") stated that it does not support the Developer's application in a letter to the Overstrand Municipality, dated 14 February 2019. The letter reads as follows:

"The Overberg District Municipality's department of Environmental Management Services does not support the application for proposed departure and consent use for portion 3 of farm 575 Afdakrivier.

The Overberg District Municipality is the owner of portion 79 of farm 575 Afdakrivier which is located in close proximity of portion 3 of farm 575 Afdakrivier. The Overberg District Municipality manages a regional waste disposal facility on its property. With reference to the licence conditions of the site, consideration should be given to the following clause:

The Permit Holder shall take all reasonable steps, such as suitable zoning and/or written agreements with adjacent landowners, to prevent the development of further residential and/or light industrial areas closer to the Facility than any existing residential areas during the operative life of the Facility. Heavy industries or industries which may create nuisance conditions may be permitted within the buffer zone in terms of the appropriate legislation.

It is important to note that the regional waste disposal facility will be operational for approximately the next 55 years and future cell development will expand to the Southern boundary of the facility. It is important for the developer to take cognisance of this and to confirm that the developer will have no objection towards the future expansion of the facility.

The proposal for departure in terms of Section 16(2)(b) to relax the 30m eastern lateral building lines to 10m and 4.5m respectively to accommodate residential units should not be considered in order to maintain a maximum buffer area from the waste disposal facility."

30. On analysis, the ODM's letter does not raise a substantive, unqualified or valid objection to the Developer's application for the proposed departure and consent use.
31. The ODM's letter of non-support is based on the vague wording of clause 4.6 of the ODM's permit dated 12 February 2018. What the ODM is required to do in terms of clause 4.6 does not bind or limit the powers of the Municipality to decide the Developer's application.
32. The ODM's letter states that consideration should be given to clause 4.6 and that it is important for the developer to take cognisance of the possible future expansion of the waste disposal facility and confirm that it will have no objection towards such expansion. This option to confirm that objections will not be raised to the future expansion of the facility indicates that the Developer's application does not relate to what the ODM is required to prevent in terms of clause 4.6.
33. The requested confirmation was given by the Developer in a letter, dated 15 April 2019, stating that it has no objection against the current and future operations of the Regional Waste Disposal Facility on Portion 79 of Farm 575 Afdakrivier ("Facility"), subject to the Facility being operated according to international best practice. The letter is included in Annexure A to the ITRP Response.

34. The development of the housing units will, accordingly, not lead to future compliance complications for the ODM as permit holder and takes care of the possible concern raised .

Residential areas

35. What clause 4.6 requires the ODM to do is to take all reasonable steps to prevent the development of further "residential areas" closer to the Facility than any existing residential areas during the operative life of the Facility.
36. The ODM's letter does not state that the Developer's application relates to the development of a further "residential area".
37. The Developer's property and the surrounding properties are zoned *Agricultural Zone 1: Agriculture*.
38. In *Tavakoli and Another v Bantry Hills (Pty) Ltd* 2019 (3) SA 163 (SCA) at 170, Rogers AJA said:
"The character of areas within a zoning scheme is established by the zoning applicable to the properties in that area."
39. The zoning as *Agricultural Zone 1: Agriculture* established the character of the area in which the Developer's property is situated. It is not a residential area and the application does not relate to the development of a further residential area.

40. The ODM letter appears to have incorrectly equated the building of five residential units in an agricultural area with the development of a further residential area.
41. The expression "residential area" is ordinarily used to refer to an urban area, as was done in the following cases:
 - 41.1. in *Van Der Burg v National Director of Public Prosecutions* [2012] ZACC 12, where Van Der Westhuizen J said: "*The property is situated at 25A Birdwood Street, Athlone, a residential area in Cape Town.*"
 - 41.2. in *City of Cape Town and Another v Robertson and Another* 2005 (2) SA 323 (CC) at para [6], Moseneke J said: "*The residential area of Camps Bay, nestled on the shores of the Atlantic Ocean, has become one of the most desirable and expensive residential areas in South Africa.*"
 - 41.3. in *Eck and Others v Clyde Brickfields (Pty) Ltd and Others* (6020/2002) 2006 ZAGPHC 165 (7 April 2006) at para 31.9, Sithole AJ said: "*In casu evidence indicates that the area occupied by the parties is not a normal urban residential area but one which is a combination of agricultural holdings and industry.*";
 - 41.4. in *Deysel v Karsten* 1994 (1) SA 447 (A) at 454G, where Van Heerden JA remarked: "*The scene of the accident was in a residential area of a country town.*"

42. The expression "residential areas" was used in the ordinary and correct sense in the "Summary of Draft Environmental Impact Report May 1999 (Project No. J19096B)" prepared by GIBB Africa:
- 42.1. in paragraph 2: "*The Karweydskraal site is privately owned land and is located in the north-western corner of the farm between the Old Hermanus and Karweydskraal Road, approximately 5 km from the residential areas of Fisherhaven and Hawston.*"
- 42.2. in paragraph 14.1: "*The impacts of increased traffic noise on TR 28/1, DR 1254, MR 6 and the landfill road are not considered significant despite the increase in traffic on these roads. This is due mostly to the fact that residential areas do not occur near to these roads.*"
- 42.3. in paragraph 15.1: "*The proposed Karweydskraal site is located some distance away from the nearest residential area. The site is also characterised by strong winds in both the summer and winter which would assist in the dispersion of odour plumes that may be generated on site. A combination of the above factors seem to suggest that odour impacts will not be significant.*"
43. The expression "residential areas" was also used in the ordinary sense in the Provincial Zoning Scheme Model By-Law, October 2004. in paragraph 5.2

"5.2 SINGLE RESIDENTIAL ZONE 2 : MEDIUM DENSITY (SR2)-

The objective of this zone is to provide more compact residential development for single families, such as detached or semi-detached dwelling units. Limited employment and additional accommodation opportunities are possible, provided that the dominant use of the property remains residential, and impacts of such uses do not adversely affect the quality and character of the surrounding residential area.

44. The expression "residential areas" was defined as an urban area in the Saldanha Bay Municipality's By-Law On Liquor Trading Days And Hours

"residential area" means an area predominantly zoned informal, single or general residential or any other equivalent zoning, with the purpose to accommodate predominantly single-family dwelling houses in low to medium density neighbourhoods, as well as higher density living accommodation and which includes controlled opportunities for home employment, additional dwellings and low intensity mixed use development;

45. In the premises, it is submitted that the building of five residential units in an agricultural area cannot be regarded as constituting the development of a further residential area. It follows that the restriction in the ODM's permit does not apply to the Developer's application.

Buffer zone

46. The ODM's letter does not indicate the extent of the buffer zone referred to in clause 4.6. The only reference to a "buffer zone" is made in relation to the possibility that industries may be permitted within the buffer zone in terms of the appropriate legislation.

47. The *Permit Application Report* for the *Karwyderskraal Waste Disposal Site* (Project No. J19096B, October 1999) contains only one reference to "buffer zone" on page 5, where it states that an agricultural area provides a suitable buffer zone with the nearest farmhouse 1.2 km away:

"The 100 ha Karwyderskraal site is located in an agricultural area at the junction of the District Road 1254 and Minor Road 6 (See Drawing 1). It is well located with respect to the waste sources in Hermanus, Hawston, Fisherhaven, Kleinmond, Betty's Bay and Botrivier. The distance to the site is acceptable, it relatively well concealed, has good geological conditions and good access. It is in an agricultural area which provides a suitable buffer zone with the nearest farmhouse 1.2 km away."

48. The ODM does not state that 1.2km is the minimum fixed buffer zone or that 800 meters would not be a suitable buffer zone in an agricultural area. As mentioned in the ITRP Response, the additional dwelling units are outside the 800m radius from the centre of the landfill site.

49. The *Generally Applicable Environmental Management Specifications for Pollution Buffers* in the *Gauteng Provincial Environmental Management Framework Standard, 2018* (GPEMF Standard) state at page 14 that:

"Best case buffer of 400m and worst case buffer of 200m must be maintained for general landfill sites (Communal, small, medium and large) as per paragraphs 6.2.5 and 7.1 of the Gauteng Pollution Buffer Zones Guideline, March 2017."

50. The Developer has applied for a departure to relax the eastern side building line from 30m to 10m. This will reduce the distance between the dwellings and the facility by 20m from 800m to 780m (a mere 2.5% reduction).
51. In any event, the extent of the buffer zone must be considered in the light of the fact that the Developer's application is not for the development of a further residential area but for the building of five dwellings in an agricultural area. The buffer zone will be approximately double the size of the best case buffer of 400m stipulated in the abovementioned *Gauteng Pollution Buffer Zones Guideline*.
52. In the premises, it is submitted that the reduction in the buffer zone from 1.2km to 800m leaves more than a sufficient buffer zone between the facility and the proposed five residential units and does not constitute a basis for rejecting the Developer's application.

**WESTERN CAPE GOVERNMENT: ENVIRONMENTAL AFFAIRS AND
DEVELOPMENT PLANNING**

53. The Overstrand Municipality, the Department Of Environmental Affairs and Development Planning ("EADP") of the Western Cape Government has indicated in correspondence to the ODM (an email dated 26 April 2019) that it concurs with the response of the ODM with regards to the proposed development based on the permit conditions set for the facility as the development "*may lead to future compliance complications to the licence holder*". The abovementioned comments regarding the ODM letter apply equally to the concurrence by the EADP.

54. The EADP does not raise any objection to the Developer's application in its letter, dated 18 February 2019, to the Municipal Manager of the Overstrand Municipality. After reviewing the information sent to the EADP and referring to the amendments to the NEMA EIA Regulations, the EADP stated:

"4. . . . Based on the information provided, the proposed departure and consent use does not constitute listed activities in terms of the NEMA EIA Regulations, 2014. However, considering the project description and the potential triggers, the Department wishes to highlight that should the proposed components exceed any of the applicable thresholds, an application for Environmental Authorisation will be required prior to commencement."

CONCLUSION

55. It is submitted that the vague and unsubstantiated basis in the ODM's letter for not supporting the Developer's application is not a valid reason for the Municipality to exercise its discretion to refuse the application and prevent the Developer from building the permitted number of dwellings on its farm.
56. As stated by the Constitutional Court in *Habitat Council*, the decision as regards the Developer's application
- 56.1. lies within the competence of the Municipality which is best suited to make this localised decision;
- 56.2. should be based on information that is readily accessible to Municipality.

57. The ODM's letter does not include or refer to information that is readily accessible or ascertainable by the Municipality. It is unclear what buffer zone and residential areas are contemplated in the licence conditions. Reference is made to the future possibility of heavy industries being permitted within the buffer zone but no details are provided.
58. It appears that for at least the next 55 years the ODM wants to prevent the development of any further residential and/or light industrial areas near the facility as well as the building of residential units in the surrounding agricultural areas merely on the basis that this may lead to future compliance complications for the ODM's facility.
59. It is submitted that if effect were to be given to this vague and unsubstantiated objection it would:
- 59.1. place unfair and unreasonable restrictions on the rights of property owners and business owners; and
 - 59.2. make impermissible inroads on the Municipality's planning and land use jurisdiction;
 - 59.3. have a severe adverse impact on the Municipality's ability to raise revenues from rates on extensive property that would be subjected to the limitation that the ODM wants to impose.
60. Fiscal powers have been conferred on municipalities by the following provisions:

- 60.1. section 229(1) of the Constitution, which provides that a municipality may impose rates on property;
 - 60.2. sections 2 and 3 of the Local Government: Municipal Property Rates Act 6 of 2004, which provide that a *"local municipality may levy a rate on property in its area"* in accordance with its rates policy (which has been set out in the Municipality's Property Rates By-Law, dated 4 April 2008);
and
 - 60.3. sections 93(6A) and (9) of the LGMS Act, which provide the rates must be based on the value of the property.
-
61. If the Developer's application is approved by the Municipality it will significantly increase the value of the Developer's property which will in turn enable the Municipality to impose higher rates. This important fiscal consideration and ongoing benefit for the Municipality outweighs the ODM's lack of support for the Developer's application based on the flimsy possibility of future compliance complications which have already been eliminated by the Developer's letter of confirmation.
 62. The Developer has a constitutional right to administrative action that is lawful and reasonable in terms of section 33(1) of the Constitution:

"(1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair";

23

63. The decision of the Municipality may be subject to judicial review (in terms of section 6(2) of the Promotion of Administrative Justice Act 3 of 2000) if it was taken
- 63.1. because irrelevant considerations were taken into account or relevant considerations were not considered; or
- 63.2. because of the unwarranted dictates of another person or body.
64. In the premises, it is submitted that the environment and the rights and interests of other parties will not be adversely affected if the Municipality were to exercise its exclusive jurisdiction to approve the Developer's application.

ADV J VAN DORSTEN
30 March 2020

72/72

Afdakrivier



Afdakrivier (Pty) Ltd

Registration nr. 2017/081714-07
 287 Julius Jeppe Straat
 Waterkloof
 0181

TP - A Theart
 C H Olivier

15 April 2019

Aandag: Loretta Gillion
 Stadsbeplanning
 Overstrand Munisipaliteit

Gedeelte 3 van die Plaas 575, Afdakrivier: Respons op beswaar/kommentaar deur JJ Delport

Mr JJ Delport se beswaar/kommentaar rakende Gedeelte 3 van die Plaas 575, Afdakrivier gedateer 6 Februarie, 2019 en gerig aan die Overstrand Munisipaliteit, verwys.

Hiermee gee ek, Tian Claassens, die Administrateur van Afdakrivier (Pty) Ltd, my versekering dat alle rioolwater streng volgens die munisipale vereistes hanteer sal word en dat daar **geen rioolwater** in die voor op Gedeelte 3 van die Plaas 575, Afdakrivier sal beland nie.

Vriendelike Groete

Tian Claassens
 Administrateur
 Afdakrivier (Pty) Ltd
 0826007750

FILE NO:	9m 3/575
SCAN NO:	10
COLLABORATOR NO:	1278628

TP 16 APR 2019

Director: CJ Venter

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR DEPARTURE & CONSENT USE, PORTION 3 OF
FARM 575, AFDAKSRIVIER (4103)**

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

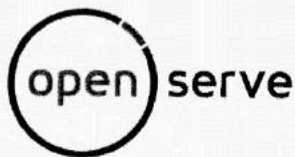
Conditions:

1. that the developer arrange with ESKOM for the provision of electricity and that he complies with all conditions as may be set by ESKOM;
2. that , as no municipal water network is available in the vicinity of Portion 3 of Farm 575, and no municipal water services will be rendered to Portion 3 of Farm 575, the developer be responsible for provision of any water supply and / or –services to the development on Portion 3 of Farm 575;
3. that the proposed development on Portion 3 of Farm 575, be provided with adequate sewer conservancy tanks, which must comply with the standards of the Department: Operational Services, and to which the sewer services of the development must connect to;
4. that, as no municipal sewerage removal services are rendered in the area, the developer is responsible for the removal of all sewerage generated on the property, and disposal thereof at a licensed municipal sewerage treatment facility;
5. that, alternatively, sewer treatment facilities that are approved by the Department of Water Affairs may be provided for disposal of sewer from the developments, and written proof of such approval be submitted to the Municipality;
6. that any commercial food preparation facilities (e.g. restaurant/guest house etc.) must be provided with a grase trap, which must comply with the standards and specification of the Department: Operational Services;
7. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
8. that, as no municipal refuse removal services are rendered in the area, the owner is responsible for removal of all refuse generated on the property, and disposal thereof at a registered municipal waste transfer station or –waste disposal facility;

9. that on-site parking facilities be provided as per the Planning Schedules, and to the satisfaction of the Department: Operational Services;
10. that the developer will arrange with Provincial Administration to obtain approval for any new access from the Provincial road.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES


DATE



TP-A Theart (Holivier)

Division of Telkom SA SOC Ltd

10 Jan Smuts Drive
Pinelands
7404

FILE NO: Ptn 31575
Afdaks ✓
SCAN NO: Farm 575
COLLABORATOR NO: 1254398

Candice Spammer

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

7 February 2019

Our Ref.: WWIP_WHMND272_19
Your Ref.: Ptn 3 of Farm 575, RCAL 4103

Attention: S Muller

Overstrand Municipality
HERMANUS

PLANT AFFECTED:

PROPOSED DEPARTURE AND CONSENT USE: PORTION 3 (DE GANG) OF FARM 575, AFDAKSRIVIER

With reference to your application received December 2018.

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

I hereby inform you that Open Serve approves the proposed work indicated on your drawing in principle. This approval is valid for 12 months only, after which reapplication must be made if the work has not been completed.

Any changes or deviations from the original planning during or prior to construction must immediately be communicated to this office.

Approval is granted, subject to the following conditions.

As per sketch attached, Open Serve infrastructure will be affected, consequently the conditions below and on the attached legend will apply.



TOWNSHIP: Oak Avenue, Highveld, Techno Park, Centurion 0157,
Private Bag 288, Pretoria, Gauteng, 0001

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

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

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

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

Should Open Serve infrastructure be damaged while work is undertaken, kindly contact our representative immediately.

All Open Serve rights remain reserved.

Yours faithfully



Selwyn Bowers
Operations Manager
Wayleave Management: Western Region

PLANT AFFECTED : COPPER

This wayleave, Reference Number **WWIP WHMN0272 19** is valid for 12 months from date hereof and is subject to the following conditions:

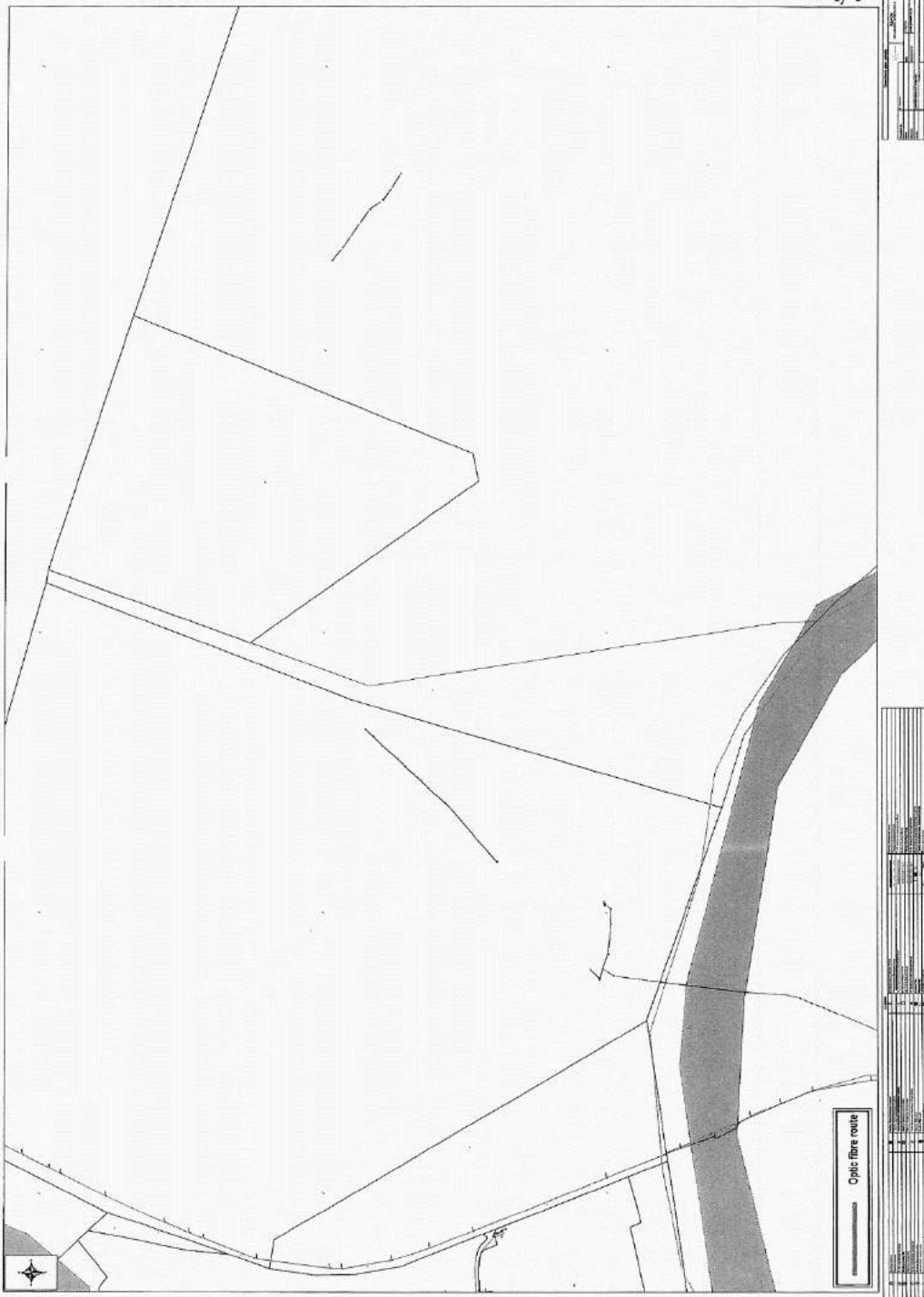
1. No mechanical plant or vibrator type compactors may be used within three meters of any Open Serve Plant (I.E. any Telecommunication equipment above or below ground level).
2. The position of our plant affected by the proposal is indicated as approximate and **Frederik Swart** at Telephone No **081 363 7815** must be contacted at least 48 hours prior to commencement of the work, upon which the actual location of the Open Serve Plant will be indicated on site.
3. A written request must be submitted to Open Serve for consideration, should the of the work, upon which the actual location of Open Serve 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 existance of the indicated plant and to notify Open Serve immediately, should the applicant locate any Open Serve 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: 2019/02/07

By: C Spanner
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)	





ANNEXURE H 1/3



FILE NO:	Pm3/575
	Afdaksrivier
SCAN NO:	54
COLLABORATOR NO:	1250869



TRATHANT
(C. Holivier)

OVERSTRAND MUNICIPALITY
PO BOX 20
HERMANUS
7200

Date:
28.01.2019

Enquiries:
Mrs Toni Parkes
Tel 021 980 3919

ATTEN: LORIAAN ISAACS

WAYLEAVE APPLICATION: PROPOSED DEPARTURE AND CONSENT USE FARM 575/3,
AFDAKSRIEVER, CALEDON

OUR REF: 00005/19

I refer to your applications dated 28 December 2018

I hereby inform you that Eskom 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.

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

Voltage	Building restriction either side of centre line
11kV	9.0 m

- b) No construction work may be executed closer than **6 (six) metres** from any Eskom structure or structure-supporting mechanism.
- c) No work or no machinery nearer than the following **distances from the conductors**:

Voltage	Not closer than:
11kV	3.0 m

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

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

Voltage	Safety clearance above road:
11kV	6.3 m

- f) That existing Eskom power lines and infrastructure are acknowledged as established

Distribution Division - Western Region (Land Development)
Western Region
Eskom Road, Brackenfell 7560 PO Box 222 Brackenfell 7561 SA
Tel +27 86 003 7555 www.eskom.co.za

Eskom Holdings SOC Limited Reg No 2002/015527/30

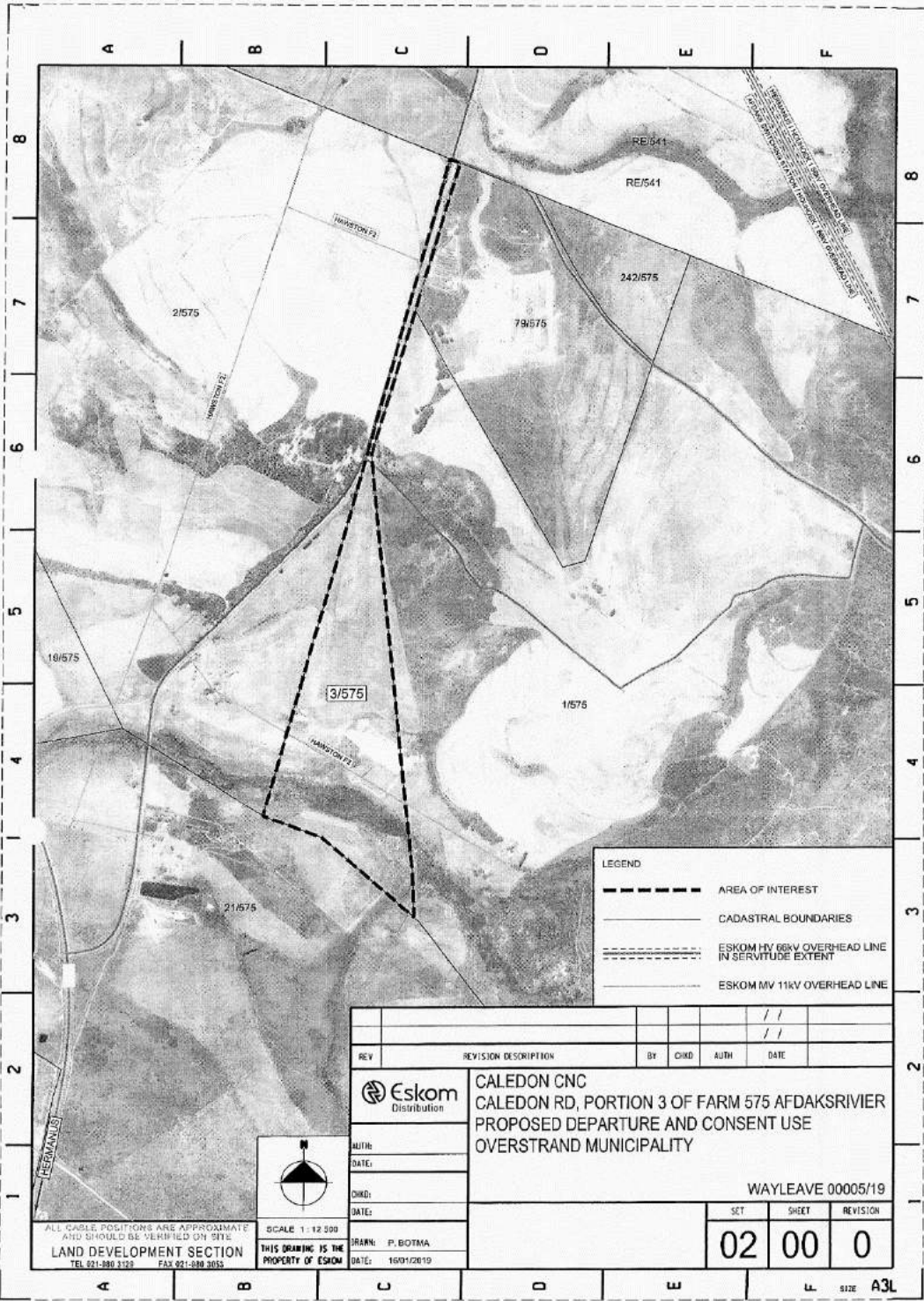


infrastructure on the properties and any rerouting or relocation would be for the cost of the applicant/developer.

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

Yours faithfully

LAND DEVELOPMENT (BRACKENFELL)



LEGEND

- AREA OF INTEREST
- CADASTRAL BOUNDARIES
- ESKOM HV 66kV OVERHEAD LINE IN SERVITUDE EXTENT
- ESKOM MV 11kV OVERHEAD LINE

REV	REVISION DESCRIPTION	BY	CHKD	AUTH	DATE

CALEDON CNC
CALEDON RD, PORTION 3 OF FARM 575 AFDAKSRIVIER
PROPOSED DEPARTURE AND CONSENT USE
OVERSTRAND MUNICIPALITY

WAYLEAVE 00005/19

SET	SHEET	REVISION
02	00	0

ALL CABLE POSITIONS ARE APPROXIMATE AND SHOULD BE VERIFIED ON SITE.
LAND DEVELOPMENT SECTION
 TEL 021-890 3129 FAX 021-898 3055

SCALE 1 : 12 000
THIS DRAWING IS THE PROPERTY OF ESKOM

DRAWN: P. BOTMA
 DATE: 16/01/2019

SIZE **A3L**

ANNEXURE I

TR A Thant
(H O hink)

Loretta Gillion - RE: Portion 3 of Farm 575, Afdakrivier: Request for comment

From: Waseefa Dhansay <Waseefa.Dhansay@westerncape.gov.za>
To: "loriaanisaacs@overstrand.gov.za" <loriaanisaacs@overstrand.gov.za>
Date: 21/01/2019 07:31 AM
Subject: RE: Portion 3 of Farm 575, Afdakrivier: Request for comment
Cc: Loretta Gillion <lpage@overstrand.gov.za>



Dear Loriaan

The email below refers,
 Thank you for consultation HWC on the proposal.
 Please note the proposal does not trigger the National Heritage Resources Act, as such, the proposal is out of the mandate of HWC to provide comment.

Kind regards,

Waseefa Dhansay
Acting Assistant Director: Professional Services
 Heritage Resource Management Services
 Heritage Western Cape

3rd Floor, Protea Assurance Building
 Green Market Square
 Cape Town
 8001

Telephone: 021 483 9689
Email: waseefa.dhansay@westerncape.gov.za
Website: <https://www.hwc.org.za>



Ilifa leMveli leNtshona Kalani
Erfenis Wes-Kaap
Heritage Western Cape

From: Ceoheritage
Sent: 18 January 2019 10:16 AM
To: Waseefa Dhansay <Waseefa.Dhansay@westerncape.gov.za>
Subject: FW: Portion 3 of Farm 575, Afdakrivier: Request for comment

FYI

Regards
 Ameerah

From: Loriaan Isaacs [mailto:loriaanisaacs@overstrand.gov.za]
Sent: 15 January 2019 03:19 PM
To: Ceoheritage <Ceoheritage@westerncape.gov.za>

FILE NO:	PTN 3/575 Afdak ✓
SCAN NO:	Farm 575
COLLABORATOR NO:	1248203

TP

21 JAN 2019

file:///C:/Users/loretta/AppData/Local/Temp/XPgrpwise/5C457545HermanusMunpos... 2019/01/21



DIRECTORATE DEVELOPMENT MANAGEMENT: REGION 2
PRINCIPAL LAND USE MANAGEMENT REGULATOR
Mr. G van Lille
Email : Gerhard.vanLille@westerncape.gov.za

*TRATHAERT
CHOLIVIER*

Reference: 15/3/2/12/BO3

Director
Infrastructure and Planning
Overstrand Municipality
P O Box 20
HERMANUS
7200



Sir

DEPARTURE AND CONSENT USE: PORTION 3 FARM 575 CALEDON

1. Your letter Ptn 3 of Farm 575, RCAL (4103) dated 28 December 2018 refers.
2. This Directorate does, in principle, not support the application for 5 additional dwelling units (250m² each) for shareholders of the application area.
3. Not only are the units placed on, previously cultivated land, but the size of the units far exceeds the prescribed total floor space of 120m² per unit.
4. The above-mentioned comment is based on the information received. The Department reserves the right to amend its comment should any additional or new information be obtained.

Yours faithfully

K MUNRO
DIRECTOR: LAND MANAGEMENT: REGION 2
DATE: *5.2.2019*

PORTION 3 FARM 575 CALEDON

FILE NO:	<i>Ptn 3/575</i>
SCAN NO:	<i>Afdakr.</i>
COLLABORATOR NO:	<i>MUNRO</i>
	<i>1254924</i>

6th Floor, 1 Dorp Street, Cape Town, 8001
tel: +27 21 4834588 fax: +27 21 483 3098

Private Bag X9086, Cape Town, 8000
www.westerncape.gov.za

- 5 FEB 2019

OVERBERG DISTRIKSMUNISIPALITEIT
 DISTRICT MUNICIPALITY
 UMASIPALA WESITHILI



MELD ASB/PLEASE QUOTE

Ons Verw./Our Ref.: 18/5/5/4

Navrue/Enquiries: Francois Kotze

Bylyn/Ext.:

Privaatsak: X22

Private Bag:
 BREDASDORP
 7280

Tel: (028) 4251157

Faks/Fax: (028) 4251014

E-mail/E-pos: rvoischenk@odm.org.za



14 February 2019

OVERSTRAND MUNICIPALITY

P.O Box 20
 HERMANUS
 7200

For attention: Michelle Naylor

TRATHART
 (H Olivier)

**RE: PORTION 3 (DE GANG) OF FARM 575, AFDAKSRIVIER, A DIVISION OF CALEDON:
 PROPOSED DEPARTURE AND CONSENT USE: INTERACTIVE TOWN & REGIONAL
 PLANNING (obo AFDAKSRIVIER PTY LTD)**

Ref: Ptn 3 of Farm 575, RCAL (4103)

The Overberg District Municipality's department of Environmental Management Services does not support the application for proposed departure and consent use for portion 3 of farm 575 Afdakrivier.

The Overberg District Municipality is the owner of portion 79 of farm 575 Afdakrivier which is located in close proximity of portion 3 of farm 575 Afdakrivier. The Overberg District Municipality manages a regional waste disposal facility on its property. With reference to the licence conditions of the site, consideration should be given to the following clause:

The Permit Holder shall take all reasonable steps, such as suitable zoning and/or written agreements with adjacent landowners, to prevent the development of further residential and/or light industrial areas closer to the Facility than any existing residential areas during the operative life of the Facility. Heavy industries or industries which may create nuisance conditions may be permitted within the buffer zone in terms of the appropriate legislation.

FILE NO:	Ptn 3/575
	Afdakrivier ✓
SCAN NO:	Farm 575
COOPERATOR NO:	1256655

Alle korrespondensie moet aan die Munisipale Bestuurder gerig word.
 All correspondence must be addressed to the Municipal Manager.

TP 14 FEB 2019

It is important to note that the regional waste disposal facility will be operational for approximately the next 55 years and future cell development will expand to the Southern boundary of the facility. It is important for the developer to take cognisance of this and to confirm that the developer will have no objection towards the future expansion of the facility.

The proposal for departure in terms of Section 16(2)(b) to relax the 30m eastern lateral building lines to 10m and 4.5m respectively to accommodate residential units should not be considered in order to maintain a maximum buffer area from the waste disposal facility.

Yours faithfully,



D P BERETTI
MUNICIPAL MANAGER

ANNEXURE L



SCIENTIFIC SERVICES

postal Private Bag X5014, Stellenbosch, 7599
 physical Assegai Bosch Nature Reserve, Jonkershoek Road
 website www.capenature.co.za
 enquiries Chanel Rampartab
 telephone +27 21 866 8015
 email crampartab@capenature.co.za
 reference SSD 14/2/5/1/7/2/575-3_dwellingsetc_Afdakrivier
 date 22 March 2019

Overstrand Municipality
 P.O. Box 20
 Hermanus
 7200

Attention: Loriaan Isaacs

Dear Ms Isaacs

Application for departure and consent use to construct five additional dwellings and gatehouse, and accommodate existing buildings on FA 575/3, Afdakrivier
 (Overstrand Municipality ref: Ptn 3 of Farm 575 RCAL (4103))

CapeNature would like to thank you for the opportunity to comment on the application for departure from building lines and consent use for five additional dwellings and gatehouse on FA 575/3, Afdakrivier. Please note that these comments only pertain to the biodiversity-related impacts and not to the overall desirability of the application.

According to the Western Cape Biodiversity Spatial Plan (CapeNature 2017) and satellite imagery, the proposed development site contains no indigenous vegetation, nor watercourses or wetlands. The Afdak River runs along the southern end of the site, and a non-perennial tributary thereof on the northern section, both of which are sufficiently buffered from the proposed dwellings and gatehouse, as well as the proposed planting areas.

Given that the proposed development area has already been transformed, CapeNature does not object to the application.

CapeNature reserves the right to revise initial comments and request further information based on any additional information that may be received.

Yours sincerely

Rampartab

Chanel Rampartab
 For: Manager (Scientific Services)



FILE NO:	Ptn 3/575
	Afdakrivier ✓
SCAN NO:	FARM 575
COLLABORATOR NO:	1268528

The Western Cape Nature Conservation Board trading as **CapeNature**
 Board Members: Prof Denver Hendricks (Chairperson), Prof Gavin Maneveldt (Vice Chairperson), Ms Marguerite Bond-Smith, Mr Mervyn Burton, Dr Collin Johnson, Prof Aubrey Redlinghuis, Mr Paul Slack



**Western Cape
Government**
Environmental Affairs and
Development Planning



Directorate: Development Management
(Region 1)

*T-P-A Theart
(Cholivier)*

REFERENCE: 16/3/3/6/E2/27/1001/19
ENQUIRIES: Ms. Saa-rah Adams
DATE: 18-02-2019

The Municipal Manager
Overstrand Municipality
P.O. Box 20
HERMANUS
7200

FILE NO:	PH 3/575
SCAN NO:	17
COLLABORATOR NO:	1263791

Attention: H. Olivier

Tel: (028) 313 8900
Fax: (028) 313 2093

Dear Sir/Madam

RE: APPLICATION FOR DEPARTURE AND CONSENT USE ON PORTION 3 OF FARM NO. 575, AFDAKSRIVIER, CALEDON

1. The abovementioned document, dated 20 November 2018 and received by this Department on 8 January 2019, refers.
2. Further to review of the information submitted to this Department, the following is noted:
 - 2.1. The farm is located 2.5km from the Botrivier estuary and connects with the Afdakrivier on the southern border that flows to the west into the Botrivier. The Afdakrivier itself, is regarded as a Critically Biodiversity Area and the upgrade of roads that traverse this area will be limited to the existing footprint of the road.
 - 2.2. In terms of section 52 of the National Environmental Management: Biodiversity Act (NEMBA), 2004, and based on available mapping information sources, the site should comprise of Elim Ferricrete Fynbos vegetation and planted pastures. This vegetation type is categorised as Critically Endangered. However, the farm has been transformed and natural areas with indigenous vegetation are restricted to the watercourses which includes wetlands south-west/south of the dam on site. No indigenous vegetation will be cleared as part of the development.
 - 2.3. The application is for departure to accommodate a gatehouse of 6m² and to relax the 30m eastern lateral building lines to 10m and 4.5m respectively to accommodate dwelling units, staff quarters and the gatehouse; including the relaxation of the 30m western street building line to 0.9m to accommodate the gatehouse.

6th Floor, 1 Dorp Street, Cape Town, 8001
Tel: +27 21 483 0773 Fax: +27 21 483 3089
Email: Saa-rah.Adams@westerncape.gov.za

Private Bag X9086, Cape Town, 8000
www.westerncape.gov.za/eadp

- 2.4. In addition to this, the proposal includes an application for consent use to accommodate five additional dwelling units.
 - 2.5. It is the owner's intention to use the application area primarily for specialised agricultural production purposes based on eco-friendly farming methods and accommodation purposes in the form of a homestead, staff quarters and houses for property shareholders.
 - 2.6. The specialised agricultural component is proposed to consist mainly of vineyards and protea plantations as well as smaller cash crops.
3. On 7 April 2017 the Minister of Environmental Affairs promulgated amendments to the regulations in terms of Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA"), viz. the Environmental Impact Assessment ("EIA") Regulations 2014 and Listing Notices 1, 2 and 3 in Government Gazette No. 40772. These regulations came into effect on 7 April 2017.
 4. In light of the above, your attention is drawn to the listed activities in terms of the NEMA EIA Regulations, 2014 (as amended) and Listing Notices 1, 2 and 3. Based on the information provided, the proposed departure and consent use does not constitute listed activities in terms of the NEMA EIA Regulations, 2014. However, considering the project description and the potential triggers, the Department wishes to highlight that should the proposed components exceed any of the applicable thresholds, an application for Environmental Authorisation will be required prior to commencement.

For example, if the proposed development footprint of structures or infrastructure is 100m² or more and is located within or within 32m of a watercourse, it will trigger:

Activity 12 of Listing Notice 1

The development of—

- (i) *dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or*
- (ii) *infrastructure or structures with a physical footprint of 100 square metres or more;*

where such development occurs—

- a) *within a watercourse;*
- b) *in front of a development setback; or*
- c) *if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; —*

excluding—

- aa) *the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;*
- bb) *where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;*
- cc) *activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;*

- dd) where such development occurs within an urban area;
- ee) where such development occurs within existing roads, road reserves or railway line reserves; or
- ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared.

If a component of the proposed development exceeds the 10 cubic metres threshold for the infilling or removal of material within a watercourse, it will trigger:

Activity 19 of Listing Notice 1:

The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;

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

- a) will occur behind a development setback;
- b) is for maintenance purposes undertaken in accordance with a maintenance management plan;
- c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;
- d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or
- e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.

If the footprint of the proposed roads exceed a width of 4m with a reserve less than 13.5m, it will trigger:

Activity 4 of Listing Notice 3

The development of a road wider than 4 metres with a reserve less than 13,5 metres.

i. Western Cape

- i. Areas zoned for use as public open space or equivalent zoning;
- ii. Areas outside urban areas:
 - (aa) Areas containing indigenous vegetation;
 - (bb) Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined; or
- iii. Inside urban areas:
 - (aa) Areas zoned for conservation use; or
 - (bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority.

If the main house and five additional dwellings will be used for overnight accommodation that sleeps 15 people or more and is located within 5km of a protected area, it will trigger:

Activity 6 of Listing Notice 3

The development of resorts, lodges, hotels, tourism or hospitality facilities that sleeps 15 people or more.

i. Western Cape

- i. *Inside a protected area identified in terms of NEMPAA;*
 - ii. *Outside urban areas;*
 - (aa) *Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans; or*
 - (bb) *Within 5km from national parks, world heritage sites, areas identified in terms of NEMPAA or from the core area of a biosphere reserve;*
- excluding the conversion of existing buildings where the development footprint will not be increased.*

If the development includes the clearance of 300m² or more of endangered or critically endangered indigenous vegetation, it will trigger:

Activity 12 of Listing Notice 3:

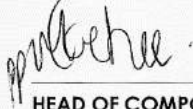
The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.

i. Western Cape

- i. *Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;*
 - ii. *Within critical biodiversity areas identified in bioregional plans;*
 - iii. *Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line or even in urban areas;*
 - iv. *On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or*
 - v. *On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister.*
5. Therefore, if the thresholds of one or more of the above listed activities are exceeded by the proposed development, written Environmental Authorisation will be required before the activity may commence.
 6. The Application Form, as well as other relevant forms and guidelines, are available from this Department's website: <https://www.westerncape.gov.za/eacdp/resource-library>.
 7. Be advised that the applicant must comply with any other statutory requirements that may be applicable to the undertaking of the activity.

8. Your interest in the future of our environment is greatly appreciated.
9. This Department reserves the right to revise or withdraw any comments or request further information from you based on any information received.

Yours faithfully



**HEAD OF COMPONENT
ENVIRONMENTAL IMPACT MANAGEMENT SERVICES: REGION 1
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**



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

TP-A Theart
(H Olivier)

OUR REFERENCE : 20/9/2/4/2/864
YOUR REFERENCE : Ptn 3 of Farm 575, RCAL (4103)
ENQUIRIES : Cor van der Walt

Overstrand Municipality
PO Box 20
HERMANUS
7200

FILE NO:	Ptn 3/575
SCAN NO:	21
COLLABORATOR NO:	1279854

Att: H Olivier

**PROPOSED DEPARTURE AND CONSENT USE: DIVISION CALEDON
PORTION 3 OF THE FARM NO 575**

Your application of 28 December 2018 has reference.

The Western Cape Department of Agriculture (WCDoA) does not support additional dwellings on cultivated agricultural land and also deems the size of the additional dwelling units too large.

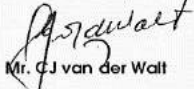
The intent from the Western Cape Department of Agriculture's perspective is that additional dwelling units cater for short term transient guest accommodation and in our view should not exceed 175m².

Please note:

- Kindly quote the above-mentioned reference number in any future correspondence in respect of the application.

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

Yours sincerely



Mr. C.J van der Walt

LANDUSE MANAGER: LANDUSE MANAGEMENT

2019-04-08

Copies:

Department of Environmental Affairs & Development Planning (Helene Janser)
1 Dorp Street
CAPE TOWN
8001

Directorate Land Use and Sustainable Resource Management
National Department of Agriculture
Private Bag X 120
PRETORIA
0001



TP (J. Theart (H. O'Neil) ANEXURE 0 1/2
cc/ H. Blignaut



BREEDE-GOURITZ

FILE NO: PIN 3 1575
Afdaks Rivier 7 16111
SCAN NO:
PIN 3
CO-LABORATOR NO:
1320096

51 Baring Street Worcester 6850, Private Bag X3055 Worcester 6850

Enquiries: V Ligudu Tel: 023 346 8000 Fax: 023 347 2012 E mail: vligudu@bgcma.co.za

REFERENCE NO: 4/10/1G40H/Farm 575/3 Afdaksrivier

Date: 03 September 2019

InterActive Town & Regional Planning
P. O. Box 980
Hermanus
7200

Attention: Melisa Buys

APPLICATION FOR DEPARTURE AND CONSENT USE: PORTION 3 (DE GANG) OF THE FARM 575 AFDAKSRIEVER, CALEDON.

With reference to the email dated 13/08/2019 received as further clarity on the comments provided dated 01/08/2019.

The Breede-Gouritz Catchment Management Agency (BGCMA) has no objection on the proposed application, subject to the following conditions:

1. All relevant sections and regulations of the National Water Act, 1998 (Act 36 of 1998) regarding water use must be adhered.
2. The minimising of waste must be promoted and alternative methods for waste management must be investigated.
3. No permanent structures may be constructed within the 100-year flood line of any watercourse (seasonal or permanent river, stream, etc.).

Disposal of sewage

- The disposal of sewage must at all times comply with the requirements of Sections 22 and 40 of the National Water Act of 1998, (Act 36 of 1998).
- Please note that irrigating garden with wastewater is a controlled activity in terms of Section 37 (a) and as such requires authorization before the activity commences.

Water for domestic use

- Water provided for domestic use must comply with the SANS 241: 2015 guidelines for drinking water.

www.bgcma.co.za

TP - 4 SEP 2019

The BGCMA reserves the right to revise initial comments and request further information based on any additional information that may be received.

Please contact the above-mentioned official if you have any queries.

Yours faithfully


MR JAN VAN STADEN
CHIEF EXECUTIVE OFFICER (ACTING)

S. Muller cc/TP N. Ahoort
(I. Olivia)

ANNEXURE P



**agriculture,
forestry & fisheries**

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA



Private Bag X120, Pretoria, 0001
Delpen Building, C/o Annie Botha & Union Street, Rivers, 0084
From: Directorate Land Use and Soil Management
Tel: 012-319-7634 Fax: 012-329-5938
Enquiries: Helpdesk Ref: 2019_04_0015

Director: Infrastructure and Planning
Overstrand Municipality
P.O.Box 20
HERMANUS
7200

Attention: S Muller

FILE NO:	AN 3/575 ✓
	N. Ahoort
SCAN NO:	
COLLABORATOR NO:	1321881

**PROPOSED DEPARTURE AND CONSENT USE ON A PORTION OF PORTION 3 (DE GANG)
OF THE FARM AFDAKSRIVIER NO 575, DIVISION CALEDON, WESTERN CAPE PROVINCE**

Your e-mail L Gillion dated 26 March 2019 refers.

This Department wishes to inform you that it does not support the proposed Consent Use for 5 additional dwelling houses on the property as it will be situated on arable land and the proposed sizes of the dwellings is deemed too large.

It is trusted that you will find the decision in order.

Yours faithfully

MS T.S. CHIPETA
ACTING DEPUTY DIRECTOR GENERAL: FORESTRY AND
NATURAL RESOURCES MANAGEMENT
DELEGATE OF THE MINISTER

DATE: 30/08/19

CC: Land Use and Soil Management Private Bag X 2 SANLAMHOF 7532
CC: Mr Brandon Layman Landuse Management Department of Agriculture: Western Cape Private Bag x 1 ELSENBURG 7607



ROAD NETWORK MANAGEMENT
 grace.Swanepoel@westerncape.gov.za
 tel. +27 21 483 4669
 Rm 35, 9 Dorp Street, Cape Town, 8001
 PO Box 2603, Cape Town, 8000

REFERENCE: 16/9/6/1-21/169 (Job 26676)
ENQUIRIES: Ms GD Swanepoel
DATE: 22 May 2019

The Municipal Manager
 Overstrand Municipality
 PO Box 20
HERMANUS
 7200

Attention: Ms L Isaacs

FILE NO:	
SCAN NO:	
COLLABORATOR NO:	128 7020

Dear Madam

PORTION 3 OF FARM 575, CALEDON DIVISION: MINOR ROAD 4011: PROPOSED DEPARTURE AND CONSENT USE

1. The following refer:
 - 1.1 Your letter Ptn 3 of Farm 575, RCAL (4103) dated 28 December 2018 and
 - 1.2 E-mail correspondence between our Mr F Fakier and the Applicant dated 9 March 2019.
2. The subject property is located 3km west from Fisherhaven and takes access off Minor Road 4011.
3. This application is for the following:
 - 3.1 Various Departure applications for a gatehouse and building lines and
 - 3.2 Consent Use in order to develop five additional dwelling units.
4. The junction of Minor Road 4011 with Divisional Road 1254 has very limited shoulder sight distance; however, warning signs for concealed accesses have been erected.

5. 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

A 5/001

POLICY ON GUIDELINES AND REQUIREMENTS IN RESPECT OF APPLICATIONS FOR THE ERECTION/ESTABLISHMENT OF ADDITIONAL DWELLING UNIT/S AND ACCOMMODATION FOR FARM WORKERS/STAFF ON AGRICULTURAL LAND UNITS WITHIN THE JURISDICTIONAL AREA OF THE OVERSTRAND MUNICIPALITY

Introduction

The Overstrand Municipality is the authority in terms of delegation of powers by the Provincial Government of the Western Cape to rule on applications for the erection/establishment of additional dwelling units on agricultural land units within its area of jurisdiction.

Owners of agricultural land units, especially in the Overberg Region, have in the light of South Africa's expanding tourism industry, become conscious of the opportunity to generate an additional income from their land units other than from bona fide farming activities, amongst others by means of developing short term rental accommodation establishments for tourists.

The following guidelines and requirements will enable the Overstrand Municipality to properly assess applications of this nature and eventually to be able to make a well-informed decision. It is also the aim to make applicants aware of the factors that they should take into account when considering applications for submission and the consequent compilation thereof for final submission to the municipality.

*Approved by Council
1 September 2009*

A 5 / 002

(Except for the standard requirements for the submission of planning applications, the following are additional requirements when submitting applications for additional dwelling units on agricultural land units.)

1. The official comment of CapeNature must be obtained and submitted together with the relevant application. CapeNature must also comment on the position of the proposed units.
2. Written confirmation from the provincial Department of Agriculture to the effect that the position of the proposed units are not located on high potential agricultural land, must accompany the relevant application.
3. The co-ordinates of the unit/s in the following format (example):-

Latitude: 33° 22' 14.56" S
Longitude: 19° 08' 37.33" E
4. A proper site development plan (SDP) in terms of the requirements of the municipality, must be submitted together with the relevant application. If required, the 1:10 and 1:50 year flood lines must be determined and indicated on the SDP. The distribution of alien vegetation and species present on the property must also be indicated on the SDP. The SDP must indicate all buildings and structures (proposed and existing) on the cadastral land unit, as well as a description of its usages.

A 5 / 003

5. Written confirmation must be obtained from the Department of Water Affairs and Forestry to the effect that the sewage infrastructure to be installed, as well as the disposal of sewage, is acceptable.
6. Proper aerial photos indicating the exact position of the proposed unit/s, must be submitted together with the relevant application.
7. Substantial proof is required that adequate household water (complying with national required standards), can be supplied on a sustainable basis.
8. The purpose for which the additional dwelling unit/s will be used for, must be fully motivated, and should other planning applications be triggered, such applications must accompany the relevant application.
9. With regard to dwelling units for the accommodation of farm workers/staff, the council shall approve more than the maximum permissible dwelling units on a land unit, **only if proof**, to the satisfaction of the municipality, is submitted that the units are indeed essential for the accommodation of farm workers/staff. In this regard proof, such as the farming activities, and importantly the sustainability of such activities in order to qualify for more than the maximum number of units, must be submitted.
10. The dwelling units (new units to be erected) for farm workers/staff may not exceed 60m² in extent and are restricted to single storey, and the municipality may restrict the number of dwelling units for farm workers/staff as deemed fit

4.../

11. Notwithstanding paragraph (9) above. Except the right to erect a primary dwelling unit on a land unit, one additional dwelling unit will be allowed in all cases and further units with a density of one unit per 10ha up to a maximum of five additional dwelling units may be allowed on a cadastral land unit, provided that the units shall remain on the same cadastral unit as the primary unit. (In other words, a maximum of 5 additional dwelling units may be allowed on a cadastral land unit of 50ha or more in extent.
12. Should a land unit consisting of the maximum dwelling units be subdivided, it may not be less than 50ha in extent.
13. Should permission be granted for the utilization of the unit/s for tourism purposes, the municipality's policy regarding accommodation establishments, must be strictly adhered to. (Where and when applicable the necessary land use rights must also be obtained.)
14. Road access points to the land unit must be upgraded to the satisfaction of the Roads Authority as well as the municipality.
15. The unit/s must be located in such a manner that the development is compact and unobtrusive and that the local vernacular is respected, and if placed within or peripheral to the farmstead precinct, the unit/s should reflect the farmstead style.

A 5 / 005

16. If the unit/s is to be placed away from the periphery of the farmstead precinct, it must be of the same architectural design and be of such a nature that it completely blends in with the natural environment (comment from an esthetical committee may be required by the municipality.)
17. The unit/s and accompanying outbuildings (garage and store facilities), may only be single storey and may not exceed a total footprint of 250m² each.
18. The unit/s must be located in such a manner that it:-
 - i) be clustered together;
 - ii) do not result in excessive expansion and encroachment of the existing development of the land unit and surrounding land units;
 - iii) is placed on localities where it will not interfere in the daily agricultural activities (e.g. the plough and harvest routes of farming implements);
 - iv) do not impact on the farming unit and surrounding farming units (e.g. in regard to dust generation or product security), and do not impact on surrounding agricultural practices (e.g. through spray drift);

- v) is placed in localities where it will not contribute to the loss of Critical Biodiversity Areas (CBA's), Critical Ecological Support Areas, or Buffer Areas to CBA's. - if the units are placed on localities near to the coastline, rivers and ecological corridors or endangered or critically endangered vegetation types, the listed activities in terms of the National Environmental Management Act No. 107 of 1998, or as amended, as well as principles of the Western Cape Provincial Spatial Development Framework must be noted - in Critical Biodiversity Areas, additional dwelling units will not be considered on parcels of land which are smaller than 20 hectares in extent, unless indicated to the contrary by a detailed botanical assessment and supported by CapeNature;
- vi) do not contribute to soil erosion (location in terms of soil conservation works e.g. contour banks must be noted in order to avoid erosion - care must be taken not to break existing contour banks;
- vii) is placed on localities where no new roads need to be constructed and should be informed by the existing on-line services network;
- viii) is not placed in high visually exposed areas, and
- ix) is placed in localities where a building line departure is not required.

19. The unit/s may not be independently alienated from the land unit by any means other than by an approved subdivision application i.t.o. the applicable planning legislation.
20. When use is made of existing structures, the activities/development may not lead to the illegal removal of farm workers/staff.
21. Permits for the extraction and use of groundwater must be obtained from the Department of Water Affairs and Forestry.
22. The municipality will not render any services, except those that might be agreed upon.
23. Should the property or any portion thereof be registered for nature conservation purposes at CapeNature (whether because of rezoning or not), the municipality must be informed accordingly.
24. Sufficient fire protection measures around buildings are a requirement of the National Veld and Forest Fire Act and must be adhered to.
 - a) Fire protection measures and infrastructure must be indicated on building plans.
 - b) Defendable space must be indicated on building plans. Defendable space must consist of a cul-de-sac which should preferably enclose the cluster of buildings. This will enable response vehicles to turn around and defend all buildings on the property, as well as to evacuate occupants in case of an emergency.

A 5 / 008

- c) Access roads in terms of fire response must have a minimum width of 4m. Access and egress roads should not exceed a grading of 10%. Dead-end roads must have a cul-de-sac with a minimum of a 15m radius. Parking shall be allowed only where and additional 2,7m for improved road width is provided and only within that improved width.
- d) All buildings shall have a driveway to the building to allow emergency vehicles to approach the building.
- e) Land owners will be required to become members of local fire protection agencies.
- f) Additional dwelling units must be constructed of fire retardant material.
- g) Gates to the property must swing inwards from the external approach side in order to provide easy access for response vehicles.
- h) Isolated buildings should have elevated water tanks installed to provide an emergency water supply for fighting fires. Emergency water tanks must be fitted with standard firefighting hose connections.

A 5 / 009

25. The relevant approval does not absolve the land owner/s from compliance with any other relevant legislation (i.e. environmental legislation, submission of building plans, erection of advertising signs, etc.).

Policy Section:	Town Planning & Property Management
Current Update:	1 September 2009
Previous Review:	N/A
Approval by Council:	26 November 2008

986

Loretta Gillion - Re: Request for comment on MPT Item - Ptn 3/575 Afdakrivier

From: Andre Olivier
 To: Loretta Gillion; Henk Olivier
 Date: 18/09/2020 01:01 PM
 Subject: Re: Request for comment on MPT item - Ptn 3/575 Afdakrivier

Afternoon Henk,

Re the above, herewith my opinion

Regards

Andre Olivier

Afternoon Henk,

Your instruction and request refer.

I don't think it is necessary for me to go into absolute detail re the motivations of the Applicant because I am comfortable with your Recommendations.

Even though I agree with the Applicant and with your opinion with regard to what constitutes or does not constitute "residential" and "tourism" and "buffer", and that the ODM's opinion is vague and unsubstantiated, the Applicant was always going to have a problem to comply with the requirements of national and provincial government policies re the physical placement / location and impact of the 5 dwellings on the farm.

Furthermore in terms of sections 42 (1)(b) and to a lesser extent (c); and read with sections 6(1)(c) and 7(b)(ii) of SPLUMA, the MPT "must" adhere to its provisions, ie, make a decision which is consistent with national and provincial govt policies - the MPT has no discretion in this regard, because if it approves the consent use application its decision will be inconsistent with national and provincial govt policies which cannot be; there is no middle ground. The WCEADP does not support the application which means the MPT is compelled to deny the consent use application.

Given the fact that the recommendation is not to approve the consent use application it would appear that the departure application will also be of no use, save for perhaps the gate house?

>>> Loretta Gillion 09/04/20 11:51 AM >>>

Dear Andre

The above application refers.

Below please find notes made by Henk for your attention:

"Dear Andre

I have drafted the report for the attached application, but the objector also obtained a legal opinion on some matters. Attached as part of Annexure E. I addressed some of the matters referring to powers of various organs of state and policies. The Legal comments (attached as Annexure K) is however based on legal case law.

Under point 7.5 under Municipal Town Planner's response, I did not make any comment, and require your input regarding the Legal opinion regarding the Waste Transfer Site permit and also the Overberg District Municipality's comment and interpretation of the Waste Transfer site permit conditions.

Your input will be highly appreciated.

Henk Olivier"