4.9

ERF 4725, 21 BERGHOF DRIVE, ONRUSTRIVER: APPLICATION FOR DETERMINATION OF ZONING: MESSRS WRAP ON BEHALF OF PH DE CHATTILON DE KOCK

4725 HON (3226/2019)
H Olivier (028) 313 8900 Hermanus Administration
20 October 2020

1. EXECUTIVE SUMMARY

An application was received on 17 July 2019 from Messrs WRAP Consultancy on behalf of PH De Chattilon De Kock on Erf 4725, Onrustrivier in terms of Section 16(2)(m) of the Overstrand Municipality By-Law on Land Use Planning, 2015 for a determination of zoning motivating that the existing cottage be accommodated as a dwelling unit in terms of a consent use right and the upgrade and expansion of the cottage up to 625m² in size in extent be allowed under existing land use rights.

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, while the proposed Site Development Plan is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 4725, Onrustrivier is zoned Open Space Zone I : Nature Reserve and is developed with an existing small stone cottage and lookout picnic and braai area. The property measures approximately 1,6557ha in extent and is further covered with some bluegum trees.

4. SUMMARY OF APPLICANT'S MOTIVATION

- The purpose of the application is to determine the historic land use rights of the subject property to evaluate the consistency/inconsistency of the existing zoning rights in relation to historic land use approvals.
- The historic planning approval relating to Erf 3710, Onrustrivier dates back to 2001. Erf 3710 was originally, prior to the planning approval, zoned Agriculture Zone I.
- There was an appeal to Western Cape Government : Environmental Affairs and Development Planning (EADP) against the Greater Hermanus Municipality's approval in March 2000, whereby EADP dismissed the appeal subject to conditions, one being *"that subdivision only be allowed to the 100m contour line and that the area above the 100m contour line be zoned Open Space Zone III (Nature Reserve)"*.
- An Open Space Development Management Plan (OSDMP) dated February 2001 was also submitted to comply with conditions of approval, with the following reference to Erf 4725 being highlighted:
  - The site was utilized for residential purposes (stone cottage) long before the town planning application was submitted.
  - The OSDMP indicates the cottage was to be upgraded, which serves as proof that there was an existing stone cottage (dwelling).

- A plan indicates a lookout point and picnic and braai facilities to be retained.

- The endorsed subdivision plan also (by the Municipality) indicates a block where the cottage is located, indicating the Municipality acknowledged the cottage and residential use rights and did not contest it. No conditions were contained in the letter of approval by the Municipality depriving these rights. The intent to upgrade and expand the existing cottage was illustrated and plans submitted by Plan Consult, and not contested.
- The intend was also to expand the cottage in line with properties in Berghof with coverage of 500m² to 750m², with an average of 625m².
- The plans submitted by Plan Consult and approved by the Overstrand Municipality depicted the location of the cottage as a residential use right. This approval empowered the Municipality with the approval of the development rules of the Open Space Zone III zoning to stipulate additional provisions. The additional provisions should have indicated the land use rights of a dwelling unit for the existing cottage by means of a departure.
- The cottage was already situated above the 100m contour line, prior to the repealed Onrust River Structure Plan was approved that limited any new developments in Onrustriver to the said contour line, therefore the cottage was an existing right.
- With the promulgation of the Overstrand Zoning Scheme, 2013 (By-Law) the existing historic right was not awarded to the property, hence this application for zoning determination to rectify the situation.
- The utilization of land prior to the commencement of the By-Law should have been considered to allocate a zoning, and historic events show the following:
  - The cottage was used for residential purposes (dwelling house) prior to 2001 in the Agriculture Zone I zoning with no limit for expansion.
  - The cottage was used from 2001 to 2013 as a dwelling unit when it was zoned Open Space Zone III. The Overstrand Municipality was supposed to allocate a dwelling unit right as a departure, as the cottage upgrade and expansion areas were approved and not contested by the Municipality.
  - With the approval of the 2013 Zoning Scheme Overstrand Municipality should have allocated the cottage as a consent use for dwelling unit under the new Open Space Zone I : Nature Reserve (OS1) Zone.
- A consent use is not required as it was already indicated on plans approved in 2001 *"existing stone cottage to be upgraded".*
- The application is desirable as surrounding owners are used to the visual and land use impact, it is compatible with the residential land uses, the upgrade and expansion of the unit will be in line with public interest, will contribute to maintaining and improving properties, will not deprive adjacent property owners any land use rights they enjoy and will help with the environmental restoration and rehabilitation of the property.
- A new Environmental Management Plan (EMP) for Erf 4725 was prepared, which found the area surrounding the cottage contain evasive plant species, which when cleared would have a positive environmental impact providing for more sunlight and water for existing natural vegetation.
- The area around the cottage is not conservation worthy.
- The creation of a road to the cottage is seen as an environmental threat in terms of the new environmental plan, but not the expansion of the cottage.
- The new EMP contain strategies to clear alien vegetation and manage fire risks, which would help increase biodiversity, water quality and quantity, soil health, reduce erosion, improve nutrient recycling, increase surrounding property values and aesthetics of the area.

- ❖ The implication of the implementation of a management plan is to ensure the historic land use rights are confirmed and managed in such a way to improve the natural environment in the interest of the owner of the property and surrounding property owners.
- ❖ For the owner to implement the EMP he must have the assurance that he can upgrade the cottage, due to the cost associated with the implementation of the EMP.
- ❖ Comply with Zoning Scheme as a Site Development Plan was submitted and an EMP was provided, and Council may now determine development rules applicable to the land unit.
- ❖ Although the subject property is located outside the urban edge as indicated on the current SDF and OMGMS it cannot deprive the subject property of the existing residential land use.
- ❖ It is recommended that Erf 4725, Onrustrivier be allocated an Open Space Zone I: Nature Reserve (OS1) zoning with a consent use for a dwelling unit, which allows for upgrade and expansion, not to exceed a coverage of 625m².

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		**Date published**	**Closing date for comments**
Notices	Yes	10 October 2019	15 November 2019
Internal departments	Yes	10 October 2019	15 November 2019
Ward councillor	Yes	10 October 2019	15 November 2019
Total comments	**FOUR (4) letters of objection**		
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 COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	**Date received**	**Summary of comments**
Fire Department	10/12/2019	No objection.
Building Control	14/10/2019	No objection.
Telkom	19/11/2019	See Annexure H.
Western Cape Government : EADP	27/02/2020	See Annexure F.
Engineering Services	28/10/2019	See Annexure I.

Eskom	18/10/2019	See Annexure G.
Operational Manager	14/10/2019	See Annexure J.
Environmental Management	29/11/2019	A clear indication must be provided that this is not a Municipal Open Space.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Four (4) letters of objection were received from the following parties:

- Adrian Louw Attorneys on behalf of the Berghof Home Owners Association
- HJ & MDM Janse van Rensburg
- SG Cohen
- N & L Batiste

The objections are attached as Annexure D. The application was provided an opportunity to respond to the objections received (see Annexure E), and also to the Municipal Town Planner.

It is to be noted that DEA&DP also provided a comment and indicated they do not support the application. The applicant was provided an opportunity to respond to the comments, and the Municipal Town Planner will also provide a response. (See attached as Annexure D.)

Objection 1

There was no consultation with the Berghof Homeowners Association (HOA) or directly adjacent property owners or sufficient time to address the proposal at an Annual General Meeting (AGM). The HOA only provided preliminary objections and reserve the right to supplement the documents at a later stage.

Applicant's response

The Municipality did send the application to the Berghof HOA and ninety (90) property owners in Berghof, and it is therefore not clear why the Berghof HOA needs to provide a collective view.

The property is also not part of the Berghof Development or HOA, and it is unclear why an AGM is required or a collective opinion of the HOA must be provided.

Town Planner's response

The applicant's viewpoint is supported.

The HOA and the Berghof property owners were informed of the application, and the fact that the property is not a member of the HOA means that a formal response/approval is not required from the HOA.

All future additional comments will then also be accepted in terms of possible appeal rights as contemplated and clearly indicated in the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.

Objection 2

The Nature Reserve zoning is the correct allocation and the Municipality cannot grant consent use if it was not included in an application. The cottage is above the 100m contour and was used for storage and not fit for habitation, and would require a subdivision application for residential purposes. The cottage also does not make it a residence, as can be seen with huts on other Nature Reserves.

Applicant's response
The Open Space Zone : Nature Reserve zoning is not contested, only the land use rights for a dwelling which is historical and have vested, and the Municipality should have accommodated it as a consent use under the Zoning Scheme in 2013.

The 100m contour line is not contested.

Even if the cottage might have only been occasionally habitated, does not mean the existing residential use rights need to be deprived.

The application is contested, however the objector proposes application be made for subdivision to accommodate the land use rights.

The cottage cannot be compared to a hut in a Nature Reserve, due to its historic use and the fact that it was indicated to be upgraded on an approved layout plan.

Town Planner's response

Both comments are duly noted.

It is impossible for the Town Planner to comment on the historic use of the stone cottage 20 years ago, and can only consider historic approvals, plans and legislation over the 20 year period to make a final assumption or recommendation about the application.

It is clear the zoning is not contested. The applicant is of the opinion the existing residential right have vested, and the Municipality should have allocated such right as a consent use with the approval of the Zoning Scheme in 2013.

It is to be noted that consultation did take place between municipal officials and the applicant prior to the application, and the applicant submitted this application based on their viewpoints.

Further response to this point will be discussed in detail under Desirability, as it is largely the point that will determine the final recommendation.

Objection 3

The lack of information regarding the nature of the construction (footprint, height) and possible uses is not clear, and there is concern that it could be used for other amenities in future.

Applicant's response

Only the construction of a dwelling is envisaged with a total floor area of 625m², meaning a two storey dwelling with ground and first storey of 325m² each.

Town Planner's response

The comments are noted.

The objector's concern regarding the lack of scale and height of the building is valid concerns, as it could lead to a loss of privacy and possibly create a visual impact on the mountain slope. Although it could be seen as speculation, it is still difficult to determine the desirability of a building proposal you cannot visualize.

Objection 4

The applicant's statement that "no application fees are therefore paid when it relates to the correction of an error", is a crafty claim by the Applicant, parading as a fact that an administrative error was made. Fees must be paid and the applicant should have consulted the Western Cape Government : Environmental Affairs and Development Planning (EADP) to determine if an error was made.

Applicant's response

Under the current planning regime EADP has no jurisdiction over making town planning decisions, only the Municipality.

Application fee was in fact paid after it was requested by the Overstrand Municipality.

The claim is not a crafty claim, but supported by hard evidence in the Motivation Report.

Town Planner's response

The comments are duly noted.

The fact is again reiterated that it was the applicant's choice to submit the application based on their own opinion about property rights.

As indicated by the applicant, an application fee was requested by the Municipality, and it was duly paid.

Note that if an application is received it is required in terms of the relevant Municipal By-Law to process such application and should not be seen as support/non-support of an application.

The applicant is correct in that the EADP does not have jurisdiction over the municipal area, but could have obtained their opinion with regards to the original decision if they wished to do so. They chose not to do so.

Objection 5

The existing right-of-way access to Erf 4725 is only 3m wide and too narrow for construction vehicles, and would require additional negotiations and registering of right-of-way servitudes over adjacent properties.

Applicant's response

There is an existing 3m servitude right-of-way over Erf 4862, which serves a single property, and thus not necessary to register any additional servitude right-of-way over other properties.

Town Planner's response

The comments are noted.

The access to the site is narrow (3m) and very steep. It will however be speculation and not clear if additional width will be required to provide access to construction trucks, as it is not clear what types of trucks, materials, etc. will be used should the application be supported.

Objection 6

The current owner retained the erf and was responsible to clear the plot of alien vegetation, which was not done. The current owner also had to pay a levy for services, which never were complied with.

Applicant's response

Erf 4725, Onrustrivier is only a neighbour of the Berghof Development. The owner of the property acknowledges the obligation to clear alien vegetation and appointed a consultant to compile a Botanical Study and Management Plan, which was submitted with the application.

The payment of levies is not a land use function. If this fact is correct that levies was not paid, the HOA should have collected or taken steps to collect it.

Town Planner's response

The objector's opinion that the current land owner had to do alien clearing is supported, and not debated by the applicant. This is however an indication that the condition of approval was never complied with, or possibly only partially complied with. The land owner in terms of the approved open space management plan had to remove alien vegetation and also constantly maintain the fynbos on site. This will have to receive further attention by the land owner.

The matter regarding non-payment of a levy is not a matter that can be dealt with as part of this application, but will have to be dealt with the two parties involved as a private matter.

Objection 7

There is security concerns, considering this is a security gated complex. Vagrants already squad in the existing cottage.

Applicant's response

The security risks are more directed at the speculation that the property might be used for other potential land uses, which would attract more visitors. It will only be utilized as a single dwelling, and the implementation of the proposal will eliminate any squatting and bring additional security.

Town Planner's response

The comments are duly noted.

The objections are mostly speculative. Permanent residence of the cottage could possibly improve security on Erf 4725.

Objection 8

The property is not part of Berghof Estate that has specific guidelines for buildings, and there are no guidelines or guiding principles for the structure to be erected. Any construction that detracts completely from the Estate guidelines is unacceptable, and must therefore comply with such Guidelines to ensure property values in future. The surrounding property owner's view of nature, loss of privacy and the additional noise could lead to an impact on property values. Construction vehicles create safety concerns.

Applicant's response

The property is not part of the Berghof Estate and does not have to comply with the Estate Guidelines. This is not a sustainable reason for refusal, and invalid.

SPLUMA clearly highlights that a Municipal Planning Tribunal may not be impeded or restricted in its decision on the grounds that value of land or property is affected. Noise will any way only increase during construction, as will be the case with all other vacant erven, and the further impact of a single dwelling for a single family can hardly be regarded as disruptive.

Construction firms also take precautions to avert accidents.

Town Planner's response

The applicant is correct that Erf 4725 is not part of Berghof and the Estate Guidelines (in terms of the constitution). The objector's concern about the new building's aesthetical appearance is however understood, as no draft plans or sketches were provided. It is speculative to think the building could due to its visual appearance impact on Berghof's property values, but it is not unreasonable for surrounding property owners to want to be able to view such proposals.

Visual proposals also would have addressed concerns about loss of privacy, views, etc. which most people consider to impact on property value. The comments are

noted about consideration of property values in terms of SPLUMA, however impact on views, privacy, etc. should however be considered to evaluate desirability.

Objection 9

Berghof residents are responsible for the upkeep of the road infrastructure leading to Erf 4725, and increased impact of traffic for the proposal will negatively impact Berghof community and will have to pay for the upkeep.

Applicant's response

There is an existing stone cottage on the property that can accommodate a single family and guests, and the new dwelling will allow the same, therefore there will be no additional traffic. The road network will therefore not be impacted.

Town Planner's response

The contents are duly noted. At this stage the owner of Erf 4725 have the right to obtain access over the private road and Erf 4862 in Berghof by right-of-way servitudes, and the notarial ties indicate the HOA must maintain such roads and access. Berghof is therefore responsible for maintenance and upkeep.

It is however debatable if a new house for a single family will ultimately have a major impact on the road and access over Erf 4862. Construction vehicles might however have an effect especially on the 3m wide access road to Erf 4725, due to its narrow width and steep slope, and it is not clear if the existing surface would last with heavy load vehicles. The Berghof HOA's concern that the upkeep of especially this access can be understood as it could require resurfacing after construction.

Objection 10

With the purchase of a property in Berghof the understanding was no other building permission would be granted above the 100m contour, allowing it to be enjoyed as a Nature Reserve.

Applicant's response

The approved layout plan indicated the stone cottage would be upgraded.

Town Planner's response

The comments are duly noted.

The original layout plan had to be amended to exclude the subdivision and rezoning of any land for residential erven above the 100m contour line. The amended layout plan submitted reflected this, and the area above such 100m contour line had to be rezoned to Nature Reserve.

The applicant refers to an Open Space Management Plan that had to be submitted as a condition of approval to ensure that all open spaces, including Erf 4725, be managed and maintained in an environmentally sensitive manner. On one of the proposal plans it was then indicated that the existing stone cottage be "upgraded".

The interpretation of the Environmental Management Plan is then also a very important part that will be considered in considering this application, and will be further elaborated on under the Desirability heading.

DEA&DP Comments/Objections

Objection 11

A zoning determination is only required when the lawful zoning of a property cannot be ascertained. In the instance of Erf 4725, the zoning of the property is known, as the Overstrand Municipality adopted a new Zoning Scheme in terms of which all properties within their area of jurisdiction were allocated new zonings. If no further applications were considered and approved in respect of this property, the zoning that was allocated to this property on the date of coming into effect of the new Zoning Scheme is still the valid zoning. No zoning determination is therefore required.

Applicant's response

The Overstrand By-Law on Municipal Land Use Planning, 2015 indicates various factors that should be considered with Determination of Zoning, for example:

- "the lawfull utilization of land, or for the purpose which it could be lawfully utilized immediately before the commencement of this By-Law, if it can be determined"
- "the zoning, if any, that is most compatible with that utilization or purpose and any applicable title deed condition"
- "any departure or consent use that may be required in conjunction with that zoning", also
- "it must have regard for a zoning which is most compatible with that utilization and any departure or consent use that may be required in conjunction with that zoning"

DEA&DP's comment is that zoning determination can only be submitted if the lawfull zoning of a property cannot be established. This is not supported, as a Municipality is empowered to assess an application for the determination of a zoning if evidence can be submitted that there are consent uses or departures which are required in conjunction with the applicable zoning to confer the most appropriate land use.

Town Planner's response

The applicant is quoting the Overstrand By-Law on Municipal Land Use Planning, 2015 with regards to the determination of zoning. The first determination of the allocation for the residential building should then have been done in 2001, when the Section 8 Zoning Scheme was applicable. An Open Space Zone (Nature Reserve Zoning) was then allocated to the erf, which the applicant do not contest.

The section 8 Zoning Scheme Regulations did not make provision for any consent uses, but did allow for tourist accommodation in terms of the zoning. This then would have been the only form of accommodation that could have been allowed which is compatible with the zoning.

The context that a departure is used in terms of the By-Law of 2015 would not relate to land uses, as a departure for land use would only have been valid for five (5)

years. The proposed "dwelling unit" use could therefore also not have been dealt with as a departure.

Objection 12

It would appear from the submission that the existing structure was a lawful building prior to the change in zoning in 2001, although the original use of said building is undetermined. In the absence of any conditions that confirm that a dwelling house is allowed, the structure would have had to be interpreted as a structure allowed within the definition of a "nature reserve". As such, this Directorate does not support the applicant's supposition and is of the opinion that the new zoning should, at best, have included a consent use for a tourist accommodation unit.

Applicant's response

DEA&DP submits that at best a consent use for tourist accommodation ought to have been inserted. DEA&DP in principle agrees with the notion that a consent can be inserted in a determination of zoning application, which contradicts the first extract of their letter.

Town Planner's response

The applicant's interpretation of DEA&DP's comments is not correct. DEA&DP is of the opinion that when the property was rezoned in 2001 a specific zoning was allocated to the land, which was never contested. At that stage the Section 8 Zoning Scheme Regulations did not make provision for a dwelling unit on Open Space Zone III properties, and also not for any consent uses to such effect. Therefore no dwelling unit right was applicable after 2001. Note that this was all part of a rezoning application, and not contested by the owner/applicant at that stage. The opinion is that the stone cottage could only have been accommodated as tourist accommodation.

DEA&DP's further comment was that when the new Zoning Scheme was approved in 2013, the only way to accommodate the tourist accommodation (stone cottage) was as a consent use. This cannot be compared to a possible "allocation" in 2001, and would only have been applicable after 2013.

The applicant's opinion is therefore not supported.

Objection 13

It should be noted that had the land been transferred to the Berghof Home Owners Association, the subsequent development of "open space" for residential purposes would have been prevented.

Applicant's response

The property has not been transferred to the Berghof Home Owners Association (HOA) which prevents an open space being used for residential purposes.

Town Planner's response

The property is still in the name of a private person, and there is no condition in the original approval that stipulated the property be transferred to the Berghof HOA.

The applicant's opinion that there is no provision in the Constitution preventing an open space being used for residential purposes are not concurred with. Firstly the Berghof HOA Constitution is not applicable to Erf 4725, therefore it would not stipulate anything about such property. Secondly, there are an open space and Management Plan applicable to Erf 4725 and all other open spaces in Berghof, but this document also does not allow open spaces to be used for residential purposes.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

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

See Paragraph 7 above.

Internal and External Departments

The application is supported by all internal municipal departments.

It is to be noted that the Western Cape Government : Environmental Affairs and Development Planning is not in support of this application.

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

10.1 Background

N/A

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

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

The objectives relating to:

Spatial Justice
N/A

Spatial sustainability
The application is outside the urban edge but will not impact on agricultural land. It is zoned Nature Reserve (private), and although a residential building with a large footprint and scale would not necessarily trigger environmental activities, it is unclear what its impact would be on the Nature Conservation value of the property.

Efficiency
The property is surrounded by an existing road network and services infrastructure and will require no additional infrastructure to be developed.

Spatial Resilience
N/A

Good administration
Good procedure was followed and with a good public participation.

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

Same as Point 10.2 above.

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

The property is indicated outside the urban edge and earmarked for Conservation Agricultural Buffer in terms of the Overstrand Municipal Wide SDF, 2006 allocation, and is also indicated outside the urban edge and in a Mountain Management Zone in terms of the Overstrand Growth Management Strategy, 2010.

In terms of the Integrated Development Framework, 2014, the property is also indicated outside the urban edge, and indicated as a green area.

This means that, considering the Nature Reserve Zoning of the property, the development of the site should be controlled by an Environmental Management Plan, as were approved in 2001. The interpretation of the Environmental Management Plan will further be discussed under the heading Desirability.

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

N/A

10.6 Impact on Municipal engineering services

The area is already serviced and sufficient bulk capacity exists to accommodate the application.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The Nature Reserve zoning is not contested. The applicant is of the opinion a "residential dwelling" right as a consent use should have been allocated to the property in 2013 in terms of the Overstrand Municipal Zoning Scheme. This will be discussed in detail under the Desirability heading.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12. THE DESIRABILITY OF THE PROPOSAL

Erf 4725, Onrustrivier was created from the approval of the rezoning and subdivision of Erf 3710, Onrustrivier by the Department of Planning, Local Government and Housing on 20 March 2000, when dismissing an appeal which was received against the Greater Hermanus Municipality's decision.

One (1) of the conditions of approval was that the layout plan be amended and the following be provided:

"2.1.2 The Nature Reserve erf along the 100m contour line, the zoning of the erf to be Open Space Zone III."

Two (2) other conditions also make reference or have relevance to the same portion, being as follows:

"2.3 that a Development and Management Plan for the Open Spaces be drawn up with the help of an environmentalist be approved by Council."

"2.5 that subdivision only be allowed to the 100m contour line and that the area above the 100m contour line be zoned Open Space Zone III (Nature Reserve)."

The developer did submit the amended layout plan, to be developed in phases, Erf 4725 forming part of Phase 1B. The developer also submitted an Open Space and Management Plan in March 2001.

The reason the applicant has submitted this application for determination of zoning is not to rectify the Nature Reserve zoning, but in their opinion for the Municipality to rectify an "error" made in not acknowledging "existing historical residential rights" the property owner wants to act on. The applicant motivates this by way of considering historic planning approvals, Zoning Schemes and the Open Space and Management Plan previously referred to.

To consider this application it is firstly important to consider the applicant's path to apply for determination of zoning, to determine if there is validity to the applicant's opinion about vested rights. Only thereafter can an opinion be provided if the correct path was used and then if the desirability factor should be evaluated.

The approval granted in March 2000 led to the allocation of an Open Space Zone III (Nature Reserve) zoning to Erf 4725, which is not debated by the applicant.

The Section 8 General Zoning Scheme Regulations (approved in terms of LUPO, 1985) was applicable to the Onrustrivier area in 2000.

The definition of Open Space Zone III (Nature Reserve) reads as follows:

"Nature Reserve means a national park, or some other nature park which is in the ownership of a public authority or has been declared as such in terms of legislation and remains in private ownership; it consist of an area which is utilized as a game

park or reserve for fauna and flora in their natural habitat and includes accommodation facilities for tourists and holidaymakers."

It is to be noted that the primary uses allowed in terms of the relevant zone was only "Nature Reserve", and no consent uses were allowed.

In 2013 the new combined Overstrand Municipality Zoning Scheme Regulations, including the zoning map, was approved.

In terms of the new Zoning Scheme, Erf 4725 was allocated an Open Space Zone 1: Nature Reserve (OS1) zoning. This zoning is also not debated by the applicant.

<u>In terms of the Open Space Zone 1 : Nature Reserve (OS1) zoning the following uses are allowed:</u>

Primary uses: Nature Reserve

Consent uses: dwelling units, environmental facilities, rooftop base station, transmission tower, tourist accommodation, tourist facilities, utility service, any other related uses permitted by Council.

<u>The definition of Nature Reserve in terms of the Open Space Zone 1 : Nature Reserve (OS1) read as follows:</u>

"nature reserve means a national park or environmental conservation area that has been declared as a nature reserve in terms of legislation whether in public or private ownership, for the purpose of conserving and managing wild life, flora and fauna, in a predominantly natural habitat, it includes conservation use but does not include tourist facilities or tourist accommodation."

The applicant's opinion is that due to the fact that there was an existing stone cottage on the property prior to the application for land use rights in 1998, these rights should have been indicated as a consent use for a dwelling unit in 2013.

However, when the land use application was approved in 2000, no specific reference was made in the approval to allow a dwelling unit on the property. In 2000 the Section 8 Zoning Scheme allowed for tourist accommodation as a primary right, but made no provision for dwelling units in any format. The alleged "dwelling unit" should have been dealt with at that stage, and the right should then still have had to comply with the primary uses allowed. The primary use however did not allow for dwelling units, only tourist accommodation

The comment of the Western Cape Government : Environmental Affairs and Development Planning (EA&DP) also had to be obtained, as in terms of LUPA all applications outside the Municipal Urban Edge must be forwarded to such Department for comments. That Department is also of the opinion that any rights for a "dwelling unit" should already have been dealt with in 2000, and due to the fact it was not it would have had been interpreted as a structure allowed within the definition of a Nature Reserve (in terms of the then Section 8 Zoning Scheme Regulations). The opinion is that the new zoning (2013), at best, should have included a consent use for a tourist accommodation unit.

The Town Planner concurs with the abovementioned opinion from EA&DP.

The applicant also further motivates his/her opinion in terms of the information found in the Open Space and Management Plan.

The applicant motivates that relevant authorities have the right to stipulate land use restrictions and additional provision, and quote provisions contained in a relevant guide plan that is in force in terms of Section 6A of the Physical Planning Act 1967. It appears the applicant is under the impression that the Open Space and Management Plan is a "Guide Plan" in terms of the Physical Planning Act, 1967, which is incorrect.

The applicant is of the opinion that the Open Space and Management Plan clearly show the vested residential rights and also is of the opinion that rights are also provided to upgrade and expand the dwelling unit.

In the mentioned document under "Existing Site Analysis" under Point 2.1 it reads as follows:

"This erf is situated on the highest point of the site presently utilized for residential purposes (Stone Cottage) and as a lookout and picnic facility".

Note that abovementioned uses referred to uses at that specific time found on-site prior to development.

Under Heading 3 – Development and Management Proposals 3.1, General, the following comment is made:

"Erf 107 will function in the same fashion with the exception that the zoning will be Open Space Zone III (Nature Reserve) in order to comply with the policy of Council to restrict development to 100m contour line and zone the land above the 100m contour to nature reserve."

On the Plan on Page 102 of the said document it indicates "Existing Stone Cottage to be upgraded".

On the Development Schedule (Point 3.2) in the document under Development Proposals "clearing all alien vegetation" and "Retain cottage" is indicated, and under Management Proposal it is indicated "Annual removal of new plant growth", "prevent erosion" and "monitor fynbos growth".

Also under Point 4 : Implementation it reads as follows:

"The previous schedule indicating the development and management proposals also indicates the phasing of the development.

It should be noted that each open space erf would be developed simultaneously with the particular construction phase within which the particular open space is situated."

Considering the above the development proposals regarding the Stone Cottage was purely to "upgrade" the cottage, and no mention is made of extend or expansion. There is also no specific extension footprints indicated on the proposal plan.

Secondly, in the Development Schedule it is only indicated "retain cottage" and "clear alien vegetation". Therefore the interpretation is that the Open Space and

Management Plan only made provision for the upgrade of the cottage within its existing footprint and height to a higher quality cottage.

In the Implementation Plan it is also indicated the development proposals on each open space should be developed simultaneously with the particular construction phase. Open Spaces must usually be formalized prior to any transfers in a development. If this interpretation is followed, development proposals should have been finalized prior to any erf transfers in Phase 1B. Note that most erven have already been transferred.

Considering the facts regarding the interpretation of the planning approvals and Zoning Schemes by the writer and Department of Environmental Affairs and Development Planning, and also the writer's opinion regarding the interpretation of the Open Space and Management Plan of 2001, the applicant's opinion that an error was made by the Municipality not to allocate a consent use for a dwelling unit on Erf 4725 in 2013, is not supported.

Considering the facts and opinions, it is the opinion that there is a historic tourist accommodation unit on Erf 4725, which is limited to its existing footprint and height. Therefore if it is the intention of the landowner to expand the historic cottage, he will have to apply to amend the existing limitations.

In terms of the Overstrand Municipality Zoning Scheme 2013, the following development rules are a requirement in terms of the Open Space Zone 1 : Nature Reserve (OS1) zone:

*"**Development Rules***

12.1.2 The following rules apply:

(a) A site development plan must be submitted in terms of 16.3 to the satisfaction of Council;
(b) Council may require an environmental study and/or environmental management plan in terms of 16.4;
(c) The Council must determine the development rules applicable to a land unit, when:
  (i) The zoning of a land unit to this zone is approved;
  (ii) Any environmental impact report is considered;
  (iii) Any environmental management plan is considered;
  (iv) Any site development plan is approved;
  (v) Prior to the approval of any building plans or engineering services; and
(d) Structures/buildings may be erected with the written consent of Council, should Council deem it necessary, provided that Council may impose conditions relating to design, architecture, and development parameters."

It is therefore the opinion that for the Municipality to consider any extensions to existing buildings, new buildings or facilities on an Open Space Zone I property, a Site Development Plan must be submitted for consideration, and that the Municipality may require an environmental management plan also be submitted.

It is therefore the opinion that the existing application does not comply with the requirement to submit a SDP and also sufficient information to consider impact on the nature reserve site itself, or the surrounding properties.

It must also be noted that objections were received from the Berghof HOA and other objectors regarding lack of information regarding the use, scale, visual impact and architectural style of the proposed extensions to the cottage. Some residents also made the comment that they were under the impression no further building permission would be granted above the 100m contour in the nature reserve. It is clear that a SDP would be required to address the concerns.

The applicant indicated in his motivation that for the owner to implement the new Environmental Management Plan, as submitted with this application, he must know if he could upgrade and expand the cottage from a cost perspective. In terms of the Open Space and Management Plan dated 2001, all alien vegetation had to be cleared. It is therefore not clear how the applicant can motivate that he would only be able to do alien clearing if he can extend the cottage, as the alien clearing was a condition of approval in 2001. This motivation point is actually acknowledgement by the applicant/owner that the original conditions of approval was not complied with, which is problematic.

Considering the above it is the opinion there is no existing "dwelling unit" rights on the property, or rights to expand the cottage to a size of 625m².

The opinion of the EADP is duly noted that a historic tourist accommodation unit right in the form of a consent use could be considered valid on the property considering the historic events. It is however the opinion that should the owner want to amend the existing tourist accommodation, an application for a site development plan be submitted with a clear indication regarding scale, placement, height and visual appearance of any such additions.

13. RECOMMENDATION

1. that the application in terms of Section 16(2)(m) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015 for a zoning determination accommodating the existing cottage on Erf 4725, Onrustrivier as a dwelling unit in terms of a consent use right, which also allow the upgrade and expansion of the cottage up to 625m² in size in extent, **not be approved** in terms of the provisions of Section 61 of the By-Law;

2. that the existing cottage be accommodated as a consent use as a tourist accommodation unit, limited to its existing footprint and height, and that a zoning certificate to such effect be provided to the property owner;

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 decision.

14. REASONS FOR RECOMMENDATION

- The original planning approval in 2000, which led to the creation of Erf 4725 only indicated that the erf be zoned for Open Space Zone 3 (Nature Reserve) purposes, and included no application to accommodate a dwelling unit.
- The erstwhile Open Space Zone 3 (Nature Reserve) zoning in terms of Section 8 of erstwhile LUPO, 1985 did not provide for any dwelling unit right as a primary or consent use right in terms of such zoning, and only tourist accommodation.
- The Western Cape Government : Environmental Affairs and Development Planning support the viewpoint in the above two bullets, and is of the opinion the

Municipality could therefore not have allocated a dwelling unit right on the property as a consent use in 2013 when the new Overstrand Municipality Zoning Scheme Regulations (and map) was approved.

- The Open Space and Management Plan as submitted in 2001, which was submitted to comply with as a condition of approval, made reference to residential use as the use on site when the document was prepared. It later clearly in the development and management proposals refers to "restricting development to the 100m contour line". It also refers to "upgrade of the cottage" and "retain cottage", with no wording expressing the extension or enlargement of the cottage. No additional footprint extensions are also indicated on the plan proposals for Erf 4725. The opinion that the Open Space and Management Plan (2001) provide the land owner with rights for a dwelling unit and expansion rights to build up to 625m² in size, is not supported.
- The viewpoint of EA&DP that the existing cottage could possibly be accommodated as a tourist accommodation unit under the Open Space Zone I : Nature Reserve zoning in terms of the Zoning Scheme Regulations approved in 2013 can be supported, subject thereto that it only accommodates the existing cottage in its existing scale and footprint, and that for any possible future extension application be made for such additional rights by way of the submission of a site development plan and all necessary information to consider footprint, scale, height, visual impact and architectural style and impact on surrounding neighbours.
- Objections were received from three (3) surrounding neighbours and the Berghof HOA, with concerns relating to footprint, scale, height, visual impact, architectural style of the proposed extensions, the impact on their private road, the right-of-way over the open space being used, and also impact on their privacy. Their opinion that due to lack of information it is difficult to consider the impact, and therefore the desirability of the application, is valid concerns and supported.
- The applicant's motivation that the land owner can only do the clearing of alien vegetation as recommended in the newly prepared Environmental Management Plan if he can upgrade and extend the cottage is not considered a valid motivation. The Open Space and Management Plan submitted in 2001 already indicated all alien vegetation was to be removed.
- The applicant's opinion that Erf 4725 have an existing right for a dwelling unit that should have been accommodated as a consent use under the Overstrand Municipality Zoning Scheme in 2013, and that it is the property owners' existing right to construct a dwelling unit of 625m² in extent, has not been proven in the motivation, and therefore the application for determination of zoning cannot be supported.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report & Management Plan
Annexure C:	Layout Plan
Annexure D:	Objections received / and DEA&DP's comments
Annexure E:	Applicant's comments on objections and DEA&DP's comments
Annexure F:	Comments: EADP
Annexure G:	Comments: Eskom
Annexure H:	Comments: Telkom
Annexure I:	Services Report
Annexure J:	Comments : Operation Department
Annexure K:	Old approval letters and Environmental Management Plan

SIGNATURE

AUTHOR:

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

REGISTERED PLANNER

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

ANNEXURE A

Plan 1 : Locality Plan
Erf 4725 Onrustrivier

Subject property 1.6557 ha

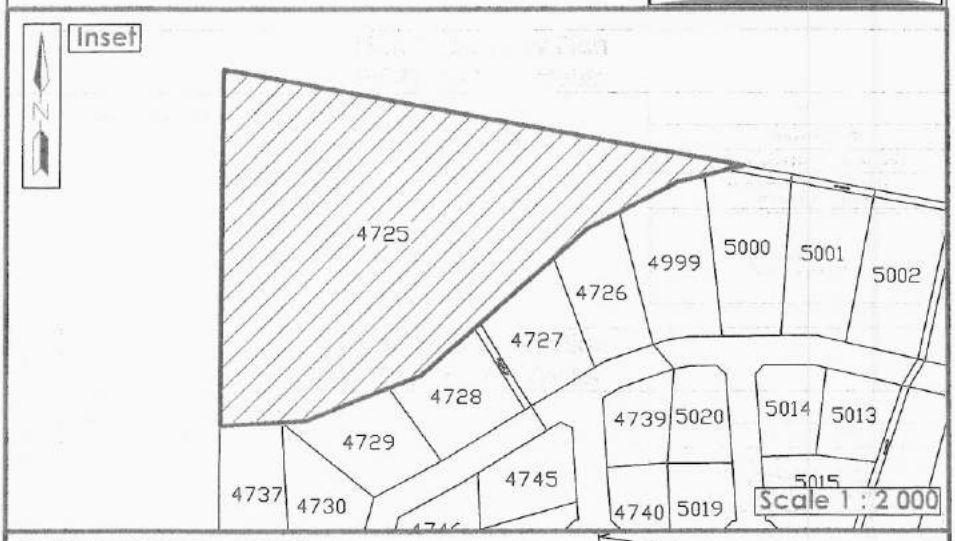
May 2019

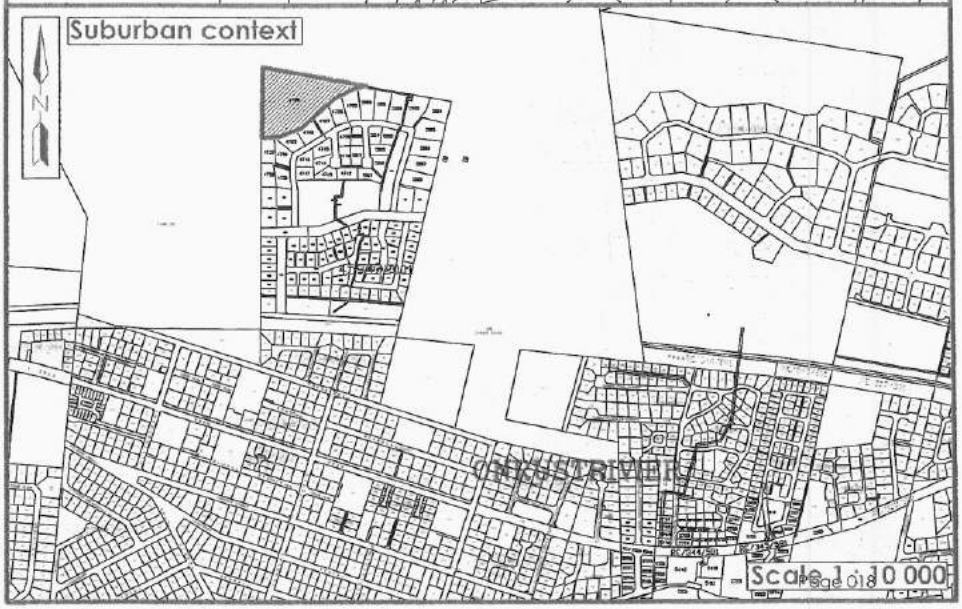
File number 19/002

Plan prepared by: Realtehile Jankie

All distances are approximate and subject to a survey

WRAP





2. ABBREVIATIONS

OMZS	Overstrand Municipality Zoning Scheme, 2013
SDF	Overstrand Municipality Spatial Development Framework, 2006
OM	Overstrand Municipality
OM By-Law	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015
SDF	Overstrand Spatial Development Framework, 2006
OMGMS	Overstrand Municipal Growth Management Strategy, 2010
LUPA	Land Use Planning Act, 2014
LUPO	The Regulations promulgated in terms of the Land Use Planning Ordinance, 1985
DEADP	Western Cape Department of Environmental Affairs and Development Planning
SDP	Site Development Plan

3. SUMMARY OF STATUS QUO PROPERTY DETAILS

Applicant	WRAP (Wright Approach Consultancy)
Registered Owner	Pieter Henderik De Chatillon De Kock
Extent	1,6557ha
Title deed	T73540/2004
Restrictive Conditions	None
Zoning Scheme	OMZS
Current land use	Dwelling unit
Current Zoning	Open Space Zone 1: Nature Reserve (OS1)

4. PURPOSE OF THE APPLICATION

The purpose of this application is the following:

4.1 To determine the historic land use rights of the subject property; and
4.2 To evaluate the consistency or inconsistency of the existing zoning rights in relation to historic land uses and land use approvals.

The abovementioned information and following motivation are intended to provide the OM with sufficient information to determine the zoning of the subject property with due consideration of the written evidence submitted with the application.

5. APPLICATION FEES

Section 2.9.1(d) of the OMZS highlights that an applicant is exempt from paying application fees when the application relates to the correction of an error which appears on a zoning map. No application fees are therefore paid for this application as this application is intended to illustrate to the OM that the historic land use rights which vested in the subject property have not been incorporated into the current zoning of the subject property.

6. HISTORIC LAND USE RIGHTS

6.1 Historic Agriculture Zone 1 zoning

Erf 4725 Onrustrivier was subdivided from Erf 3710 Onrustrivier, which was zoned Agriculture Zone 1. The subdivided portion now known as Erf 4725, was at the time of submission of the application for rezoning and subdivision by Plan Consult prior to 2001, already improved with a dwelling unit (refer **Annexure C, P41**).

6.2 Application by Plan Consult and initial town planning approval

An application for the rezoning and subdivision of the Remainder of Erf 3710 Onrustrivier, was submitted to the Greater Hermanus Municipality by Plan Consult in 1998. The application was approved and after an appeal was submitted against the approval of the application by the Greater Hermanus Municipality, the Department of Planning, Local Government and Housing on 20 March 2000, dismissed the submitted appeal against the decision of the Greater Hermanus Municipality and approved the application for rezoning and subdivision of Erf 3710 Onrustrivier, subject to certain conditions (refer **Annexure C, P78**).

Condition 2.5 of the Department of Planning, Local Government and Housing approval states the following:

"That subdivision only be allowed to the 100m contour line and that the area above the 100m contour line be zoned Open Space Zone III (Nature Reserve)."

Plan Consult submitted a report and plans in February 2001 to comply with the conditions of approval, particularly pertaining to the condition that Erf 4725 Onrustrivier be zoned Open Space Zone 3: Nature Reserve as it is located above the 100m contour.

The *Proposed Open Space Development Management Plan* dated February 2001 submitted by Plan Consult highlighted the following with reference to Erf 4725 Onrustrivier (refer **Annexure C, P88**):

a. The subject erf is located on the highest point of the subject site and was utilised for **residential purposes (stone cottage)** long before the town planning application was submitted (refer **Paragraph 2.1, P92 and Photo 1 on P93** of the report);
b. Plans submitted with the *Open Space Development Management Plan* indicate that the cottage **was to be upgraded**, which serves as proof that there was an existing stone cottage (dwelling) on the property; (refer **Plan A (Erf 107) Development Proposals, P102 as well as Plan A Site Analysis, P96** of the report) and
c. The plans also indicate a lookout post with picnic and braai facilities to be retained (refer **Plan A (Erf 107) Development Proposals, P102**).

The amended subdivision plan which was endorsed by the OM, indicates a block where the cottage is located which illustrates that the cottage and the residential land use rights where acknowledged and not contested by the OM (refer **Annexure C, P111**). The letter of approval which was issued, however contained no conditions of approval confirming these rights, which deprived the property from the existing land use rights (dwelling) on the subject property.

Considering that the intent to upgrade and expand the existing cottage was illustrated in the plans submitted by Plan Consult and not contested by the OM, these land use rights are therefore not nullified. This illustrates that it has always been the intention to upgrade and increase the footprint of the cottage to a dwelling unit which will have a number of bedrooms, bathrooms and a garage. The intention was always that the scale in terms of coverage, bulk and height to be within the same parameters as other properties in Berghof.

To illustrate the above in more detail - erven to the north of Berghof, adjacent to the subject property, range from 1000m² to 1500m². When coverage of 50% is applied, the permissible coverage of the dwellings can range from 500m² to 750m² or an average of 625m². The intention has therefore always been to upgrade and expand the footprint of the cottage to be in harmony with the adjacent erven and not exceed 625m² coverage, prevalent to the north of Berghof.

The following planning controls and land use restrictions were applicable on the subject property when the amended application was approved:

Open Space Zone III

Primary uses
Nature reserve

Consent uses
None

The relevant authorities shall in each case, depending on unique circumstances, ***stipulate land use restrictions and additional provisions****.*

The provisions contained in a relevant guide plan that is in force in terms of section 6A of the Physical Planning Act, 1967 (Act 88 of 1967), shall mutatis mutandis apply as additional land use restrictions in this zone.

The definition in LUPO of *nature reserve* at the time was:

"Nature reserve means a national park, or some other nature park which is in the ownership of a public authority or has been declared as such in terms of legislation and remains in private ownership; it consists of an area which is utilised as a game park or reserve for fauna and flora in their natural habitat and includes accommodation facilities for tourists and holidaymakers."

Considering that the plans which were submitted by Plan Consult and approved by the OM which depicted the location of the cottage as a residential land use right, the OM was empowered by the development rules of the Open Space Zone III zoning to stipulate additional provisions. **The additional provisions should have included the land use rights of a dwelling unit for the existing cottage by means of a departure.**

6.3 Repealed Onrustrivier Structure Plan

The repealed Onrustrivier structure plan highlights on page 36 that the 100m contour was used to limit **any new developments in Onrustrivier**. The subject cottage already existed when the Onrustrivier Structure Plan was still in force and the structure plan could therefore not deprive the

properly owner of existing land use rights and the existing cottage cannot be regarded as *new development*.

7. CURRENT ZONING

With the promulgation of the Overstrand Municipality Zoning Scheme, 2013, a new zoning of Open Space Zone 1: Nature Reserve (OS1) was awarded to the subject property. The new zoning however did not incorporate the existing historic right to have a residential dwelling unit on the subject property. Considering this discrepancy between historic land use rights/approvals and the existing zoning rights, a zoning determination in terms of Section 13 of the By-Law, is therefore applied for.

7.1 Lawful utilisation and error in the zoning

When the Municipality receives an application for determination of zoning in terms of Section 13 of the By-Law, the Municipality must consider the lawful utilisation of the land or the purpose for which it could be lawfully used immediately before the commencement of the By-Law and also consider the zoning compatible with the utilisation and any **departure or consent use** that may be required with that zoning.

Considering the above, the subject cottage was historically, and is still lawfully used for the following:

Order of the land use rights	Land use right	Applicable zoning
1	Dwelling-house	The subject cottage was lawfully used for residential purposes before 2001, when the property was zoned Agriculture Zone 1 and it was not prohibited from being upgraded or expanded.
2	Dwelling unit	The subject cottage was lawfully used between 2001 and 2013 as a dwelling unit for residential purposes when it was zoned Open Space Zone III. The OM was empowered and suppose to insert the land use of a *dwelling unit* as a *departure* in order to comply with the final decision of the Department of Planning Local Government and Housing on the appeal. The dwelling unit was shown to be upgraded with expansion areas and was approved and not contested by the OM.
3	Dwelling unit	The subject cottage is currently used as a dwelling unit under the existing zoning of Open Space Zone 1: Nature Reserve (OS1) and with the promulgation of the 2013 zoning scheme, a *consent use* for a *dwelling unit* should have been part of the zoning of the subject property. The plans which show that the subject cottage will be upgraded which were approved by the OM are still valid under the current zoning.

The land use for a dwelling unit has historically existed lawfully on the property as indicated on the endorsed subdivision plans, approved by the OM. The owner of the subject property cannot

be deprived of the land use of a *dwelling unit* which historically existed on the subject property, as illustrated above.

7.2 Consent use required

Section 13.(2)(c) highlights that when the OM considers an application for the determination of zoning, it must also have regard to any *departure or consent* that may be required in conjunction with the zoning.

It has been motivated in the previous subsection that a *consent use* for a *dwelling unit* had to form part of the zoning determination on the subject property.

On the plans included in the *Proposed Open Space Development Management Plan* dated February 2001, submitted by Plan Consult, it was clearly indicated: "*Existing Stone Cottage to be Upgraded*".

8. DESIREABILITY

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

The subject stone cottage (dwelling unit) historically existed, and the surrounding property owners have become accustomed to the visual and land use impact thereof. The dwelling unit is also compatible with the residential land uses which exist south of the subject property. Alterations and appropriate expansion of the building footprint of the subject dwelling unit will be in the public interest as it will enhance the visual look of the subject property. The determination sought from the OM that the existing cottage is regarded as a dwelling unit will also contribute immensely to the culture of maintaining and improving properties in Onrustrivier which is in the public interest. The determination sought that the existing cottage is regarded as a dwelling unit will also not deprive adjacent property owners of any land use rights which are enjoyed as it all does not constitute a noxious land use. The environmental restoration and rehabilitation of the property and upgrading of the cottage, which the subject property owner intends to institute, should this application be approved, is in the interest of the natural- and built systems in the area.

9. BOTANICAL STUDY AND ENVIRONMENTAL MANAGEMENT PLAN

9.1 Management plan

When the application for rezoning and subdivision was finally approved in 2000, Council made it a condition of approval that an *Open Space Development Management Plan* must be compiled for the subject property. This condition of approval was also endorsed by the Department of Planning, Local Government and Housing.

9.2 Objective of the management plan

As almost 18 years have passed since the submission of the previous Open Space Development Plan, the applicant requested Amida Johns to compile a management plan specifically for Erf 4725 in order to determine which areas of the property contains conservation worthy vegetation, which areas need to be cleared etc. It was also important to know if the area immediately adjacent to the existing stone cottage (dwelling house) is environmentally sensitive. At present the area contains a number of invasive alien plant species such as Eucalyptus trees. According to the Management Plan compiled by Amida Johns, the expansion of the existing dwelling unit will lead to surrounding alien plant species to be removed which is a positive environmental impact (refer **Annexure D**). The removal of the trees would also improve the water availability and full sun conditions required for the natural vegetation to improve and remain as a viable and functioning habitat unit (refer **Annexure D**).

It is therefore evident that the area immediately surrounding the cottage is not conservation worthy and functions as a "werf "to the cottage and any expansion within this area would not impact on any natural conservation worthy areas.

The management plan further aims to provide guidelines and a framework within which the nature reserve area needs to be managed.

In Paragraph 3.3, P120 of the Management Plan, under *Threats and Opportunities, ...The expansion of the existing building into this area particularly with the upgrade of the road to the stone cottage on site* is listed as a threat, but it is qualified by... *the actual expansion of the cottage itself would not affect this section.*

Under 4.1 P121, *Objectives* it is stated that the *...maintenance and upgrading of the stone cottage with associated infrastructure confined to the cottage itself and the hardened area around the structure. The portion of the entrance road to the cottage within the site should preferably not be widened.*

The Management Plan contains strategies which pertain to clearing alien vegetation and management of fire threats. The implementation of the management plan would increase biodiversity, increase water quality and quantity, increase soil health, reduce erosion, improve nutrient recycling, increase surrounding property values and improve the aesthetics of the surrounding area (refer **Annexure D**).

9.3 Implication of the implementation of the management plan

The application submitted for the determination of zoning which also contains the Management Plan for the subject property, illustrates the positive intent of the property owner. The intent is to ensure that the historic land use right of a dwelling unit which vested on the property is determined (confirmed) and that the property is managed in such a way that all alien vegetation is eradicated and managed not to regrow. The implementation of the management plan is therefore in the interest of the owner of the subject property, and the surrounding landowners and general public.

It is however imperative to the applicant that, in order to implement the management plan, he has the assurance that the existing stone cottage (dwelling unit) on the subject property has the required land use rights. This will justify the cost associated with the implementation of the management plan, as the cottage can be upgraded to such a level that it can be occupied

by a family on a permanent basis, enjoying the rehabilitated natural environment that surrounds it.

10. DEVELOPMENT RULES

Compliance or non-compliance of the proposal with the development rules applicable to the OS1 zoning and the consent use for a dwelling unit which is sought are herewith illustrated:

Open Space Zone 1: Nature Reserve (OS1)		
	Development rules	**Application**
Primary uses	Nature reserve	Fauna and flora
Consent uses	**dwelling units**, environmental facilities, rooftop base station, transmission tower, tourist accommodation, tourist facilities, utility service, any other related use permitted by Council.	It is requested that the zoning of the property is determined as Open Space Zone 1: nature Reserve (OS1) with a consent use for a dwelling unit.

Development rules

A site development plan must be submitted in terms of 16.3 to the satisfaction of Council.
A site development plan was submitted with the original application.

Council may require an environmental study and/or environmental management plan in terms of 16.4.
Although an Open Space Development Plan was submitted in compliance with the approval of the original application, a management plan for the subject property is also submitted with this application (refer **Annexure D**).

The Council must determine the development rules applicable to a land unit, when.

(i) **The zoning of a land unit to this zone is approved.**
It is motivated that the OM resolve that a right for a dwelling unit exists on the subject property.

(ii) **Any environmental impact report is considered.**
The existing cottage currently has no detrimental impact on the environment as illustrated in the management plan (refer **Annexure D**).

(iii) **Any environmental management plan in considered.**
A management plan is submitted with this application for the consideration of the OM and other competent authorities.

(iv) **Any site development plan is approved.**
A site development plan was approved with the original application which illustrates that the cottage was going to be upgraded with expansion areas shown. Considering the unique history which pertains to the subject cottage, it is requested that Council determine that the existing cottage is a dwelling unit and that the existing cottage, after expansion and upgrade does not exceed a footprint of 625 m² in size.

(v) **Prior to the approval of any building plans or engineering services.**
The subject dwelling unit exists on the subject property and is connected to municipal services. Building plans for any alterations and expansion of the existing dwelling will be submitted to the building control department.

SDF and OMGMS

The current SDF and OMGMS indicates that the subject property is located outside of the urban edge. Considering that the subject cottage and existing residential land use have existed before the SDF and OMGMS were approved, the SDF and OMGMS land use designation can therefore not deprive the subject property of the exiting land residential land use.

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Not registered for VAT

Management Plan

Erf 4725, Berghof Estates, Onrus

Compiled By Amida Johns and Timothy Johns
for: WRAP
HERMANUS 7200

JUNE 2019

PART A

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BACKGROUND

An application for the rezoning and subdivision of Erf 3710 Onrusrivier was submitted to Council and was approved under delegated authority at a meeting of the Executive committee held on the sixth of June 2000. Council subsequently approved the application and one of the conditions was that the erf above the 100m contour be zoned as open Space Zone III (Nature Reserve) and also that a Development Management Plan be compiled for the open Space areas. These conditions were also endorsed by the Department of Planning, Local Government and Housing after the appeal against the proposed development was dismissed by them.

A site analysis for each of a number of sites within the development property was undertaken individually. Plan A for then Erf 107 in the new development involved the now Erf 4725 that is situated above the 100m contour and at the highest point of the newly formed Berghof Estate.

1. INTRODUCTION

This management plan has been undertaken as part of the motivational process for the proposed upgrading of the stone cottage, Stonelee, on Erf 4725 of the Berghof residential estate in Onrus, Overstrand Municipality.

The property, Erf 4725 (here after referred to as the site), has been been zoned as municipal Open Space Zone III 'Nature Reserve' with the development of the Berghof Estate housing complex.
This management plan aims to provide guidelines and a framework within which the reserve area will be managed. Management objectives, scheduling action and guidelines on the management approach are stated. Emphasis is placed on scheduling management actions, assigning responsibility and quantifying cost.

The management plan is a dynamic document that should be updated when necessary.

The Berghof Estate is situated above and to the north of the R43 and above the residential area of Onrus. This is approximately 7,5kms west of Hermanus central. The estate is bound on both sides by undeveloped properties of the lower slopes of the Onrus mountains. Erf 4725 is the north west most property on the estate and is open to the upper northern mountain side.

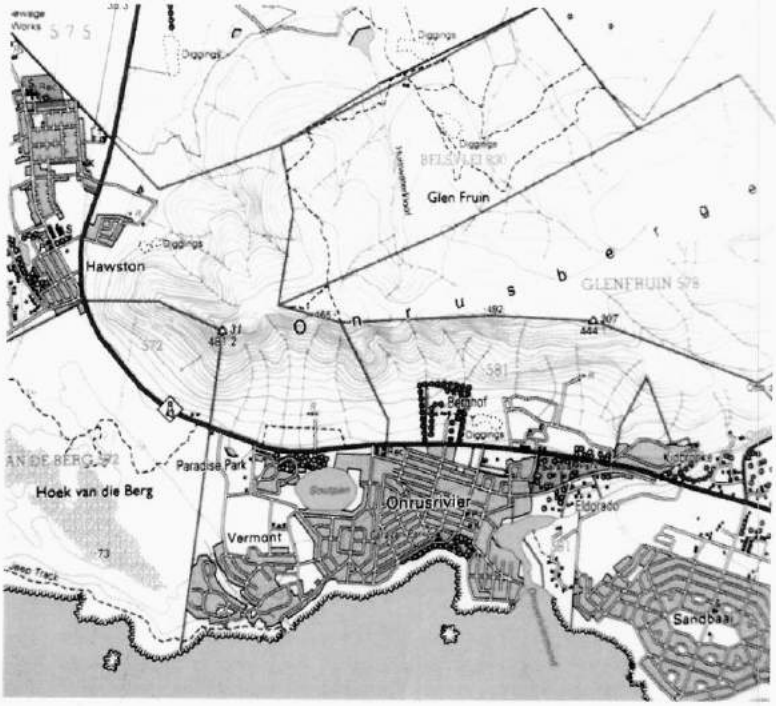

Figure 1. Locality of Erf 4275 and the Berghof Estate within the Onrus area and above the R43 road. The entire estate is situated on the lower slopes of the Onrus mountains with Erf 4275 located above the 100m contour line at the north west corner of the estate.

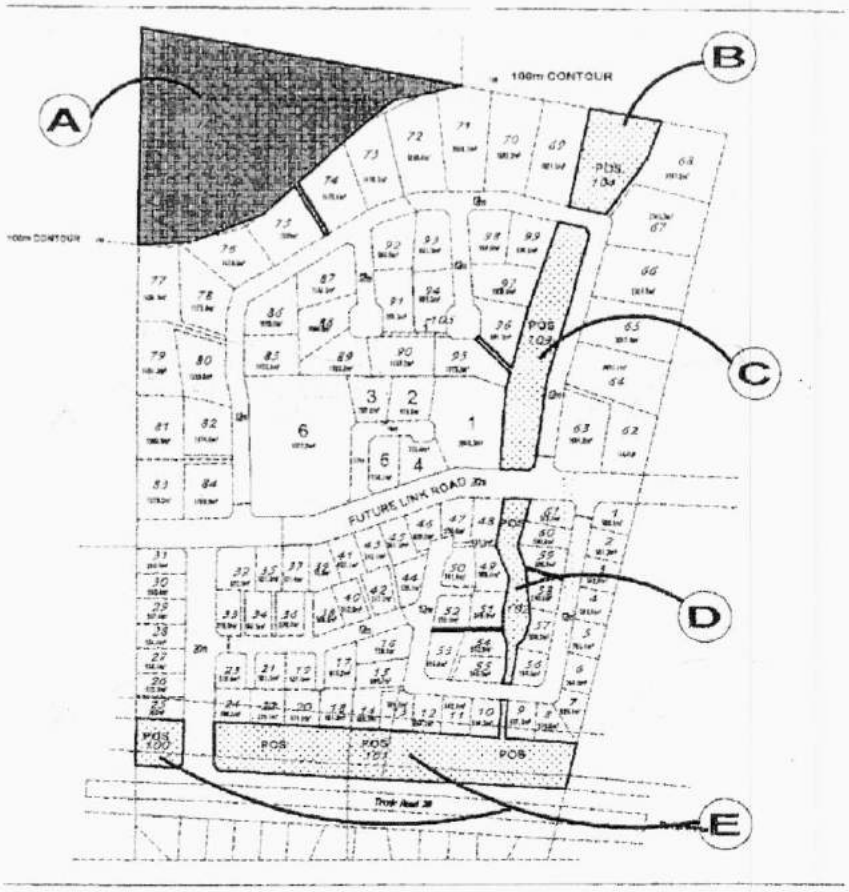

Figure 2: Erf 4725, here indicated by A, situated above the 100m contour of the Berghof Estates site plan. The remaining open space areas B to E are not dealt with in this management plan

1.1 Value of site

The 1,6557ha ha of Erf 4275 contains a relatively small section of approximately xx m2 of Western Coastal Shale Band Vegetation. This vegetation type is listed as Least Threatened as per the Threatened Terrestrial Ecosystems of South Africa Gov. Gazette No. 34809. The condition of the vegetation is medium to low over this section with the better representation of species diversity on the south east of the property.

The remaining larger portion of the property contains no significant coverage of indigenous plant species.

The site remains open to the adjacent mountain vegetation on its northern boundary and joins onto a Critical Biodiversity Area identified as a focus area for protected area expansion in the Overstrand's Integrated Development Plan, 2050: Draft Strategic Environmental Management Framework.

1.2 Purpose of the plan

The plan is to fall into the municipal requirements for the management of Open Space Zone III, Nature Reserve.

An Annual Plan of Operation, APO, is provided as a practical overview of the management actions to be undertaken within the specified year. Costing estimates would be calculated to allow for forward planning and budgeting.
An annual audit is undertaken to establish if the management objectives have been achieved and to make necessary adjustments. The plan will be updated annually after the audit.
The planning approach is thus focused on the recording of specific management actions with monitoring and evaluation of these activities.

The plan is structured in two parts, Part A and Part B. Part A is a 5-year document outlining the overall framework for the open space area including purpose, significance and management objectives. Part B is a plan of implementation as a detailed activity plan. The latter section is to be reviewed annually.

2. DESCRIPTION OF THE PROPERTY

2.1 Legal framework

The Open Space III 'Nature Reserve', Erf 4725, is a property of an area of 1,655ha on the Berghof Estates in Onrus established with the approval and development of the present housing complex. The site falls within the Overstrand Municipal district and is subject to the municipal regulations for the designated zonation. The purpose of The National Veld and Forest Fire Act, (No.43 of 1983) would be applicable to the site to prevent and combat veld fires. The Conservation of Agricultural Resources Act, 1983 (No. 42 of 1983), CARA, is relevant in terms of protecting the water sources, vegetation and the combating of weeds and invader plants.

2.2 Physical context

The site occurs on a moderate slope above the 100m contour but below the 140m altitude line. A water drainage gully runs along the western boundary. This was a dry cannel at the time of this report. The site is bound by the partially developed residential erven of the estate on its immediate south eastern boundary. A fence is in place along this boundary. The northern boundary of the site joins onto the natural mountain vegetation of the steeper slopes of the Onrus mountains with the west open to the adjacent undeveloped property. A stone cottage is located in the centre of the site as well as a very rudimentary open campfire area at the far north west corner. The stone cottage is approximately 50 m2 and is connected to municipal services.

2.3 Vegetation

The site has been mapped by the South African National Biodiversity Institute (SANBI, 2012) as containing Hangklip Sand Fynbos. This vegetation type is Endangered in terms of the NEM:BA National List of Ecosystems that are Threatened and in Need of Protection, 2011 (GN. No.1002) However, when assessed, the southeast section of the site was found to have a vegetation cover of Western Coastal Shale Vegetation. This vegetation type, based on the soil type, would have extended over the entire site with a transition to Overberg Sandstone Fynbos occurring at the northern boundary of the property. Western Coastal Shale Fynbos Vegetation is a fynbos shrubland ecosystem found embedded within the mountain ranges of the Western Cape from an altitude of 50m to 1800m. The vegetation occurs on the clay soils of the shales of the Table Mountain Sandstone, Cederberg Formation, geological group. The vegetation type does not fall into the categories that put it into the threatened groups of Critically Endangered, Endangered or Vulnerable as per the list of Threatened Ecosystems in need of Protection. Its least Threatened status is the result of the achievement of the conservation target of 30% protected in statutory and local authority nature reserves (Mucina and Rutherford, 2006).

The vegetation on this section of the site representing this ecosystem type has species that include *Leucadendron xanthoconus, Erica plukenetii, Erica viscaria, Adenandra villosa, Anemone knowltonia, Searsia rosmarinifolia Thamnochortus sp* and *Restio sp.* The southern most portion of this section has some plants of *Berzelia lanuginosa,* a species indicative of a wetter habitat. No Red List threatened species or species of conservation concern were noted over this section or anywhere else over the site.
A number of invasive alien plant species of *Acacia, Hakea* and *Eucalyptus* occur scattered throughout this section with a cover estimated at 60%. The plants are however still relatively small and easily manageable at the present time.
The vegetation here is considered to have a medium to low condition. This means that the full complement of species expected within this vegetation type and at this locality, are not present, but that a significant number of different species, and actual numbers of each, exist to make the vegetation distinguishable. Also, the state of the vegetation may be maintained and improved with appropriate management actions.

The larger proportion of the site has no significant natural vegetation cover and has well establish mature *Eucalyptus* trees. The northwest section of this area has previously been cleared of the large *Eucalyptus* trees and at present contains only a handful of indigenous plants.

Photo 1. South eastern boundary area of Erf 4725 with low to moderate condition Western Coastal Shale Vegetation. The area has an invasion of *Hakea, Acacia* and *Eucalyptus* species.

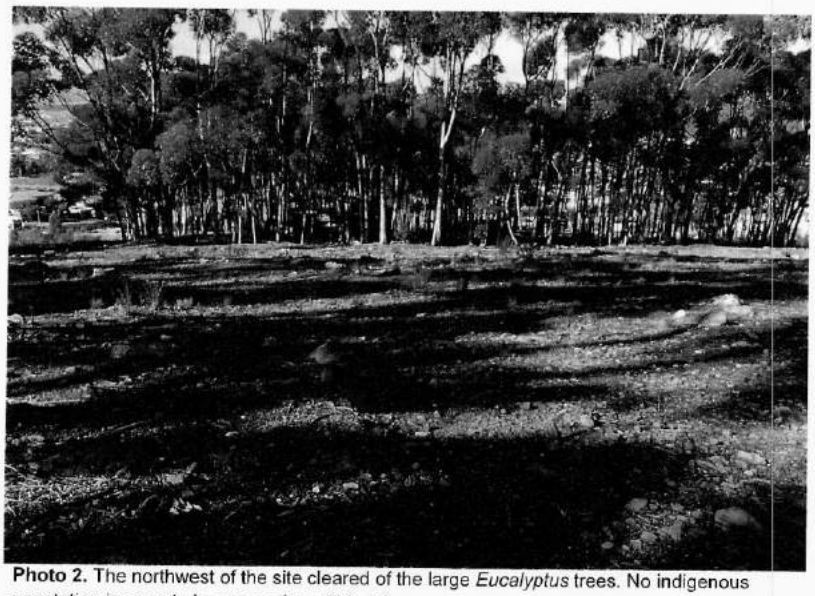

Photo 2. The northwest of the site cleared of the large *Eucalyptus* trees. No indigenous vegetation is seen to be recovering within this area.

2.4 Fauna

No vertebrate or invertebrate information has formally been collected with for this management plan. Two angulate tortoises, *Chersina angulata*, were however observed within the natural vegetation section of the site.

2.5 Socio-political context

Opportunity exist for contract work for alien plant clearing, fire management measures, infrastructure maintenance and development and erosion control and restoration.

2. 6 Facilities and infrastructure

A stone cottage exists at a central point of the site. This is a simple single storey rectangular structure that is immediately surrounded by a bare and compacted ground area and large mature *Eucalyptus* trees. The cottage is connected to connected to the local municipality's services.

3. SUMMARY OF MANAGEMENT

3.1 Management of Invasive alien plants

The plan foresees alien clearing operations on the site. The initial target area would be the portion of natural vegetation on the south eastern boundary line. The three aggressive alien species (*Hakea, Eucalyptus* and *Acacia*) occurring here are to cleared in accordance with the recommended alien removal methods and scheduled timeframe. The clearing plan is to be updated yearly. Funding for the clearing operations would part of the estates budget plan. Clearing of the larger *Eucalyptus* tress is unlikely to result in the regeneration of any significant quality natural vegetation as demonstrated by the clearing activities already undertaken in the north west corner of the site. Clearing of the trees will however prevent the spread of the species into the surrounding natural areas and the natural vegetation on site. Removal of the trees would also improve the water availability and full sun conditions required for the natural vegetation to improve and remain as a viable and functioning habitat unit.

3.2 Fire Management

The invasive alien plant issue of the site is coupled to the management of fire both on the site and on the surrounding mountain areas. Recent fires adjacent to the site have greatly exacerbated the alien infestation here and will continue to be a source of plant re-invasion into the site.

3.3 Threats and opportunities

Threats to the remaining portion of natural vegetation on the south eastern boundary of the site come from;
- inappropriate alien clearing activities.
- spread of alien plants into this section from the *Eucalyptus* on site as well as from the other alien species in the surrounding undeveloped area.
- the impediment of water supply to this section from the larger *Eucalyptus* trees.
- shading from the larger *Eucalyptus* trees.

- exclusion of fire will prevent the regeneration of the vegetation and eventually result in in the vegetation becoming moribund.
- expansion of the existing building into this area particularly with an upgrade of the road to the stone cottage on site. The actual expansion of the cottage itself would not affect this section.

The south eastern border section remains a small viable habitat refuge with the clearing of alien plants within the area and over the remainder of the site. Clearing activities will facilitate water movement, eliminate shading as well as the source of *Eucalyptus* re-infestation.
The site also needs to remain connected to the natural vegetation of the mountain on its northern boundary to allow for the movement of plant species pollinators to and from the habitat on site.
The management of fire as tool for regeneration of the vegetation is difficult and may not be possible.

The remaining portion of the site that is covered in the larger *Eucalyptus* trees remains unlikely to regenerate a significant vegetation cover due to the prolonged period of trees in-situ and consequential loss of soil stored seed and changes in the soils physical characteristics. Planting in of other non invasive indigenous species may be appropriate post clearing.

4. MANAGEMENT FRAMEWORK

The vision for the site as a nature area would be to clear the area of the alien Eucalyptus trees and maintain and possible improve the condition of the natural vegetation along the south eastern boundary. The stone cottage is to remain in situ.

4.1 Objectives

The management objectives included:
- Clearing of alien invasive vegetation in accordance with the Alien Clearing Schedule in the plan included.
- Management of fire for both protection and regeneration as per plan included.
- Maintenance and upgrading of the stone cottage with associated infrastructure confined to the cottage itself and the hardened surface area around the structure. The portion of the entrance road to the cottage within the site should preferable not be widened.

4.2 Site Units

The site has been divided into management units to direct planning and activities described in Part B over the area. This is primarily to facilitate clearing of the invasive alien plants to maintain, and over time, improve the remaining Western Coastal Shale vegetation of the south eastern boundary section of the site.

REFERENCES

Mucina, L. & Rutherford, M.C. (eds) 2006. The Vegetation of South Africa, Lesotho and Swaziland. Strelitzia 19 South African National Biodiversity Institute. Pretoria.

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PART B

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1. ALIEN VEGETATION CLEARING

1.1 Introduction

This management plan provides recommendations for the effective management of Invasive Alien Plants (IAPs) on the site and will allow the proponent to comply with the NEM:BA Regulations for the management of invasive species.

Please note that this plan must be read in conjunction with any other relevant documentation and legislation.

Benefits of Clearing Alien Invasive plants:

- Increased biodiversity
- Increased water quality and quantity
- Increased soil health
- Reduced erosion
- Improved nutrient recycling
- Increased property value
- Improved visibility /aesthetics

Alien Vegetation Clearing	
Objective	To remove all invasive alien plants from the area and sustain follow up and maintenance actions.
Management Actions	• Map the area to determine species and density distribution. • Prioritise areas for clearing • Estimate an appropriate budget for the Alien Clearing Schedule
Responsible Party	The landowner / Home Owners Association
Time frame	Continue with schedule according to Table 1, page 17
Means	• Mechanical and manual clearing as well as the application of herbicide to felled stumps where needed in initial as well as follow-up operations; • Accurate records should be kept of all clearing operations • Alien Clearing Schedule and Map to be used.

1.2 Legislative Requirements

The proponent is required to comply with all necessary legislation, policies and guidelines. These include, but are not limited to:

- National Environmental Management Act (NEMA, Act No. 107 of 1998, As Amended)
- National Environmental Management: Biodiversity Act (Act 10 of 2004), As Amended
    - GN No. R.598 National Environmental Management: Biodiversity Act 10 of 2004: Alien and Invasive Species Regulations, 2014
- Conservation of Agricultural Resources Act (Act No. 43 of 1983)
- Fertilizer, Farm Feeds, Agricultural Remedies and Stock Remedies Act (Act No. 36 of 1947).

GN No. R.598 National Environmental Management: Biodiversity Act 10 of2004: Alien and Invasive Species Regulations, 2014

Category 1a Listed Invasive Species

"(1) Category 1a Listed Invasive Species are those species listed as such by notice in terms of section 70(1)(a) of the Act as species which must be combatted or eradicated.
(2) A person in control of a Category 1a Listed Invasive Species must –
a. comply with the provisions of section 73(2) of the Act;
b. immediately take steps to combat or eradicate listed invasive species in compliance with sections 75(1), (2) and (3) of the Act; and
c. allow an authorised official from the Department to enter onto land to monitor, assist with or implement the combatting or eradication of the listed invasive species.
(3) If an Invasive Species Management Programme has been developed in terms of section 75(4) of the Act, a person must combat or eradicate the listed invasive species in accordance with such programme."

Category 1b Listed Invasive Species

"(1) Category 1b Listed Invasive Species are those species listed as such by notice in terms of section 70(1)(a) of the Act as species which must be controlled.

(2) A person in control of a Category 1 b Listed Invasive Species must control the listed invasive species in compliance with sections 75(1), (2) and (3) of the Act.
(3) If an Invasive Species Management Programme has been developed in terms of section 75(4) of the Act, a person must control the listed invasive species in accordance with such programme.
(4) A person contemplated in sub-regulation (2) must allow an authorised official from the Department to enter onto the land to monitor, assist with or implement the control of the listed invasive species, or compliance with the Invasive Species Management Programme contemplated in section 75(4) of the Act."

Category 2 Listed Invasive Species

"(1) Category 2 Listed Invasive Species are those species listed by notice in terms of section 70(1)(a) of the Act as species which require a permit to carry out a restricted activity within an area specified in the Notice or an area specified in the permit, as the case may be.
(2) Unless otherwise indicated in the Notice, no person may carry out a restricted activity in respect of a Category 2 Listed Invasive Species without a permit.
(3) A landowner on whose land a Category 2 Listed Invasive Species occurs or person in possession of a permit, must ensure that the specimens of the species do not spread outside of

the land or the area specified in the Notice or permit.
(4) If an Invasive Species Management Programme has been developed in terms of section 75(4) of the Act, a person must control the listed invasive species in accordance with such programme.
(5) Unless otherwise specified in the Notice, any species listed as a Category 2 Listed Invasive Species that occurs outside the specified area contemplated in sub-regulation (1), must, for purposes of these regulations, be considered to be a Category 1 b Listed Invasive Species and must be managed according to Regulation 3.
(6) Notwithstanding the specific exemptions relating to existing plantations in respect of Listed Invasive Plant Species published in Government Gazette No. 37886, Notice 599 of 1 August 2014 (as amended), any person or organ of state must ensure that the specimens of such Listed Invasive Plant Species do not spread outside of the land over which they have control."

Category 3 Listed Invasive Species
"(1) Category 3 Listed Invasive Species are species that are listed by notice in terms of section 70(1)(a) of the Act, as species which are subject to exemptions in terms of section 71(3) and prohibitions in terms of section 71A of Act, as specified in the Notice.
(2) Any plant species identified as a Category 3 Listed Invasive Species that occurs in riparian areas, must, for the purposes of these regulations, be considered to be a Category 1b Listed Invasive Species and must be managed according to regulation 3.
(3) If an Invasive Species Management Programme has been developed in terms of section 75(4) of the Act, a person must control the listed invasive species in accordance with such programme."

Conservation of Agricultural Resources Act (Act No. 43 of 1983)
The regulations under this Act provide a list of declared weeds and invaders, which have been divided into three categories, as follows:
• Category 1 plants are prohibited and must be controlled.
• Category 2 plants (commercially used plants) may be grown in demarcated areas providing that there is a permit and that steps are taken to prevent their spread.
• Category 3 plants (ornamentally used plants) may no longer be planted; existing plants may remain, as long as all reasonable steps are taken to prevent the spreading there of, except within the flood line of watercourses and wetlands.

1.3 Site Context & Environmental considerations

The site has an infestation of alien plant species ranging from young plants, coppicing plants to large mature trees. The site is divided into units 1 to 5. See Map 1 page 16.

Clearing Units No's 1 and 5 are primary the rehabilitation areas and therefor, in this context, should be considered as the more sensitive areas in the initial clearing phase. There must be an aim for minimal disturbance of these areas during clearing operations. After clearing these areas must be considered as "no-go" areas to minimise disturbance.

The following points need to be considered with clearing operations;

- Clearing methods are based on standard clearing procedures of the Working for Water operations.
- All cleared material should be transported away to the local refuse disposal site. *Eucalptus* timber may be sold.

- Clear alien material should not be stack on indigenous plants within management units 1 and 5.
- Cleared areas may be susceptible to sheet and gully erosion.

Clearing Units

Map 1. Management alien clearing units on Erf 4725. Units are numbered 1 to 5.

2. ALIEN CLEARING SCHEDULE

The management of alien vegetation should comprise of the following phases:

1. **Initial Clearing Phase:** This refers to the first time an area is cleared of alien vegetation.
2. **Follow-up Clearing Phase:** This refers to the post initial clearing operation to identify and remove remaining or reoccurring plants. This may consist of a number of follow-up clearing operations. Frequency of follow-up clearing is informed through monitoring of the re-growth but is usually annually.
3. **Maintenance Phase:** This phase takes place when the area is completely cleared of all invasive alien plants and requires a walk through and removal of any regrowth and new invader plants once a year.

Table 1: Alien Clearing Schedule

Phase	Timeframe
Initial Clearing Phase	4 – 8 weeks
Follow-up Clearing Phase	Annually from end date of initial clearing
Maintenance Phase	Annually

2.1 Initial clearing phase

2.1.1 Control methods

As a result of the species present the control methodology that should be implemented in this area is an integrated approach including mechanical, manual as well as chemical control methods. The correct methods should be used in each unit to ensure effective management of the species.

The table 2 included below gives the control methods with the codes used to designate the methods to be used. The codes are used in the tables 4 to 8 for each clearing unit.

Table 2: Applicable control methods and codes

METHOD	APPLICATION	CODE
Mechanical control		
Hand pull	Seedlings	H
Tree Popper	Shrubs and smaller trees	TP
Physical felling	Large to medium trees	F
Cutting/slashing	Small to medium bushes	S
Chemical		
Application to cut stump	Coppice species	CS

Manual & Mechanical

The method involves the removal or damage of plants. Mechanical and manual control is labour intensive and can therefore be expensive and, if conducted improperly, could cause severe soil disturbance and erosion. Manual hand pulling, which is one of the recommended control methods through this management plans lifecycle, is cost effective as no machinery or chemicals are needed.

The methods used to clear the naturally vegetated units 1 and 5 should aim to cause minimal disturbance to prevent further loss of indigenous vegetation. Therefore, these areas should use manual hand pulling methods whenever possible as well as cutting/slashing methods on individual alien species as described in table 3 below. In order to further facilitate the rehabilitation process of units 1 and 5, the suggested control method for *Eucalyptus* stands of units 2 and 3 is physical felling also described in table 3. Due to the objective to rehabilitate the area, ring-barking or bark stripping are not considered because they will continue to shade the natural vegetation on the south eastern boundary units of the site.

Table 3: Applicable control methods

Method Description/Instructions		Restrictions
Uprooting: Removal of complete plant from the soil using the	*Hand pull:* Young, seedling invaders can be removed from the soil using hands.	- Health and safety Appropriate equipment

following methods:		- Only appropriate where seedling densities are fairly low. - Stacked responsibly to prevent regrowth
	Tree Popper: used to remove shrubs and smaller trees. It is vital that the root ball and any taproots are totally removed to prevent re-growth.	- Only appropriate where seedling densities are fairly low.
Physical felling	Using a bowsaw for smaller trees with large trees to be felled by a qualified professional team with the appropriate equipment. - Cut stumps as close to the ground as possible. - Coppice species must be treated with herbicides immediately following the mechanical treatment. - The stumps/roots of large trees namely those in parcels 2 and 3, are to remain in situ for soil stabilisation.	- Appropriate equipment - Chainsaw and other machinery operators must have the appropriate training - Wet weather
Cutting or slashing:	Using a loppers, machete or slasher to cut stump: - below the growth node as close to the ground as possible, no more than 10cm above the ground. - No side branches - Immediately apply herbicide to cut stump of coppice species.	- Appropriate equipment - Appropriate training

Chemical control
Chemical control requires the use of a suitable herbicide to prevent sprouting of cut stumps, to poison seedlings or to kill trees in situ without removing them. Contractors using herbicides are required to have a permit according to Fertilizer, Farm Feeds, Agricultural Remedies and Stock Remedies Act (Act No. 36 of 1947) as well as comply with all other relevant legislation/regulations/best practice guidelines. Should there be uncertainty or guidance required in terms of any aspect relating to the use of herbicides, the Working for Water programme can be contracted. Herbicide should be stored and handled in accordance with all applicable legislation to avoid environmental degradation and risks to human health.

Herbicide is **ONLY** to be applied to the cut stumps of coppice species. First, saw the trunk of the plant off at ground level. Then, **immediately** apply herbicide onto the trunk.

Guidelines for the use of herbicide:

- Correctly stored – if applicable
- Must be correct type of herbicide (registered for species)
- Must be correctly applied
- In correct dosage (concentration)
- Correct use of protective equipment
- Don't apply during /immediately before or after raining
- Don't apply in high wind conditions.
- Choose correct application method.
- Use correct spray droplet size. Balance too large / too small droplets to ensure effective cover, reduce run-off, increase absorption potential
- Ensure to use additives (actipron) to ensure herbicide "sticks" to the plant.
- Apply to individual stumps

Biological Control
Biological control already present for *Acacia saligna*. Further biological control would not meet the objects of this management plan and are therefore not considered.

2.1.2 Mapped and tabled clearing units
Clearing units where mapped according to species, age and density. Details of species within these clearing units can be found in Tables 4 to 8.

Clearing Units

Clearing Unit 1
Point: -34,40302062 19,17059220
Photograph reference: Figure 2
Total % of area infested: 60%

Table 4

Species Name	Common Name	NEMBA Category	Estimated % cover of total infestation	Age	Prioritization (/10)	Risk of Invasion	Clearing method
Acacia saligna	Port Jackson Willow	CARA 2002: Category 2 NEMBA: Category 1b	70%	Young	10	Low	S, CS
Eucalyptus cladocalyx	Sugar gum	CARA 2002: Category 2 NEMBA: Category 1b	28%	Young	10	Low	S, CS
Hakea sericea	Silky hakea	CARA 2002: Category 1 NEMBA: Category 1b	2%	Young	10	Low	S, CS
Leptospermum laevigatum	Australian myrtle	CARA 2002: Category 1 NEMBA: Category 1b	Single plant	Young	10	Low	S, CS

Clearing Unit 2
Point: 19.17001,-34.40346
Photograph reference: Figure 3
Total % of area infested: 100%
Table 5

Species Name	Common Name	NEMBA Category	Estimated % cover of total infestation	Age	Prioritization (/10)	Risk of Invasion	
Eucalyptus cladocalyx	Sugar gum	CARA 2002: Category 2 NEMBA: Category 1b	95	Mature	2	Medium	F, CS
				Seedlings	2	Low	H
Eucalyptus conferruminata	Spider gum	NEMBA - Category 1b	5	Mature	2	Medium	F, CS

Clearing Unit 3
Point: 19.16939,-34.40274
Photograph reference: Figure 5
Total % of area infested: 95%

Table 6

Species Name	Common Name	NEMBA Category	Estimated % cover of total infestation	Age	Prioritization (/10)	Risk of Invasion	Clearing Method
Acacia saligna	Port Jackson Willow	Category 2 NEMBA – Category 1b	5	Mature	8	Medium	F, CS
Eucalyptus cladocalyx	Suger gum	CARA 2002: Category 2 NEMBA: Category 1b	95	Mature	8	High	F, CS

Clearing Unit 4
Point: 19.16932,-34.40304

1037

30/42

Photograph reference: Figure 4
Total % of area infested: 50%

Table 7

Species Name	Common Name	NEMBA Category	Estimated % cover of total infestation	Age	Prioritization (/10)	Risk of Invasion	Clearing Method
Acacia saligna	Port Jackson Willow	CARA 2002 Category 2 NEMBA – Category 1b	25%	Seedling	8	Low	H/TP
Eucalyptus cladocalyx	Suger gum	CARA 2002: Category 2 NEMBA: Category 1b	30	Seedling	8	Low	H/TP
Pine pinaster	Pine	CARA 2002: Category 2 NEMBA: Category 1b	25	Seedling	8	Low	H/TP
Hakea sericea	Silky hakea	CARA 2002: Category 1 NEMBA: Category 1b	20	Seedling	8	Low	H/TP

Clearing Unit 5
Point: -34,40378410 19,16936557
Photograph reference: Figure 6
Total % of area infested: 35%

Table 8

Species Name	Common Name	NEMBA Category	Estimated % cover of total infestation	Age	Prioritization (/10)	Risk of Invasion	Clearing Method
Acacia saligna	Port Jackson Willow	CARA 2002 Category 2 NEMBA – Category 1b	70%	Young	9	Low	S/F, CS
Eucalyptus cladocalyx	Sugar gum	CARA 2002: Category 2 NEMBA: Category 1b	20%	Young	9	Low	S, CS
Pine pinaster.	Pine	CARA 2002: Category 2 NEMBA: Category 1b	5%	Young	9	Low	F
Hakea sericea	Silky hakea	CARA 2002: Category 1 NEMBA: Category 1b	5%	Young	9	Low	H

2.1.3 Clearing Unit Ordering

Clearing unit priority and ordering was determined using species, species age, infestation levels, as well as environmental context. Clearing should start with the clearing unit ranked as priority 1, second clearing unit to be cleared is then priority rank 2, and so on. The order of priority clearing is shown in Table 9 below.
The initial clearing of invasive alien plants should commence within the natural vegetation units and then proceed along the northern and western boundary of the site to prevent further spread and further loss of the indigenous vegetation.

Table 9: The order of priority clearing for the management units identified on site.

Priority rank	Parcel
1	Clearing unit 5
2	Clearing unit 1
3	Clearing unit 4
4	Clearing unit 3
5	Clearing Unit 2

2.2 Follow up clearing phase

Once initial clearing phase is completed, the follow-up clearing phase can begin. This phase would involve the manual hand pulling of seedlings and small plants that have been overlooked in the initial clearing or have germinated or re- coppiced. Cutting & slashing, using appropriate equipment recommended for trees that are too large to hand pull. Herbicide is to be applied to cut stumps of coppice species.

Hand pulling – in accordance with table 3, page 18.
Cutting or slashing – in accordance with 3, page 18.

2.3 Maintenance phase

The aim being early detection and removal of any re-occurring invasive species on the site. This should be done by a site walk through to removal of any regrowth and new invader plants once a year.

3.BIOMASS MANAGEMENT

Due to the fire risk of increased biomass the following recommendations are made, these apply to the entire lifecycle of this management plan.

Large trees should be de-branched and stumps cut into 30 or 40cm lengths. This should be done at the area where the tree is felled.

Branches should not be dragged to another location. This minimizes the spread of any seed that may be present on the plants.

The biomass must be utilised as far as possible. In the event that the amount of alien plant biomass is simply too great, it should be transported offsite and appropriately disposed of.

4.MONITORING

In order to ensure the success of this management plan throughout the phases, a basic monitoring programme must be put into place. This monitoring programme will allow for the assessment of the success of the management plan.

4.1 Initial clearing monitoring

The following monitoring actions should be taken:

Fixed-point photography of areas to be cleared:

- prior to initial clearing.
- area from immediately before and after follow-up clearing activities.
- Restoration/rehabilitation processes.

Records are to be kept of daily operations which must include information such as the area cleared and the amount of herbicide used.

4.2 Follow-up Clearing Phase Monitoring

Areas cleared re visited and records of dates cleared and herbicide used.

4.3 Maintenance Phase Monitoring

Records of dates cleared and herbicide used.

Monitoring to take place throughout the project life cycle with visual walk-through surveys. It is important that, if monitoring results in detection of invasive alien plants, that this leads to immediate action.

5.COSTING

This management plan seeks to utilise the most cost-effective control methods while still realising the aims and objectives. Hand pulling is a very cost-effective method of control and is utilized where ever possible. The initial clearing phase of this 5-year management plan will carry the highest costs with the clearing of units 2 and 3 likely being the most expensive to clear. Although the physical felling of the trees is not the cheapest option, in light of the objective to rehabilitate the area, it is necessary.
It is suggested that an appropriately qualified contractor be appointed to complete the initial clearing phase as well as follow-up phase. The maintenance phase can be performed by educated staff. Costing will thus need to obtained from the appointed contractor.

Table 10: Costing

Phase	Costs involved
Initial clearing phase	Contractor costs: - Labour - Equipment - Transport - Herbicide Insurance – if applicable

	Biomass disposal costs
Follow-up	Contractor costs: - Labour - Equipment - Transport - Herbicide Insurance – if applicable
Maintenance phase	Staff education Equipment

6. FIRE MANAGEMENT

Fire management for the site involves the implementation a management system that will enhance the habitat condition of the natural area occurring here as well as provide protection from wild fires.

As part of the local Fire Protection Association (FPA) a Fire Management Plan would need to be drawn up similar to that of the FPA.

Fire Management	
Management Objective	Implement a fire management system that will ecologically favour the natural vegetation patterns and aid in the preservation thereof.
Management Actions	- Prepare a Fire Management Plan. - Acquire and maintain the necessary infrastructure and equipment for fire management. - Maintain a fire history. - Implement burning and protection/fire belts as per the Fire Management Plan to be drawn up.
Responsibility	Land owner/Home Owners Association
Means	Fire management is to be integrated with alien clearing activities. Burning should only be allowed after clearing actions and should be subject to an alien clearing schedule post burn

7. EROSION CONTROL AND RESTORATION

The areas on site with no natural vegetation will be susceptible to sheet and gully erosion after the clearing of the alien plants.

Erosion control activities will need to be undertaken and this may include the restoration of a vegetation cover to the cleared units.

Erosion Control/Restoration	
Management Objective	To mitigate erosion on the property after alien plant clearing and restore a vegetation cover.
Management Actions	Erosion: - Areas affected by sheet and gully erosion are to be repaired where possible and erosion controlled. - As soon as erosion occurs, it must be repaired and the cause of erosion must be minimised or stopped where possible by preventative measures. Restoration: - Restoration Plan to be drawn up and implemented - Restoration would include the rehabilitation of the soil to allow for the successful establishment planted indigenous species. - Species planted in are to be locally occurring species that occur on the shale band of the Western Coastal Shale Vegetation type of the Onrus area.
Responsibility	Land owner/Home Owners Association
Timeframe	Continuous. Potential erosion areas should be monitored at all times.
Means	Erosion control method such as logs and netting to be used in conjunction with planting. The magenta sour fig, *Carpobrontus aciniformis*, provides an excellent soil stabilization cover on clay rich soils.

8. INFRASTRUCTURE MAINTENANCE AND DEVELOPMENT MANAGEMENT

Repair and maintenance of all infrastructure, i.e. the stone cottage and access road and fencing, within the site are to mitigate erosion and degradation of the natural environment.

The picnic area at the north west corner of the site is not considered a formally constructed site.

All further development or upgrading needs to done in accordance the requirement specifications of the municipal zoning for Open Space III, Nature Reserve.

Infrastructure and Development Management	
Management Objective	All development to be undertake within the Open Space III zoning constraints and without degradation to the natural vegetation units.
Management Actions	- Development activities are to be restricted to the existing structures and immediately surrounding hard surfaces and *Eucalyptus* trees areas. The proposed expansion of the Stonelee cottage up to 1500 m2 should be confined to these areas. A minimum undeveloped buffer area of 20 meter is recommended between the naturally vegetated units 1 and 5 and any expansion of the cottage area. - The entrance road should remain a single track - Any construction activities that involve areas adjacent to the naturally vegetated units need method statements to ensure these areas are protected during the construction phases. The physical demarkation of No-go barriers would be the basic essential. Method statements are to cover : - *No-go areas.* These are areas where construction activities are prohibited. The target is to contain construction activities to the development locations and demarcate potentially sensitive areas or vegetation. This includes areas on site, the adjacent private property and the nature reserve. Management of these impacts require barred areas that will be temporarily demarcated with fencing. - *Pollution by any construction run-off such as cement mixing, cleaning solvents.* Handling of waste is to be controlled to minimise possible environmental damage through inappropriate waste management on site. Cement and concrete are highly toxic to plants and animals. These must be mixed at specifically demarcated sites away from the natural areas and on hard areas to prevent ground water contamination. Mixing is best done in areas that are part of the final construction sites or the driveway. No runoff from construction substances, such as paint, chemical cleaners, cement mixing or any waste-water shall enter the ground water or streams or any man-made trenches. Any contaminated run-off is to be contained, neutalised and removed from the site to a suitable landfill site. Any wastewater generated is to be fed into a suitable containment area such as a lined sedimentation pond prior to disposal. Liquid dispensing receptacles (e.g. lubricants, diesel, shutter oil etc) must have drip trays beneath them or beneath the nozzle fixtures. Detergents used for washing shall be of low phosphate and nitrate concentration. Suitable product recovery materials (e.g. spillsorb) should ideally be kept on site. - *Solid Construction waste.* Rubble generated by the activity shall be protected and temporarily stored on site with subsequent removal to the approved landfill site. Excess concrete/cement must be physically

	removed from the site. Used cement bags must be stored in waterproof containers or bags to prevent wind dispersal and water contamination. Material suitable for recycling shall be stored in separate and specific containers. - *Soil Stabilisation and Erosion control.* The topsoil is not to be stripped from the remainder of the site other than with excavation activities for the cottage upgrade. During construction areas susceptible to erosion must be protected by appropriate wind and drainage control measures. - *Site Clearing.* The contractor shall ensure that all construction related equipment and materials used for construction activities are removed from the site upon completion of the project. No material shall be disposed of in the surrounding environment. Burying rubble or waste on site is prohibited. Surfaces are to be checked for waste products form activities such as concreting and cleared in an approved manner.
Responsibility	Land owner/Home Owners Association
Timeframe	Continuous
Means	Municipal building regulations and zoning scheme requirements.

9. WATER MANAGEMENT

Municipal services supply the stone cottage on site. Additional facilities could be added to catch rain water.
A water tank and piping are found near the picnic area at the far north west point of the site but this appears not to be in use.

No irrigation of the natural vegetation should take place.

10. MANAGEMENT PLAN REVIEW

On a 5-yearly basis, this Management Plan should be reviewed and adjusted where necessary. To achieve this, the following questions (and others as needed) should be addressed:

- Did this Management Plan make a meaningful contribution to management of the Protected Area?
- Were individual management "prescriptions" realistic and achievable? Were they written unambiguously or was there room for misunderstanding?
- Were budgets for each management activity realistic? Were the allocated budgets too much or too little?
- Were sufficient staff members of the right qualifications allocated to each management activity?

ANNEXURE 1: Figures

Figure 2: Unit 1

Figure 3; Unit 2

Figure 4: Unit 4

Figure 5: Unit 3

Figure 6: Unit 5

11. REFERENCES

Henderson,L. 2001. Alien weeds and invasive plants. Plant Protection Research Institute Handbook No 12. ISBN; 1-86849-192-7

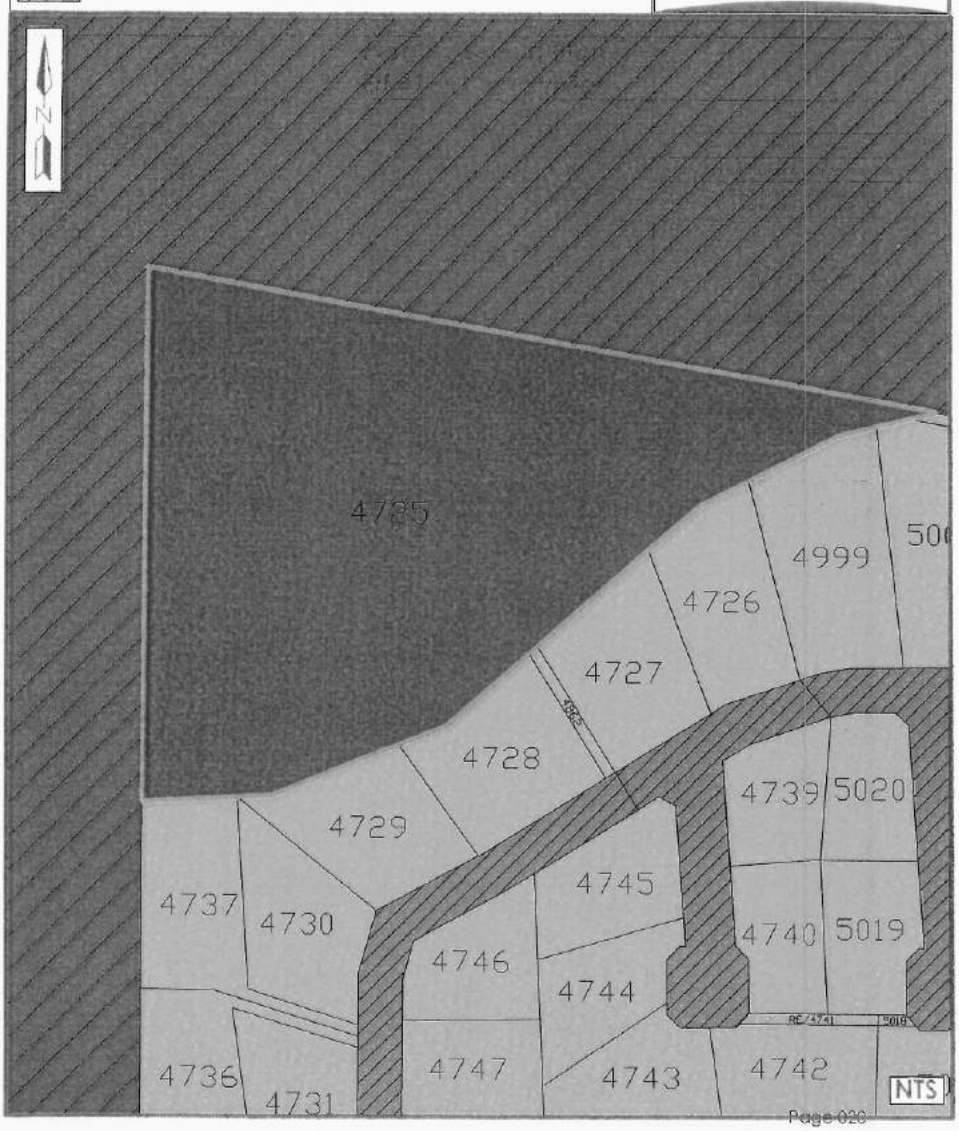
ANNEXURE C

Plan 2 : Zoning Plan
Erf 4725 Onrustrivier

Subject property 1,6557 ha
Residential Zone 1: Single Residential
Transport Zone 2: Road and Parking
Open Space Zone 1: Nature Reserve
Utility Zone: Utility Services

May 2019
File number 19/002
Plan prepared by: Reatlehile Janse
All distances are approximate and subject to a survey

WRAP



'ANNEXURE D 1/8

ATTORNEYS
ADRIAN LOUW &
ASSOCIATES

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MEDIATION • CONVEYANCING • DISPUTE RESOLUTION • ESTATE ADMINISTRATION

OVERSTRAND MUNISIPALITEIT
15 NOV 2019
OVERSTRAND MUNICIPALITY

TP - N. Ahoot (H. Olivier) by email and personal delivery.

14 November 2019

Overstrand Municipality
16 Patterson Street
Hermanus
By email: loretta@overstrand.gov.za

FOR URGENT ATTENTION
FILE NO: Erf 4725 Onrustrivier
SCAN NO: 8
COLLABORATOR NO: 1357220

Dear Sirs

COMMENTS AND OBJECTION

ERF 4725, 21 BERGHOF DRIVE, ONRUS RIVER: APPLICATION FOR DETERMINATION OF ZONING: WRAP [obo PH DE CHATTILON DE KOCK]

OVERSTRAND MUNICIPALITY REF: 3226/2019 [H Olivier]

We act herein on instruction of the Berghof Homeowners Association [BHO]. The members of BHO are interested and affected parties as their properties border on as Berghof or are immediately adjacent to Erf 4725 and share access from the R43.

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

We submit that the current zoning, of Nature Reserve [OS1] is not incorrect and our clients object to both the Application [and the zoning being changed] based on the following grounds;

A. CONSULTATION

1. As is evident from the Locality Plan, the impact of re zoning and subsequent development will have immediate effect on the direct neighbours, eight adjoining erven, but also on the whole of Berghof Estate. The BHO need to convene either a Special General Meeting or AGM and follow its constitution to table such meeting to allow full and informed discussion of this Application, which has potential huge impact on the value of their properties especially the adjacent erven 4737, 4730, 4729, 4728,4727,4726,4999, 5000. The value of a property is directly related to its locality and these properties have the delight of a mountain slope and pure nature as neighbour, which would be blighted by a large construction with attendant noise and loss of privacy, leading to a loss of value. This will be substantiated by an expert on valuations if this point is contested.

PRINCIPAL: J ADRIAN W LOUW (BA LLB. STELL) ACREDITED MEDIATOR
CONVEYANCING & ESTATES: KATHRYN E CELLIERS LOUW (BA LAW UOVS MPHIL. RAU)
PROFESSIONAL ASSISTANT: TARYN C SCHOLTZ (LLB. UWC)
TRUST ACCOUNT NUMBER: 1470007940 NEDBANK HERMANUS

TP 15 NOV 2019

2. There needs to be a meeting convened which is presently diarised and planned for May 2020 [The Annual General Meeting] when most owners are present. Please note that several impacted properties have absent owners.

B. ZONING; NATURE RESERVE

1. It is submitted that there was **no mistake** in the current zoning of erf 4725 and it was done carefully, and with deliberation, by the then authorities, especially because of the litigation that occurred between the developers inter se. This NATURE RESERVE zoning was no ERROR, as is asserted in this application, but it was the subject of careful scrutiny and the local authority cannot grant consent if it was refused implicitly or by non- inclusion, originally.

2. The 100-metre contour line restriction makes perfect sense, even if a pre-existing stone cottage was built in earlier times. The stone structure was never permanently inhabited, but we are reliably informed by the Developer, it was only used as a store before and after the Berghof development. It is in any event not fit for habitation. The landowner must also apply for a subdivision if he wants to build such a huge [625metre square] fully fledged residential or institutional residential structure.

3. [The mere fact of an existing hut on a mountain slope does not make it a residence, as is well established looking at Vogelgat Private Nature Reserve and Galpin Hut in Fernkloof Reserve.]

C. LACK OF INFORMATION REGARDING NATURE OF CONSTRUCTION

1. The proposal is mooted to erect a 625 metre square structure on or around the existing stone structure. This is an enormous expansion of the tiny stone structure, equivalent to three or four small houses, or a large barn [20 by 30 metres] or a multilevel building such as a school boarding house. The question that needs answering urgently what is the real agenda? Will it be a small hotel? A boarding dormitory for the school [Northcliff house] that the Applicant conducts from within Berghof? A restaurant?

D. APPLICATION FEES

1. Without a single shred of corroborating evidence, the motivation is baldly "second guessing" the decision of the Department of Planning, Local Government and Housing and implying negligence on their side. The statement on page 008, paragraph 5 this that "No Application fees are therefore paid when it relates to the correction of an error" .

   This is jumping the gun, with respect, and boldly asserting an error was made, when this assertion and claim is actually contested is administratively and procedurally flawed.

   This is actually just a crafty claim by the Applicant / WRAP Consultancy, parading as a fact.

2. The correct approach, it is humbly submitted, should be to the Department of Environmental Affairs and Development Planning to determine if there was an error made by the then Provincial Department.

3. Paying no Application fees is thus procedurally wrong, but this claim obviously suits the applicant, who thus does not to have to pay for the Application.

E. ACCESS

1. As is clear from Plan 2 by WRAP, **there is no access to Erf 4725 other than across erf 4862** which belongs to our clients. There is a servitude registered over Erf 4862 in favour of Erf 4725. However, this narrow [only 3 metres wide] footpath is a tarred narrow strip and does not qualify as a public road ["as defined"] and thus vehicular and construction access to Erf 4725 is impossible as it currently stands and negotiations with erven 4728 and 4729 would be necessary to register at the very least a servitude over these erven to enable a wide enough access. There is no indication of this in the plans.

F. FAILURE BY APPLICANT TO PAST OBLIGATIONS; ALIEN CLEARANCE, LEVIES UNPAID

1. The original Development proposal for the whole farm, as sold by the farmer to the Developer, included the part now known as Erf 4725. After the Development plans were changed and finally approved following the appeal, the part [Erf 4725] was not included and was sold back to the farmer for a nominal R10.00 [Ten Rand] The owner of Erf 4725 however was under the obligation to clear the plot of alien vegetation as this part, above the 100 metre contour line, had been excised from the Development and as the Development then did not have to clear that part [later known as Erf 4725] it became the responsibility and obligation of the farmer / Mr de Kock after the Management Plan of 2001.

2. Mr de Kock also had to pay 0.1% of the Annual Levies in compensation, as services had been laid on and paid for by the Developer. Both of these obligations have never been complied with by Mr de Kock, we are instructed.

G. SECURITY CONCERNS

1. The whole idea of a secure gated complex is nullified if Security concerns are not addressed. Security risks and insurance premiums will go up if free access is required for pupils or casual visitors to the proposed structure. There are already complaints of vagrants squatting in the stone hut from time to time.

H. PRELIMINARY OBJECTIONS

These are merely preliminary objections as the opinions of the whole BHO must be canvassed and included and we therefore reserve the right to supplement this document at a later stage and accept that this right will be respected by Town Planning Overstrand Municipality and WRAP Consultancy.

We trust this serves as formal and urgent issues in Objection and that it will be given the necessary attention by the Applicant, WRAP and the Overstrand Municipality.

We thank you for your cooperation.

Yours faithfully

PER: A W LOUW

ADRIAN LOUW AND ASSOCIATES

[1233]

TP. D./Head
(14 Olivia)

Loretta Gillion - Erf 4725, 21 Berghof Drive, Onrus River: Application for determination of zoning: Wrap (obo PH De Chattilon de Kock)

From: Henk and Daleen Janse van rensburg <Jahenda@hotmail.com>
To: "loretta@overstrand.gov.za" <loretta@overstrand.gov.za>
Date: 14/11/2019 01:26 PM
Subject: Erf 4725, 21 Berghof Drive, Onrus River: Application for determination of zoning: Wrap (obo PH De Chattilon de Kock)

To: H Olivier & S Muller

We received a registered letter relating to the rezoning of Erf 4725, 21 Berghof Drive, Onrus River: Application for determination of zoning: Wrap (obo PH De Chattilon de Kock)

We hereby advise that we oppose the rezoning of Erf 4725 due to the fact that Berghof Estates has very specific guidelines for building within the Estate and as this property is not part of the Estate there is no guidelines or guiding principles for the structure that will be erected.

The road infrastructure leading to Erf 4725 is part of the upkeep from the residents of Berghof and if approval is given for rezoning the traffic to this part of the property will impact the Berghof community negatively and the upkeep is funded by the Berghof residents.

Regards
HJ & MDM Janse van Rensburg

FILE NO: Erf 4725
Onrus/Rnd
SCAN NO:
HON 4725
COLLABORATOR NO:
1356749

14 NOV 2019

TP- D. Abrahams
(H. Olivier)

OVERSTRAND MUNISIPALITEIT
14 NOV 2019
OVERSTRAND MUNICIPALITY

Thursday, 14 November 2019

6 Aristea Crescent
Berghof Estates
Onrus
7201

Overstrand Municipality
Town Plannig Department
16 Patterson Street
Hermanus

email: loretta@overstrand.gov.za

Dear Sirs

RE: ERF 4725, 21 BERGHOF DRIVE, ONUS RIVER: APPLICATION FOR DETERMINATION OF ZONING

As a property owner directly affected by this application, we hereby submit our comments on this matter.

Our property is Erf 4745, immediately opposite the current access path to Erf 4725.

1. ACCESS TO ERF 4725

The proposed use of this Erf is to build a 625 m² structure on or around the existing stone structure. As this is an extensive project, it would mean that for an extended period of time there will be constant excessive traffic on Berghof Drive immediately above my property.

There is a huge risk that, should any construction or private vehicles entering or exiting Erf 4725 to Berghof Drive have any mechanical failure that said vehicle/s could end up smashing into our retaining wall which in turn could cause the wall to collapse onto our property, our roof and into our swimming pool.

2. NATURE OF THE PROPOSED STRUCTURE

There is nothing to indicate the real type of structure to be erected other than a comment that "the cottage can be upgraded to such a level that it can be occupied by a family on a permanent basis".

Any structure other than a private residence that meets the design guidelines of the estate will be unacceptable as it will:-

a) detract completely from the design of the estate which is one of the reasons why we purchased a property there and built a house to meet those guidelines

FILE NO: 04 4725 ✓
Onrus/Olivier
SCAN NO:
COHEN
COLLABORATOR NO:
1356756

14 NOV 2019

b) result in a traffic increase of unknown proportions as we have no idea what the intention of the current owner is.

Furthermore, if any residence is to be built on Erf 4725, it should then fall under the Berghof Estates design guidelines so that the aesthetics of the estate are not compromised in any way that could reduce the property values in the future. This would include the required perimeter/boundary walls that the rest of the owners in the estate need to comply with.

We trust that in the interest of existing property owners in Berghof Estates that the Municipality will do the required due diligence into this matter and that all concerns of all parties involved are taken into consideration before finality is reached with the rezoning application.

Yours sincerely

STUART G. COHEN

Email : stuartc551@gmail.com
Mobile : 083-657-4102

TP - N. Ahgat
CH. Olivier

OVERSTRAND MUNISIPALITEIT
14 NOV 2019
OVERSTRAND MUNICIPALITY

Thursday, 14 November 2019

Mr N & Mrs L Batiste
31 Berghof Drive
Berghof Estates
Onrus, 7201
Email: linbatiste@msn.com
Tel: 0760 394163

Overstrand Municipality
Town Planning Department
16 Patterson Street
Hermanus

Sent by email: loretta@overstrand.gov.za

Dear Sirs

RE: ERF 4725, 21 BERGHOF DRIVE, ONRUS RIVER: APPLICATION FOR DETERMINATION OF ZONING

As property owners we are not immediately affected by this application however, we still have concerns. Our property is Erf 5001 and not too far from Mr de Kock's Erf 4725.

My husband and I purchased our stand with the understanding that there would be no other building permission above the 100 metre contour line, thus allowing us to enjoy the beauty of the Nature Reserve behind us and the frequent visits of the Klipspringers.

Our concerns are that guidelines for the build may be abused by way of utilising the area for other amenities other than a private dwelling and, in the future, further encroachment above the 100 metre contour line.

It was our understanding that Mr de Kock's cottage could not be developed, however, we would have no objection for Mr de Kock or his family to enjoy a more habitable house provided it fell under the Berghof Estate design guidelines.

We trust that in the interest of all property owners in Berghof Estates, particularly those who would be greatly affected, that the Municipality will sympathetically take into account the concerns of all parties involved before finality is reached with the rezoning application.

Kind regards

Nigel & Linda Batiste

14 NOV 2019

FILE NO: ERF 4725 ✓
Onustrivier
SCAN NO:
BATISTE
COLLABORATOR NO:
135675 1

TP-A Theart (H Olivier)

ANNEXURE E 1/13
09 DEC 2019
OVERSTRAND MUNICIPALITY

Project Office

Town Planning & Project Management

Our Reference: 19/002
Your reference: 4725 HON 3226/2019

6 December 2019

FILE NO: EL 4725 - HON
SCAN NO: HON 4725
COLLABORATOR NO: 136521

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Attention: Mr Henk Olivier

ERF 4725 ONRUSTRIVIER: APPLICATION FOR THE DETERMINATION OF ZONING

Comments and objections were received from:

- Adrian Louw Attorneys on behalf of the Berghof Homeowners Association;
- HJ & MDM Janse van Rensburg;
- SG Cohen; and
- N & L Batiste.

Response to an objection relating to estate guidelines

Objection	*"We hereby advise that we oppose the rezoning of Erf 4725 due to the fact that Berghof Estates has very specific guidelines for building within the Estate and as this property is not part of the Estate there is no guidelines or guiding principles for the structure that will be erected."*
Comment	The assertion by the objector that the subject property is not part of the Berghof Estate (BE) is correct. The fact that the subject property is not governed by the guidelines of the BE is not substantive reason for the refusal of the submitted application in terms of Clause 16.8.1 of their Constitution. We are therefore opinion that this objection is invalid.

Project Planning | Project Feasibility | Land Use Applications | Project Execution Management | Liquor Licensing
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Established 2002

TP - 9 DEC 2019

Objection	*"There is nothing to indicate the real type of structure to be erected other than a comment that "the cottage can be upgraded to such a level that it can be occupied by a family on a permanent basis".* *Any structure other than a private residence that meets the design guidelines of the estate will be unacceptable as it will detract completely from the design of the estate which is one of the reasons why we purchased a property there and built a house to meet those guidelines.* *Furthermore, if any residence is to be built on Erf 4725 it should then fall under the Berghof Estates design guideline so that the aesthetics of the estate are not compromised in any way that could reduce the property values in the future. This would include the required perimeter/boundary walls that the rest of the owners in the estate need to comply with."*
Comment	The subject property is not part of the BE and therefore does not need to comply with the BE design guidelines.

Response to an objection relating to procedural considerations.

Objection	*"These are merely preliminary objections as the opinions of the whole BHO must be canvassed and included and we therefore reserve the right to supplement this document at a later stage and accept that this right will be respected by Town Planning Overstrand Municipality and WRAP Consultancy."*
Comment	The Overstrand Municipality (OM) has gone to great lengths and additional cost to the applicant, by sending out more than 90 registered letters to all the property owners in Berghof to garner as much public participation and comments regarding the town planning application as possible. Should the objector wish to submit comment on the submitted proposal, it will be accepted and respected by the OM and WRAP. It is not clear why the collective view of the BHO needs to be canvassed?

Objection	*"The correct approach, it is humbly submitted, should be to the Department of Environmental Affairs and Development Planning to determine if there was an error made by the then Provincial Department,* *Paying no Application fees is thus procedurally wrong, but this claim obviously suits the applicant, who thus does not to have to pay for the Application."*
Comment	Appeals relating to town planning applications were submitted to the Department of Environmental Affairs and Development Planning (DEADP) before the enactment of SPLUMA in 2013. Under the current planning regime, DEADP has no jurisdiction over making town planning decisions as that is exclusively a municipal function. The application can therefore not be forwarded to DEADP for decision making as requested by the objector as that would be procedurally wrong under current legislation. Application fees were in fact paid by the property owner after requested by the Overstrand Municipality.

Objection	*"The original Development proposal for the whole farm, as sold by the farmer to the Developer, included the part now known as Erf 4725. After the Development plans were changed and finally approved following the appeal, the part [Erf 4725] was not included and was sold back to the farmer for a nominal R 10.00 [Ten Rand]. The owner of Erf 4725 however was under the obligation to clear the plot of alien vegetation as this part, above the 100 metre contour line, had been excised from the Development and as the*

	Development then did not have to clear that part [later known as Erf 4725] it became the responsibility and obligation of the farmer / Mr de Kock after the Management Plan of 2001."
Comment	The objector acknowledges that Erf 4725 Onrustrivier was initially included as part of the development but was later excluded after the development plans were amended when approved. Considering this acknowledgement by the objector, the owner of the subject property is simply a neighbour to the Berghof development and the BHA therefore has no jurisdiction over the subject property. The owner of the subject property acknowledges the obligation to clear alien vegetation and appointed a consultant to compile a botanical study and management plan which was attached to the submitted application.

Objection	*"Mr de Kock also had to pay 0.1% of the Annual Levies in compensation, as services had been laid on and paid for by the Developer. Both of these obligations have never been complied with by Mr de Kock, we are instructed."*
Comment	The payment or collection of levies is not a land use function. If the objectors' facts are correct, why have the Berghof Home Owner's Association not collected these levies or took steps to collect such outstanding levies?

Objection	*"It is submitted that there was no mistake in the current zoning of erf 4725 and it was done carefully, and with deliberation, by the then authorities, especially because of the litigation that occurred between the developers inter se. This NATURE RESERVE zoning was no ERROR, as is asserted in this application, but it was the subject of careful scrutiny and the local authority cannot grant consent if it was refused implicitly or by non- inclusion, originally."*
Comment	There was no dispute between the directors of the Developer of Berghof. The objector appears to confuse Berghof with Chanteclair / Leopard Rock. The motivation report furthermore does not contest the zoning of Open Space Zone 1: Nature Reserve applicable on the subject property as asserted by the objector. The motivation report systematically illustrates that the land use rights for a dwelling unit have historically vested on the subject property and were supposed to be acknowledged in current Overstrand Zoning Scheme, 2013. Under the current zoning, the land use right of a dwelling unit can only be accommodated as a consent use."

Objection	*"Without a single shred of corroborating evidence, the motivation is baldly / 'second guessing' the decision of the Department of Planning, Local Government and Housing and implying negligence on their sides. The statement on page 008, paragraph 5 this that "No application fees are therefore paid when it relates to the correction of an error"* *This is jumping the gun, with respect, and boldly asserting an error was made, when this assertion and claim is actually contested is administratively and procedurally flawed.*

	This is actually just a crafty claim by the Applicant / WRAP Consultancy, parading as a fact."
Comment	It is not a "crafty claim" as the claim is supported by hard evidence in the motivation report.

Objection	*"There needs to be a meeting convened which is presently diarised and planned for May 2020 [The Annual General Meeting] when most owners are present. Please note that several impacted properties have absent owners."*
Comment	Considering that the owner of the subject property is not a member of the BHA, it is not clear why there needs to be a meeting to discuss the application as each property owner within the development was notified about the application and had ample time to submit comment to the application. As already stated earlier, more than 90 registered letters were sent out to all individual owners and it is unclear why a collective opinion from the BHO is required.

Response to an objection relating to access considerations.

Objection	*"As is clear from Plan 2 by WRAP, there is no access to Erf 4725 other than across erf 4862 which belongs to our clients. There is a servitude registered over Erf 4862 in favour of Erf 4725. However, this narrow only 3 metres wide footpath is a tarred narrow strip and does not qualify as a public road ["as defined"] and thus vehicular and construction access to Erf 4725 is impossible as it currently stands and negotiations with erven 4728 and 4729 would be necessary to register at the very least a servitude over these erven to enable a wide enough access. There is no indication of this in the plans."*
Comment	Access to Erf 4725 is gained via a 3m wide servitude over Erf 4862 Onrustrivier (refer to the SG diagram **Annexure A**). It is therefore not necessary for a right of way servitude to be registered over Erven 4728 and/or 4729 Onrustrivier. An access road of 3m is sufficient when it only services a single property.

Objection	*"The road infrastructure leading to Erf 4725 is part of the upkeep from the residents of Berghof and if approval is given for rezoning the traffic to this part of the property will impact the Berghof community negatively and the upkeep is funded by the Berghof residents.* *The proposed use of this Erf is to build a 625m² structure on or around the existing stone structure. As this an extensive project, it would mean that for an extended period of time there will be excessive traffic on Berghof Drive immediately above my property."*
Comment	There is an existing cottage on the subject property which can accommodate a single family and attracts traffic of a single family and its guests. The approval and implementation of this proposal will also allow a single family to reside on the subject property which by implication means that there will be no additional traffic attracted. The impact on the existing private road network will therefore not be impacted by the approval and implementation of this proposal.

WRAP

Response to an objection relating to the impacts and implications of the approval and implementation of this proposal.

Objection	*"The proposal is mooted to erect a 625-metre square structure on or around the existing stone structure. This is an enormous expansion of the tiny stone structure, equivalent to three or four small houses, or a large barn [20 by 30 metres or a multilevel building such as a school boarding house. The question that needs answering urgently what is the real agenda? Will it be a small hotel? A boarding dormitory for the school [Northcliff house] that the Applicant conducts from within Berghof? A restaurant?"*
Comment	The property owner only envisages to construct a dwelling on the subject property. The reference to a 625 square meter is nothing more than the average house that can be built on any of the Berghof erven calculated at 50% coverage and a 2-storey building. In other words, a ground floor of 325 square meters and a 1st floor of 325 square meters.

Objection	*"The whole idea of a secure gated complex is nullified if security concerns are not addressed. Security risks and insurance premiums will go up if free access is required for pupils or casual visitors to the proposed structure. There are already complaints of vagrants squatting in the stone hut from time to time."*
Comment	The assertion made by the objector that premiums will increase in the gated complex is based on speculation. These speculations are that a multilevel building such as a school boarding house, small hotel, a boarding dormitory for the school Northcliff House or a restaurant can potentially be constructed on the subject property and attract causal visitors. The property owner only wishes to construct a single dwelling on the subject property which nullifies the argument that the approval and implementation of this proposal will be a security risk or increase insurance premiums. The approval and implementation of this proposal would eliminate the rumours of vagrants squatting in the existing cottage and will in fact provide additional security if the dwelling on the subject property is occupied by the owners.

Response to objections relating to an impact on property values.

Objection	*"The BHO need to convene either a Special General Meeting or AGM and follow its constitution to table such meeting to allow full and informed discussion of this Application, which has potential huge impact on the value of their properties especially the adjacent erven 4737, 4730, 4729, 4728, 4727, 4726, 4999, 5000. The value of a property is directly related to its locality and these properties have the delight of a mountain slope and pure nature as neighbour, which would be blighted by a large construction with attendant noise and loss of privacy, leading to a loss of value. This will be substantiated by an expert on valuations if this point is contested.* *There is a huge risk that, should any construction or private vehicles entering or exiting Erf 4725 to Berghof Drive have any mechanical failure that said vehicles could end up smashing into low- retaining wall which in turn could*

	cause the wall to collapse onto our property, our roof and into our swimming pool."
Comment	The objection is based on the assumption that the approval and implementation of this proposal will lead to the devaluation of the above properties. SPLUMA highlights the following in Section 7 (vi) of SPLUMA highlights the following; *"A Municipal Planning Tribunal considering an application before it, may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property is affected by the outcome of the application."* The submission of an objection based on the assertion that the property values will be decreased is therefore not a relevant consideration for the MPT when making a decision. Notwithstanding the above, the objection is based on the assumption that property values will decrease due to noise caused by construction and loss of privacy. Noise which occurs during construction is temporary and will be experienced by current property owners when the existing vacant erven are constructed on, in the development. One dwelling house which is used for the accommodation of a single family in a development with more than 90 erven, can hardly be regarded as being disruptive to the character of the area and is not projected to lead to the reduction of property values. Construction firms generally take precautionary measures to avert accidents which the objector is highlighting as a concern.

Response to an objection relating to the format of the submitted application.

Objection	*"As is evident from the Locality Plan, the impact of re zoning and subsequent development will have immediate effect on the direct neighbours, eight adjoining erven, but also on the whole of Berghof Estate."*
Comment	The submitted application is not for a rezoning but a determination of zoning.

Objection	*"The 100-metre contour line restriction makes perfect sense, even if a pre-existing stone cottage was built in earlier times. The stone structure was never permanently inhabited, but we are reliably informed by the Developer, it was only used as a store before and after the Berghof development. It is in any event not fit for habitation. The landowner must also apply for a subdivision if he wants to build such a huge [625metre square] fully fledged residential or institutional residential structure."*
Comment	The location of the 100m contour is not contested in the application. The cottage might have been occasionally habited however that does not translate into the existing residential land use right on the cottage being deprived.

	On the one hand, the objector is opposed to this application however, on the other hand proposes that a subdivision application be submitted to accommodate the land use rights which the property owner seeks confirmation of. This is very contradicting. The reference to the "huge fully-fledged residential structure "was already addressed in the response to an earlier comment.

Response to objections not related to the submitted application.

Objection	*"[The mere fact of an existing hut on a mountain slope does not make it a residence, as is well established looking at Vogelgat Private Nature Reserve and Galpin Hut in Fernkloof Reserve.]"*
Comment	The building concerned is illustrated as a cottage on all historic plans which was never contested by any government department. The subject building is not a hut and reference to the buildings at the Vogelgat Private Nature Reserve and Galpin Hut in Fernkloof Reserve is irrelevant as the circumstances and history of those buildings differ remarkably from those of the subject property. It must be made very clear that with the approval of the layout plan for Berghof, it was indicated on the plan that the existing cottage will be upgraded.

Conclusion

Most of the objections are based on speculation that the owner of the subject property has ulterior development motives which were proven not to be the case in the abovementioned response. The assertion that the approval and implementation of this proposal would devalue surrounding properties is unfounded.

The applicant only wants to exercise his right to upgrade the existing cottage on the property to a dwelling house of a similar size that will be in line with the average size of buildings in the Berghof development.

No objection was submitted which justifies the refusal of the submitted application.

Yours faithfully

REA JANKIE
TOWN PLANNER (B/8392/2017)

8/13

SPRONK LAND SURVEYORS

Annex A

OFFICE COPY

SIDES Metres		ANGLES OF DIRECTION		CO-ORDINATES Y System: WG19° X	
		Constants:		± 0,00	± 0,00
AB	3,05	228 43 30	A	-15 637,60	+3808 434,14
BC	39,80	328 25 40	B	-15 639,89	+3808 432,13
CD	3,00	58 25 40	C	-15 660,63	+3808 465,88
DA	39,10	148 25 40	D	-15 658,07	+3808 467,45
			1AC19 ⊕	-15 035,06	+3808 933,17
			2AC20 ⊕	-18 967,66	+3809 586,98

S.G No. 4778/2003

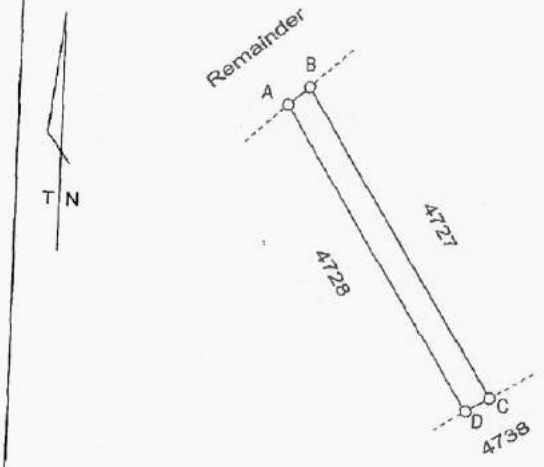
Approved

for SURVEYOR-GENERAL

2003·11·14

Description of Beacons

A,B,C,D : 12mm Round Iron Peg



Scale 1:500

The figure A B C D represents 118 square metres of land being Erf 4862 (a portion of Erf 4725) Onrustrivier situate in The Overstrand Municipality Administrative District of Caledon Province of Western Cape

Surveyed in July - September 2000 & July 2003 by me

P.F.SPRONK
Professional Land Surveyor
Registration Number PLS-0779

EXEMPT FROM PROVISIONS OF ACT 70 OF 1970 SECTION 1.9

APPROVED IN TERMS OF SECT. 8 OF ORD. 15/1985 REF. TP 3-16/2003 DATE 2003.09.25

This diagram is annexed to No. T 73539/2004 d.d. i.f.o. Registrar of Deeds	The original diagram is S.G. No. 4779/2003 Transfer Grant	File S/10350/8 S.R. E.2824/2000 G.P. 6552/2002 Comp. AI-3CBA(3369) LPI:C0130016

ERF 4862 ONRUSTRIVIER

S

TP: N. Theart
(H. Olivier)

9/13

OVERSTRAND MUNICIPALITY
15 OCT 2020
OVERSTRAND MUNICIPALITY

Project Office

Town Planning & Project Management

Our reference: 19/002
Your reference: 4725 HON 3226/2019

14 October 2020

FILE NO: Erf 4725 ✓
Onrustrivier
SCAN NO:
HON 4725
COLLABORATOR NO:
1468942

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Attention: Mr H Olivier

ERF 4725 ONRUSTRIVIER: RESPONSE TO A COMMENT FROM THE WESTERN CAPE DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING (DEADP) REGARDING A SUBMITTED APPLICATION FOR THE DETERMINATION OF ZONING

The letter from DEADP dated 6 March 2020, refers.

DEADP does not support the application for the determination of zoning based on certain reasons. This response will therefore refute the reasons provided by DEADP and provide substantive submissions for the planning application to be approved as applied for.

Response to the allegation that the application is paternally defective

Extract from DEADP letter:

> *"A zoning determination is only required when the lawful zoning of a property cannot be ascertained. In the instance of Erf 4725, the zoning of the property is known, as the Overstrand Municipality adopted a new Zoning Scheme in terms of which all properties within their area of jurisdiction were allocated new zonings. If no further applications were considered and approved in respect of this property, the zoning that was allocated to this property on the date of coming into effect of the new zoning scheme is still the valid zoning. No zoning determination is therefore required."*

The application for a zoning determination was informed by the provisions in the Overstrand By-Law on Municipal Land Use Planning, 2015 (By-Law) which highlights the following in Section 13.

TP 15 [illegible]

"(13) Determination of zoning

(1) The owner of land or a person authorised by the owner may apply to the Municipality for the determination of a zoning for land referred to in Section 8 of the Ordinance and which is not deemed to be zoned by virtue of a determination under Subsection 14(1) of the Ordinance.

(2) When the Municipality considers an application in terms of Subsection (1) it must have regard to the following:

(a) the lawful utilisation of the land, or the purpose for which it could be lawfully utilised immediately before the commencement of this By-law if it can be determined;

(b) the zoning, if any, that is most compatible with that utilisation or purpose and any applicable title deed condition;

(c) any departure or consent use that may be required in conjunction with that zoning;

(d) in the case of land that was vacant immediately before the commencement of this By-law, the utilisation that is permitted in terms of the title deed conditions or, where more than one land use is so permitted, one of such land uses determined by the Municipality; and

(e) where the lawful utilisation of the land and the purpose for which it could be lawfully utilised immediately before the commencement of this Bylaw, cannot be determined, the zoning that is the most desirable and compatible with any applicable title deed condition, together with any departure or consent use that may be required."

Sections (13)(2)(c) and (13)(2)(b) of the By-Law are applicable as it explicitly cites that when the Municipality considers an application for the determination of zoning, it must have regard for a zoning which is most compatible with that utilisation and any departure or consent use that may be required in conjunction with that zoning. DEADP highlights that a zoning determination can only be submitted if the lawful zoning of a property cannot be established. When Section (13)(2)(c) and (13)(2)(b) are read together, the Municipality is empowered to assess an application for the determination of zoning if evidence can be submitted that there are consent uses or departures which are required in conjunction with the applicable zoning to confer the most appropriate land use right for existing land uses. The validity of the current zoning of Open Space Zone 1: Nature Reserve which is applicable to the subject property is not contested in the submitted application but that there should also be a consent use for a dwelling unit applicable to the subject property.

Response to the suggestion for the most feasible consent use for the property

Extract from the DEADP letter:

> *"It would appear from the submission that the existing structure was a lawful building prior to the change in zoning in 2001, although the original use of said building is undetermined. In the absence of any conditions that confirm that a dwelling house is allowed, the structure would have had to be interpreted as a structure allowed within the definition of a 'nature reserve'. As such, this Directorate does not support the applicant's supposition and is of the opinion that the new zoning should, at best, have included a consent use for a tourist accommodation unit."*

Section (13) (2) (a) of the By-Law highlights that when the Municipality considers an application for the determination of zoning, it must have regard for (1) the lawful utilisation of the land or (2) the purpose for which it could be lawfully utilised immediately before the commencement of this By-Law. DEADP submits that, at best a consent use for tourist accommodation ought to have been inserted in the current zoning as the structure could lawfully be used for that purpose in the previous zoning. DEADP in principle agrees with the notion that a consent use can be inserted in an application for the determination of zoning which contradicts the first extract of the letter which cites that no determination of zoning is required.

Notwithstanding the above, the reasoning negates another aspect which empowers the Municipality to have regard for the lawful utilisation of land which was motivated in the report and summarised in the table below:

Order	Land Use	Time period	Applicable zoning	Motivation
1	Dwelling house	Prior to 2001	Agriculture Zone 1 **Primary rights:** Agriculture Consent uses: additional dwelling units, farmstore, farmstall, intensive feed farming, riding school, nursery, service trade, tourist facilities. Definition of agriculture. *"means the cultivation of land for crops and plants or the breeding of animals, or the operation of a game farm on an extensive basis on the natural veld or land, and includes only such activities and buildings as are reasonably connected with the main farming activities of the farm but does not include the consent uses applicable to agricultural zone 1."*	A farm owner's house or labourer's cottage can reasonably be regarded as connected with the main farming activities on a property which was zoned Agriculture Zone 1 at the time. The lawful utilisation of the existing cottage as a dwelling house prior to the initial approval of the subdivision plan has been illustrated as that conforms to the primary rights applicable at the time which conforms to Section (13) (2)(a) of the By-Law. The dwelling house was lawfully used in accordance with the primary rights at the time and the land use right vested with the subject property which the DEADP letter negates.
2	Dwelling unit	2001 to 2013	Open Space Zone 3 Primary rights: nature reserve Definition of a nature reserve *"Nature reserve means a national park, or some other nature park which is in the ownership of a public authority or has been declared as such in terms of legislation and remains in private ownership; it consists of an area which is utilised as a game park or reserve for fauna and flora in their natural habitat and includes accommodation facilities for tourists and holidaymakers."*	Although this definition does not permit a dwelling unit as a primary right, it is submitted that the property was still used in accordance with the primary right of a dwelling house from the previous zoning which constitutes a lawful use which commenced prior to the promulgation of the Zoning Scheme at the time and was supposed to be inserted as land use departure in the applicable zoning at the time.
3	Dwelling unit	2003 to date	Open Space Zone 1: Nature reserve Primary rights: nature reserve.	Although the primary right does not permit a dwelling unit, a consent use is permitted in the applicable zoning. Considering that the dwelling house on the property was a lawful use under the LUPO zoning of Agriculture

			Consent use: dwelling units, environmental facilities, rooftop base station, transmission tower, tourist accommodation, tourist facilities, utility service, any other related use permitted by Council. Definition of a nature reserve: means a national park or environmental conservation area that has been declared or registered as a nature reserve in terms of legislation whether in public or private ownership, for the purpose of conserving and managing wild life, flora and fauna, in a predominantly natural habitat; it includes conservation use but does not include tourist facilities or tourist accommodation;	Zone 1, when the approval to subdivisional area was granted, the land use of the dwelling was supposed to be inserted as a departure for a dwelling unit at the time which was supposed to be transferred when the OMZS was promulgated in 2013 as a consent use for an additional dwelling.

What DEADP negates is that the existing dwelling unit has been lawfully used as such and various historic plans depict this land use as a cottage. Considering that the dwelling unit land use right was not consistently transferred and incorporated into the development rights applicable to the subject property, the lack of support from DEADP has not been adequately substantiated.

Berghof Homeowners' Association

Extract from the DEADP letter:

> *"It should be noted that had the land been transferred to the Berghof Homeowners' Association, the subsequent development of 'open space' for residential purposes would have been prevented."*

The subject property has not been transferred from the ownership of Pieter Henderik De Chattilon De Kock to the Berghof Homeowners' Association (BHOA) as illustrated in the title deed. There are no provisions in the Constitution of BHOA which prevents an open space being used for residential purposes.

Conclusion

Considering the contents of this response letter the application for the determination of zoning is the technically correct mechanism to establish that the land use right for a consent use for a dwelling unit vests on the subject property. DEADP negates that the land use right for a dwelling unit was supposed to be transferred in all successor zoning rights which forms the basis of the application for the determination of zoning.

Considering this, it is recommended that the application be approved in the format as applied for.

Yours faithfully

R JANKIE

TOWN PLANNER (B/8392/2017)

ANNEXURE F 1/3

Western Cape Government
Environmental Affairs and Development Planning

DIRECTORATE: DEVELOPMENT MANAGEMENT (REGION 2)

E-mail : Dalene.Groenewald@westerncape.gov.za
Tel: +27 21 483 5568 Fax: +27 21 483 3633
Private Bag X9086, 1 Dorp Street, Cape Town, 8000
www.westerncape.gov.za/eadp

REFERENCE: 15/3/2/12/B03
TOWN PLANNING ENQUIRIES: Dalene Groenewald Tel: (021) 483 5568
DATE: 27 February 2020

Municipal Manager
PO Box 20
Hermanus
7200

OVERSTRAND MUNICIPALITY: APPLICATION FOR THE DETERMINATION OF ZONING, ERF 4725, ONRUS RIVER

1. Your request for comment, dated 2 December 2019, and received by this Department on 5 December 2019, refers.

2. Based on a review of the information submitted to this Department, the proposal entails the following:

   (i) To determine the historic land use rights of the subject property; and
   (ii) To evaluate the consistency or inconsistency of the existing zoning rights in relation to historic land uses and land use approvals.

3. The applicant is WRAP on behalf of Pieter HDC de Kock, the registered owner of the property. The property is located at number 21 Berghof Drive, Onrus River and measures 1.6557ha.

4. The property is zoned as Open Space Zone 1: Nature Reserve in terms of the Overstrand Municipality Zoning Scheme Regulations. The surrounding properties are zoned for Single Residential purposes towards the south and south-east and as Utility Zone: Utility Services towards the north and west.

5. Environmental Comment

   Applicability of the National Environmental Management Act ("NEMA") Environmental Impact Assessment ("EIA") Regulations, 2014 (as amended):

According to the information provided, the proposed development does not trigger any listed activities in terms of the NEMA Regulations.

6. Planning Comment

Erf 4725 Onrus River was subdivided from Erf 3710 Onrus Rivier, which was zoned Agriculture Zone 1. An application for rezoning for the Remainder of Erf 3710 to Open Space Zone III (nature reserve) was submitted to the Greater Hermanus Municipality by Plan Consult in 1998 and was approved by the then Department of Local Government and Housing on appeal, subject to conditions.

The amended subdivision plan endorsed by the Overstrand Municipality depicted the location of the cottage. The letter of approval that was issued, however, did not contain a condition confirming this land use right, which, according to the applicant, deprived the property of the residential land use rights.

The promulgation of the Overstrand Municipality Zoning Scheme By-law in 2013 introduced the new zoning to the property of Open Space Zone I: Nature Reserve. The zoning conversion, however, did not recognise any historic residential rights.

It is the motivation of the applicant that the property should have been given a consent use right for a dwelling unit, when the zoning was converted from Open Space III (nature reserve) to Open Space I (nature reserve), under the Overstrand Zoning Scheme By-law.

The applicant argues that there was an error in the allocation of the zoning in 2013 with the adoption of the new zoning scheme. The 'error' referred to by the applicant, on his own submission, occurred when the municipality allocated the rights to Erf 4725 in 2001 and the subdivision was confirmed. The applicant also refers to an amended subdivision application but confirms that the amended approval did not include the required consent for a dwelling house.

It would appear from the submission that the existing structure was a lawful building prior to the change in zoning in 2001, although the original use of said building is undetermined. In the absence of any conditions that confirm that a dwelling house is allowed, the structure would have had to be interpreted as a structure allowed within the definition of a 'nature reserve'. As such, this Directorate does not support the applicant's supposition and is of the opinion that the new zoning should, at best, have included a consent use for a tourist accommodation unit.

It should be noted that had the land been transferred to the Berghof Home Owners' Association, the subsequent development of 'open space' for residential purposes would have been prevented.

A zoning determination is only required when the lawful zoning of a property cannot be ascertained. In the instance of Erf 4725, the zoning of the property is known, as the Overstrand Municipality adopted a new Zoning Scheme in terms of which all properties within their area of jurisdiction were allocated new zonings. If no further applications

were considered and approved in respect of this property, the zoning that was allocated to this property on the date of coming into effect of the new zoning scheme is still the valid zoning. No zoning determination is therefore required.

7. Conclusion

In view of the above, the application for a zoning determination is not supported. It is recommended that the applicant should apply to the Municipality for a Consent Use provided for in the Zoning Scheme, as contemplated in Section 16(2).

This comment is based on information currently available. Comment of all interested parties, those potentially affected by the application and other role players are not available at this stage.

This Department reserves the right to submit contradictory and/or amended comment should any additional or new information be submitted. The above-mentioned comment is also not binding on any component within this Department, nor on the Minister, responsible for Environmental Affairs and Development Planning.

DIRECTOR: DEVELOPMENT MANAGEMENT
REGION 2
DATE: 6.3.2020

ANNEXURE G 1/3

OVERSTRAND MUNISIPALITEIT / OVERSTRAND MUNICIPALITY
Eskom Distribution
18 OCT 2019
Overstrand Municipality

FILE NO: Erf 4725 Onrusrivier
SCAN NO: HON 4725
COLLABORATOR NO: 1339641

TP Plithead (J.Olivier)

Date: 2019/10/18

Loretta@overstrand.gov.za

Enquiries:
WayleavesWesternOU@eskom.co.za

WAYLEAVE APPLICATION: CONSENT USE : 21 BERGHOF DRIVE, ONRUS RIVER : Hermanus

YOUR REF: 4725 HON (3226/2019)

ESKOM REF: 02557-19

THIS IS NOT AN APPROVAL TO START CONSTRUCTION

I hereby inform you that Eskom has no objection to 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.

1. **Eskom services are affected by your proposed works and the following must be noted:.**

a) Eskom has no objection to the proposed work and include a drawing indicating Eskom 11kV/LV underground services in close proximity.
b) Please note that underground services indicated are only approximate and the onus is on the applicant to verify its location.
c) There may be LV overhead services / connections not indicated on this drawing.
d) The successful contractor must apply for the necessary agreement forms and additional cable information not indicated on included drawing, in order to start construction.

Application for Working Permit must be made to:

Customer Network Centre: Caledon

Dirk Swart
028 214 5710
SwartDi@eskom.co.za

Include Eskom Wayleave as-built drawings and all documentation, when applying for Working Permit.

Should it be necessary to move, relocate or support any existing services for possible future needs, it will be at the developer's cost. Application for relocating services must be made to Sabelo Potela on 084 745 8990 / PotelaS@eskom.co.za.

Distribution Division - Western Region [Land Development]
Western Region
Eskom Road Brackenfell 7560 PO Box 222 Brackenfell 7561 SA
Tel +27 86 003 7566 www.eskom.co.za
Eskom Holdings SOC Limited Reg No 2002/015527/30

18 OCT 2019

2. **Underground Services**

The following conditions to be adhered to at all times:

a) Works will be carried out as indicated on plans.
b) No mechanical plant to be used within 3.0m of Eskom underground cables.
c) All services to be verified on site.
d) Cross trenches to be dug by hand to locate all underground services before construction work commences.
e) If Eskom underground services cannot be located or is grossly misplaced from where the wayleave plan indicates, then all work is to be stopped and Graham Hector from the Land Development Office to be contacted on 021 980 3551 / HectorG@eskom.co.za, to arrange the capturing of such services.
f) In cases where proposed services run parallel with existing underground power cables the greatest separation as possible should be maintained with a minimum of 1000mm.
g) Where proposed services cross underground power cables the separation should be a minimum of **300mm** with protection between services and power cables. (Preferably a concrete slab)
h) No manholes; catch- pits or any structure to be built on top of existing underground services.
i) Only walk-behind (2 ton Bomac type) compactors to be used when compacting on top of and 1 metre either side of underground cables.
j) If underground services cannot be located then the Customer Network Centre (CNC) should be consulted before commencement of any work.

3. **O.H. Line Services:**

a) No work or no machinery nearer than the following **distances from the conductors**:

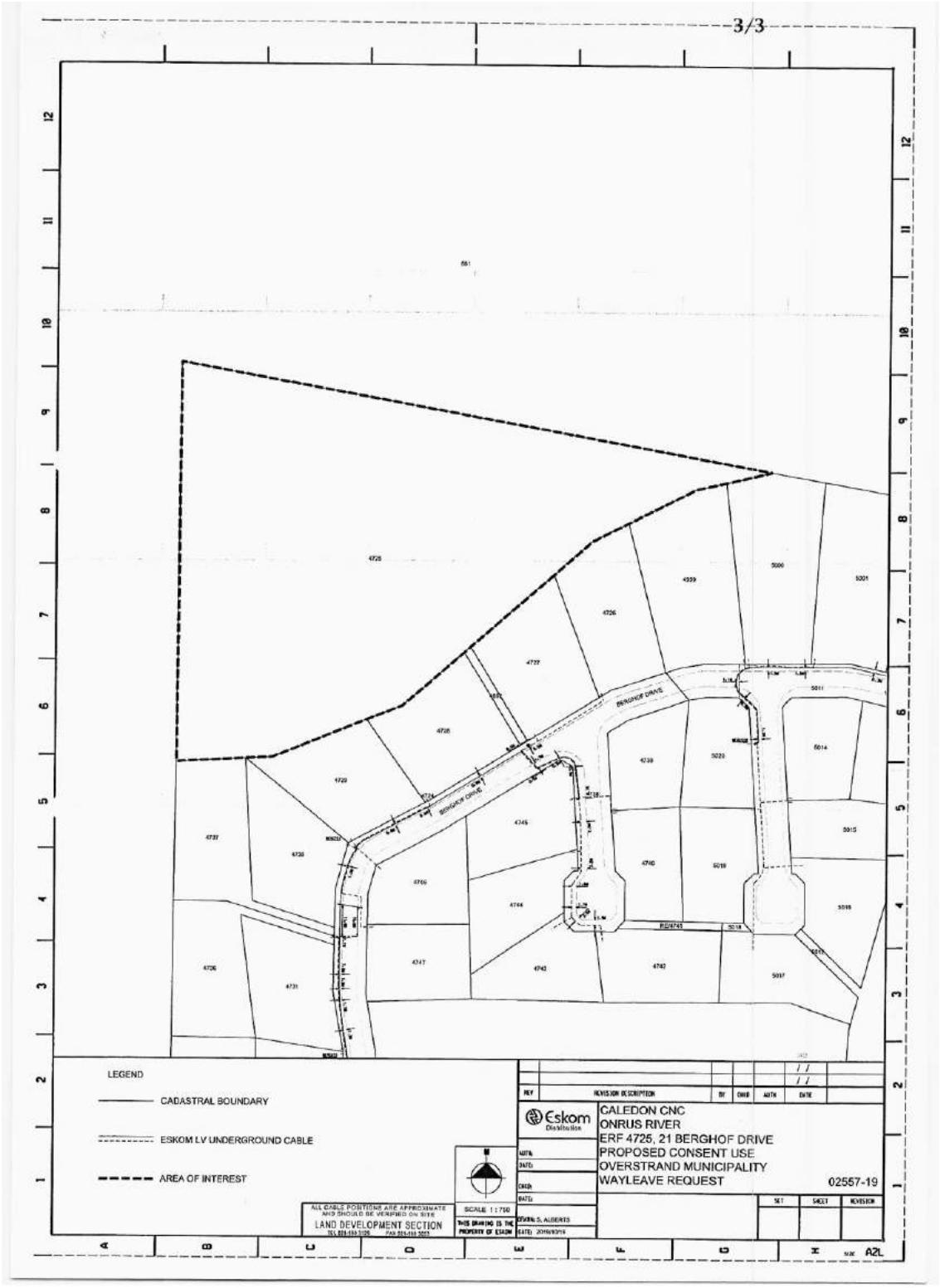
Voltage	Not closer than:
11kV	3.0 m
66kV	3.2 m
132kV	3.8 m

4. **NOTE**

Wayleaves, Indemnity form (working permit) and all as-built drawings issued by Eskom to be kept on site at all times during construction period.

Yours faithfully

LAND DEVELOPMENT (BRACKENFELL)


3/3
LEGEND
CADASTRAL BOUNDARY
ESKOM LV UNDERGROUND CABLE
AREA OF INTEREST
ALL CABLE POSITIONS ARE APPROXIMATE AND SHOULD BE VERIFIED ON SITE
LAND DEVELOPMENT SECTION
SCALE 1:750
THIS DRAWING IS THE PROPERTY OF ESKOM
Eskom
Distribution
CALEDON CNC
ONRUS RIVER
ERF 4725, 21 BERGHOF DRIVE
PROPOSED CONSENT USE
OVERSTRAND MUNICIPALITY
WAYLEAVE REQUEST
02557-19
SIZE A2L

ANNEXURE H 1/4
TP - A. Theart
(H. Olivier)

OVERSTRAND MUNISIPALITEIT
19 NOV 2019
OVERSTRAND MUNICIPALITY

open serve

FILE NO: ERF 4725 - HON
SCAN NO: HON 4725
COLLABORATOR NO: 1357946

Division of Telkom SA SOC Ltd

10 Jan Smuts Drive
Pinelands
7404

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

Our Ref.: WWIP_WONR3984_19
Your Ref.: 4725 HON

19 November 2019

Attention: S Muller

Overstrand Municipality
HERMANUS

APPLICATION FOR DETERMINATION OF ZONING: ERF 4725, 21 BERGHOF DRIVE, ONRUS RIVER

With reference to your application received **10 October 2019.**

Please notify this office immediately if you locate any Open Serve plant that was not indicated. Please contact our representative Frederik Swart at telephone number 028 514 1199 / 081 363 7815 / FrederikS@openserve.co.za

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 the drawing supplied, Open Serve infrastructure **will not be affected**. **However, care should still be taken should it be evident that there is in fact Open Serve network present on the actual sites.**

19 NOV 2019

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

For Selwyn Bowers
Operations Manager
Wayleave Management: Western Region

open serve

PLANT NOT AFFECTED

If any plant not indicated exists and information or supervision is required please contact this office at least 48 hours before any work commences.

Frederik Swart FrederikS@Openserve.co.za	081 363 7815	
Refence number WWIP_WONR3984_19	**Marked Up** C. Spammer	**Date** 19-Nov-19

TELKOM
REGIONAL EXECUTIVE
NEMESIA CLOSE
ARISTEA CLOSE
WONR80
WONR58
WONR60
Legend
Existing Manhole
Planned Manhole
To Be Abandoned Manhole
Existing Jointing Pit
Planned Jointing Pit
To Be Abandoned Jointing Pit
Existing PJB
Planned PJB
To Be Abandoned PJB
Existing SDC
Planned SDC
To Be Recovered SDC
Existing DLC
Planned DLC
To Be Recovered DLC
Existing Pillar Joint
Planned Pillar Joint
To Be Recovered Pillar Joint
Existing Indoor DP
Planned Indoor DP
To Be Recovered DP
Existing DP
Planned DP
To Be Recovered DP
Existing Pole
Planned Pole
To Be Recovered Pole
Existing Underground Route
Planned Underground Route
To Be Abandoned Underground Route
Existing Overhead Route
Planned Overhead Route
To Be Recovered Overhead Route
Existing Mini OMDF
Planned Mini OMDF
Existing Stout and Stay
Compiled By
C Spanner
Client
Overstrand Municipality
Client ref
4725 HON
Details
NO SERVICES AFFECTED
Date
15/11/2019
OpenServe ref
WWP HONR3864 19
Page Size
A4

ANNEXURE I

COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR: APPLICATION FOR DETERMINATION OF ZONING: ERF 4725, ONRUS RIVER (3226/2019)

Stormwater (SW)	:	In order
Electricity	:	Escom
Water	:	In order
Sewer	:	In order
Roads and traffic	:	In order

Conditions

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;

2. that should additional services connections be required, the owner will be responsible for the payment of bulk services levies;

3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to minimum requirements of *SANS 10400 – P:2010:* Drainage;

4. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;

5. that stormwater be allowed to discharge through Erf 4725, Onrus River, unobstructed;

6. that any additional and / or extended vehicles entrances will be for the owner's account;

7. that no on-street parking be allowed.

p.p. R Cloete

DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

29/11/2019

DATE

ANNEXURE J

Munisipaliteit – U-Masipala – Municipality

OVERSTRAND

INTERNAL MEMORANDUM

Aandag / For Attention:	Town Planning department: H. Olivier	Van / From:	Department Operational Services
Afskrif / Copy:		Datum / Date:	14 October 2019

Ref: Erf 4725, Onrus River

1. APPLICATION FOR DETERMINATION OF ZONING ON ERF 4725, ONRUS RIVER

The Department: Operational Services (Hermanus) **has no objection to the application for determination of zoning on Erf 4725, Onrus River as indicated in the application, subject to the following conditions:**

1. That the applicant must comply with all statutory requirements that may be applicable to the undertaking of the proposed development on Erf 4725, Onrus River.
2. 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.
3. That on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Directorate: Infrastructure and Planning.
4. That any additional and / or extended vehicle entrances will be for the owner's account.
5. That, upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Senior Manager: Operational Services (Hermanus) for written approval.
6. It is incumbent upon the applicant / developer to ensure that all operational requirements in terms of water, sewerage and stormwater provision to the property are met.

Yours faithfully

T.I. Marx
Principal Technician: Operational Services
Hermanus

P. Burger.
Senior Manager: Operational Services
Hermanus

C:\Users\tmarx\Desktop\departures\Peter\Erf 4725 Onrus River 2019-10-14.docx

2019 -10- 15

ANNEXURE K

Verwysing Reference Isalathiso: AF213/19/3/2-H7

Navrae Enquiries Imibuzo: L CLOETE

Departement van Beplanning, Plaaslike Bestuur en Behuising
Department of Planning, Local Government and Housing
iSebe loCwangciso, uLawulo lweeDolophu noLwakhiwo-zindlu

TEL: (021) 483-4585

Mr A J W Marren
Hermanus Ratepayers Association
P O Box 134
HERMANUS
7200

Sir

APPEAL: APPLICATION FOR REZONING AND SUBDIVISION OF THE REMAINDER OF ERF 3710, ONRUS RIVER

1. Your letter dated 11 March 1999 in the above regard has reference.

2. The Competent Authority for the administration of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) has, in terms of sections 42 and 44 of the said Ordinance, dismissed your Association's appeal against a decision of the Greater Hermanus Municipality to approve an application for the rezoning of the Remainder of Erf 3710, Onrus River from Agricultural Zone I to Single Residential Zone and the subdivision thereof to create 99 single residential erven, 1 agricultural smallholding and open space areas, subject to the following conditions:

2.1 Approval by the Council of a revised layout plan, which will include the following:

2.1.1 An increase in width of the 10 m roads to 12 m.

2.1.2 The Nature Reserve erf along the 100 m contour line, the zoning of the erf to be Open Space Zone III.

2.1.3 Access to the Nature Reserve erf.

2.1.4 The size of Erf 106 should also be brought in line with the sizes of the surrounding erven.

2.1.5 Re-positioning of the erf housing the proposed detention pond.

2.1.6/...

Privaatsak X 9083
KAAPSTAD 8000
Waalstraat 27
Telefoon (021) 483 4585
Faks (021) 4833633

Private Bag X9083
CAPE TOWN
27 Wale Street
Telephone (021) 483 4585
Fax (021) 483 3633

2.1.6 The creation of a school erf, if desired.

2.1.7 Reduction in the use of panhandles.

2.1.8 The position of the acceptable temporary access point should also be more clearly indicated.

2.1.9 Erf 106 on Annexure A should be indicated as Single Residential Zone.

2.2 That the PAWC Department of Transport approve the final access point.

2.3 That a Development and Management Plan for the Open Spaces be drawn up with the help of an environmentalist be approved by Council.

2.4 The appointment of a consulting engineer who will apply more detailed studies to investigate the stormwater run-off and locality and size of the detention pond, and approval by Council's Town Engineer of the proposal.

2.5 That subdivision only be allowed to the 100 m contour line and that the area above the 100 m contour line be zoned Open Space Zone III (Nature Reserve).

2.6 That a Detailed Service Plan be submitted to the Town Engineer for approval.

2.7 That a service agreement be drawn up between Council and the applicant.

2.8 That Erven 32 and 33 be zoned for Public open Space in the event of an extension of the East-West collectors.

2.9 That a bulk service levy be payable on each additional erf as determined by the Town Engineer.

2.10 That this development and any costs be for the account of the applicant and to no expense of the Council or the PAWC Department of Transport.

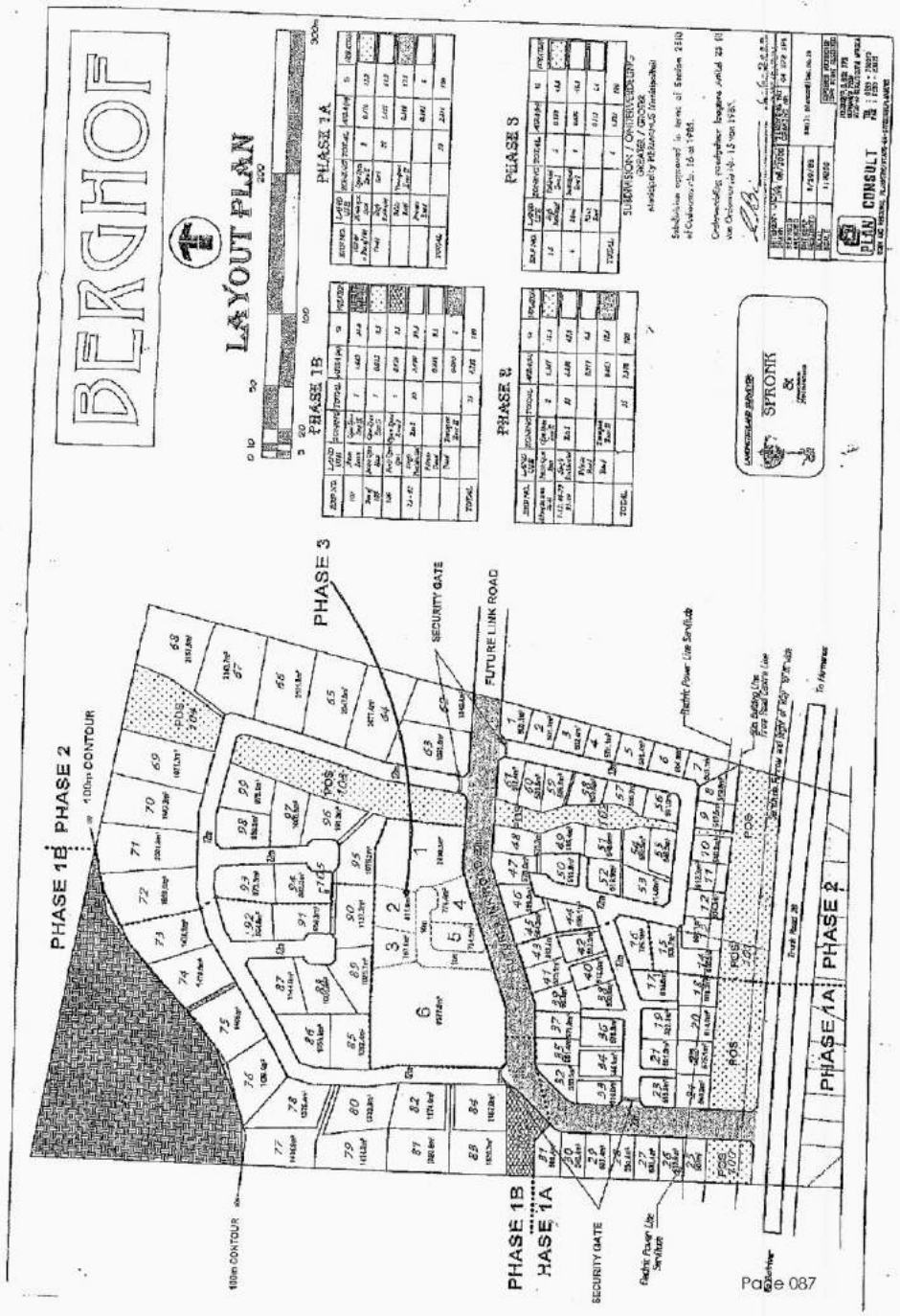
2.11 That calculations of anticipated stormwater runoff from the site be submitted to the PAWK Department of Transport, in order that the adequacy of culverts may be checked.

2.12 Erf 106 on Annexure A should be zoned Single Residential Zone.

Yours faithfully

HEAD OF DEPARTMENT

DATE: 14 MAR 2000


BERGHOF
LAYOUT PLAN
PHASE 1A
PHASE 1B
PHASE 2
PHASE 3
SECURITY GATE
FUTURE LINK ROAD
100m CONTOUR
POS
PHASE 1B
PHASE 1A
PHASE 2
SECURITY GATE
Page 087

ERF 3710 ONRUSRIVIER
BERGHOF
PROPOSED OPEN SPACE DEVELOPMENT PLAN

CLIENT : Topsiprops (PTY) Ltd

REFERENCE: 04 072 1

DATE : February 2001

CONTENTS

1. BACKGROUND AND COUNCIL'S RESOLUTION

2. EXISTING SITE ANALYSIS

3. DEVELOPMENT & MANAGEMENT PROPOSALS

4. IMPLEMENTATION

1. BACKGROUND AND COUNCIL RESOLUTION

An application for the rezoning and subdivision of erf 3710 Onrusrivier was submitted to Council and was approved under delegated authority at a meeting of the Executive Committee held on the 6th of June 2000.

Council subsequently approved the application and one of the conditions was that the erf above the 100m contour be zoned Open Space Zone III (Nature Reserve) and also that a Development and Management Plan be compiled for these open space areas.

These conditions were also endorsed by the Department of Planning, Local Government and Housing after an appeal against the proposed development was dismissed by them.

2. EXISTING SITE ANALYSIS

A site analysis for each site was conducted and each site was analysed individually with the following results. (Please refer to the base map and the individual plans)

2.1 Plan A (Erf 107, Photo 1-3)

This erf is situated on the highest point of the site and is presently utilised for residential purposes (Stone Cottage) and as a lookout and picnic facility.

Approximately 50% of this site are cleared of alien vegetation (Blue Gum) and the balance is still covered by these trees. In the open space area new fynbos growth is already visible.

The Blue Gum trees vary in stem thickness from 50 – 500mm.

2.2 Plan B (Erf 104, Photo 4)

Erf 104 was provided to accommodate two small existing dams, which could provide attractive water features. These dams are small but effective in retaining water flowing from the Onrus Mountains.

The banks of the stream are steep (±3m) and rockey. Blue gum trees that vary in stem thickness from-50 – 200mm also invade the banks.

2.3 Plan C (Erf 103, Photo 5-9)

Erf 103 was shaped to accommodate a well-defined watercourse, which are approximately 3m deep. The banks of the stream are steep but not dangerously so and provide an interesting open space feature for the future residential area.

PHOTO 1: ERF 107
Existing stone cottage with Blue Gum bush in the background

PHOTO 2: ERF 107
Existing picnic and lookout site

PHOTO 3: ERF 107
View from erf 107 looking towards the south

PHOTO 4: ERF 104
Existing weir and dam during the summer

PHOTO 5: ERF 103
View of dry watercourse looking in a southern direction

PHOTO 6: ERF 103
View of watercourse looking in a northerly direction

PHOTO 7: ERF 103
View of watercourse looking in a northerly direction showing shallow banks of the watercourse

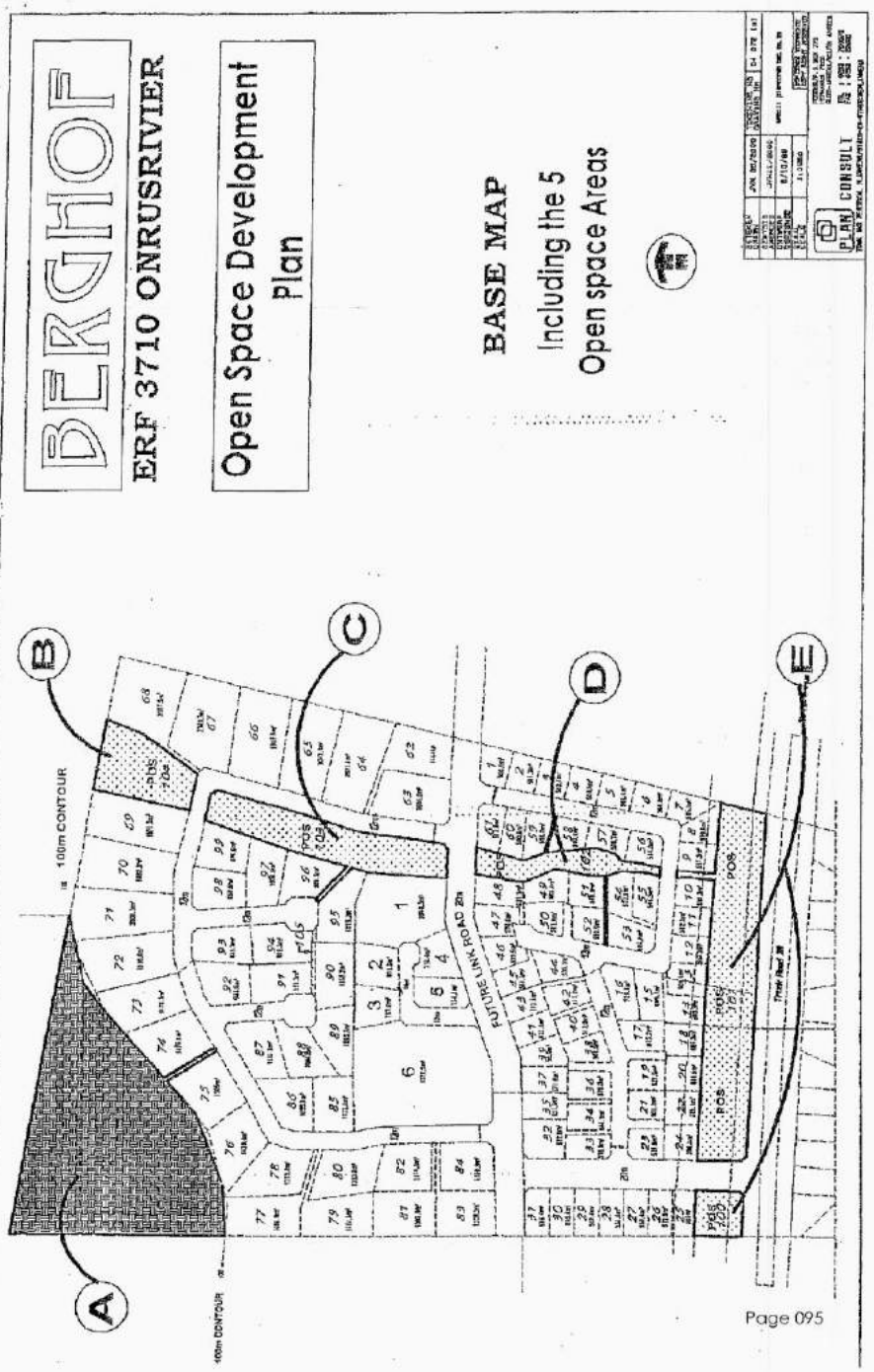
PHOTO 8: ERF 103
Down stream area of erf 103 showing smaller consentration of Blue Gum trees

PHOTO 9: ERF 103
Area cleared of trees, down stream portion of erf 103

PHOTO 10: ERF 102
View of erf 102 showing partially cleared area as well as remaining smaller Blue Gum trees

PHOTO 11: ERF 101
Erf presently under construction for detention pond

PHOTO 12: ERF 101
Natural growth Grass & Fynbos that will be allowed to establish in the detention pond area


BERGHOF
ERF 3710 ONRUSRIVIER
Open Space Development Plan
BASE MAP
Including the 5
Open space Areas
100m CONTOUR
FUTURE LINK ROAD 2a
POS
A
B
C
D
E
PLAN CONSULT
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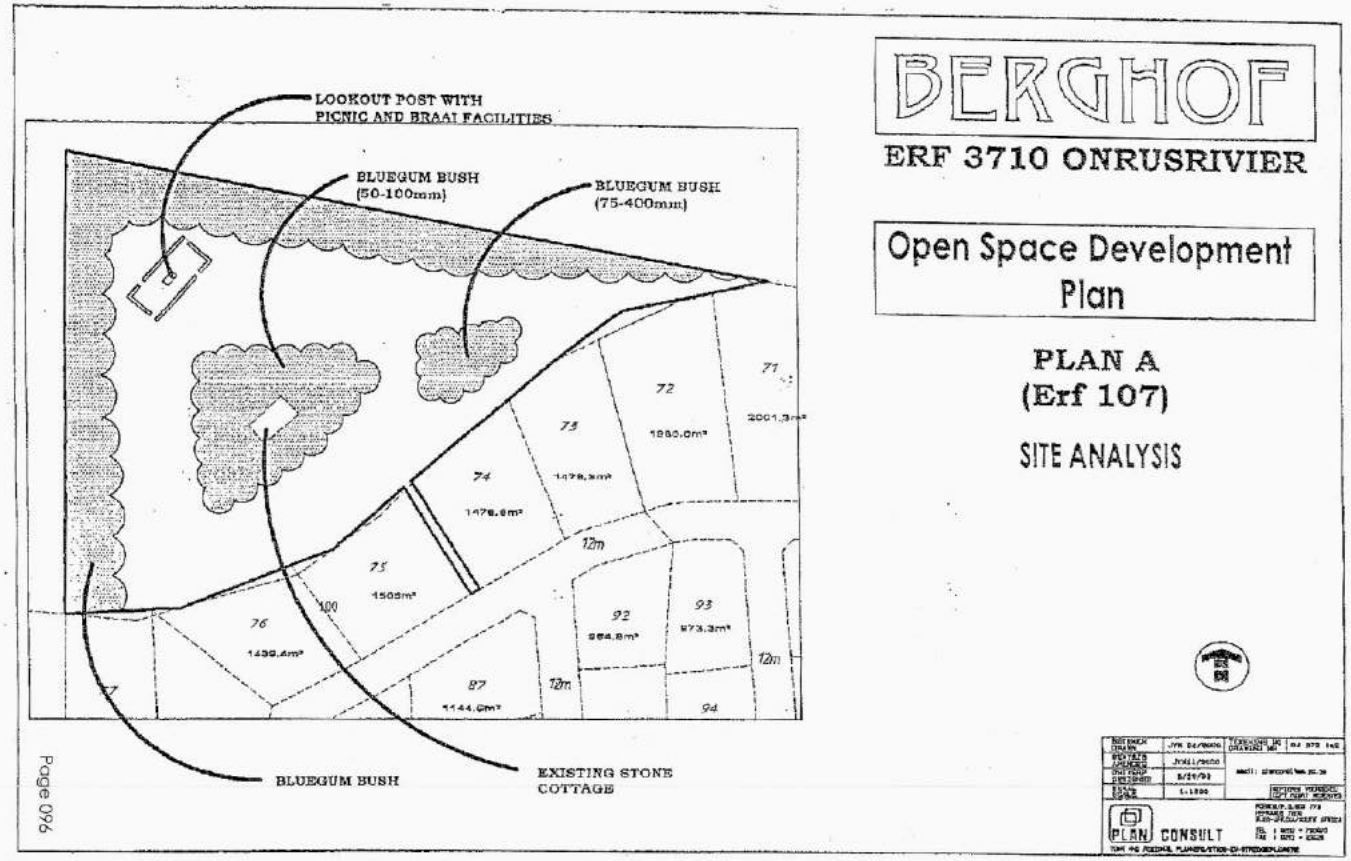
LOOKOUT POST WITH
PICNIC AND BRAAI FACILITIES
BLUEGUM BUSH
(50-100mm)
BLUEGUM BUSH
(75-400mm)
BLUEGUM BUSH
EXISTING STONE
COTTAGE
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ERF 3710 ONRUSRIVIER
Open Space Development Plan
PLAN A
(Erf 107)
SITE ANALYSIS
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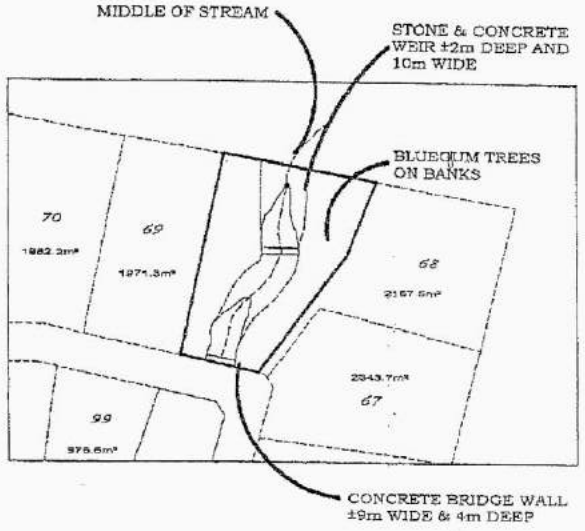
ERF 3710 ONRUSRIVIER

Open Space Development Plan

PLAN B
(Erf 104)

SITE ANALYSIS



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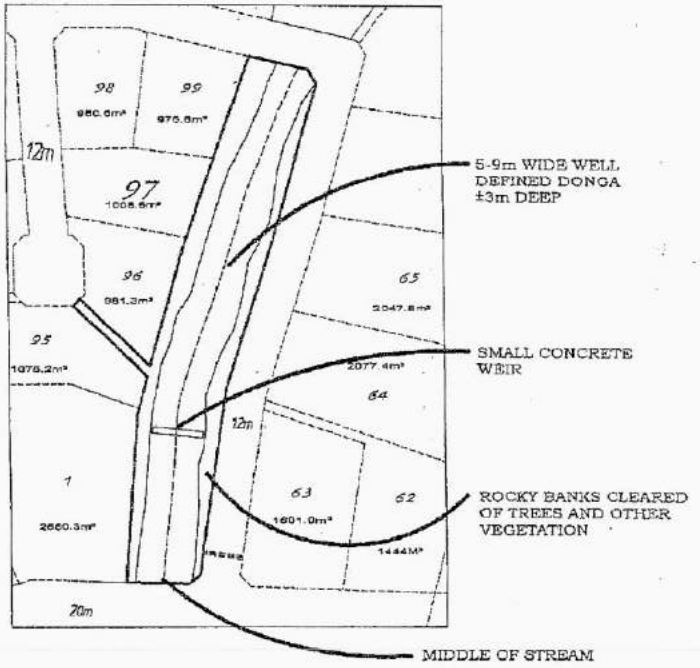
ERF 3710 ONRUSRIVIER

Open Space Development Plan

PLAN C
(Erf 103)

SITE ANALYSIS



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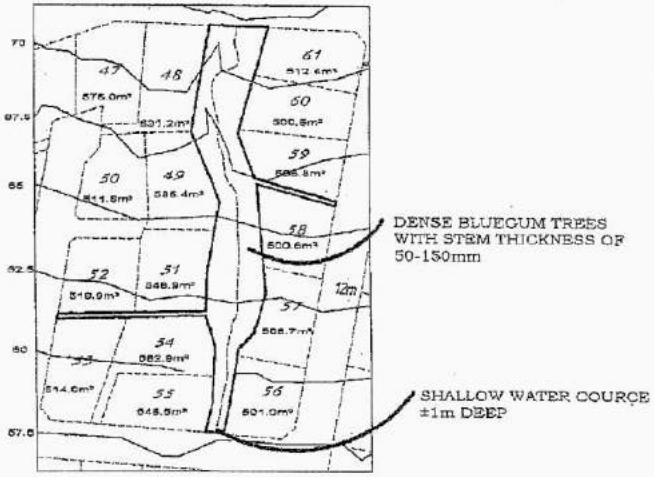
ERF 3710 ONRUSRIVIER

Open Space Development Plan

PLAN D
(Erf 102)

SITE ANALYSIS



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ERF 3710 ONRUSRIVIER

Open Space Development Plan

PLAN E
(Erf 100& 101)
SITE ANALYSIS

PLAN CONSULT

The banks are also cleared of vegetation and big trees with evidence of natural fynbos returning to the open areas. A small weir exists in the middle of the stream, which could also serve as a smaller water feature in the raining season.

2.4 Plan D (Erf 102, Photo 10)

Erf 102 is almost totally overgrown by alien vegetation (Blue Gum). These trees are not fully-grown and could be removed easily.

The watercourse is not as well defined but a definite watercourse does exist and is accommodated as such in the confines of this erf.

2.5 Plan E (Erf 100&101, Photo (11-12)

This erf was created for the purpose of accommodating a water retention facility as well as providing space for the municipal water servitude and Provincial Road building line.

This erf is presently under construction (ground works) and will be stabilised by natural ground cover.

A dense bush of Blue Gum trees, which will be removed during the construction phase, covers the eastern portion of the site.

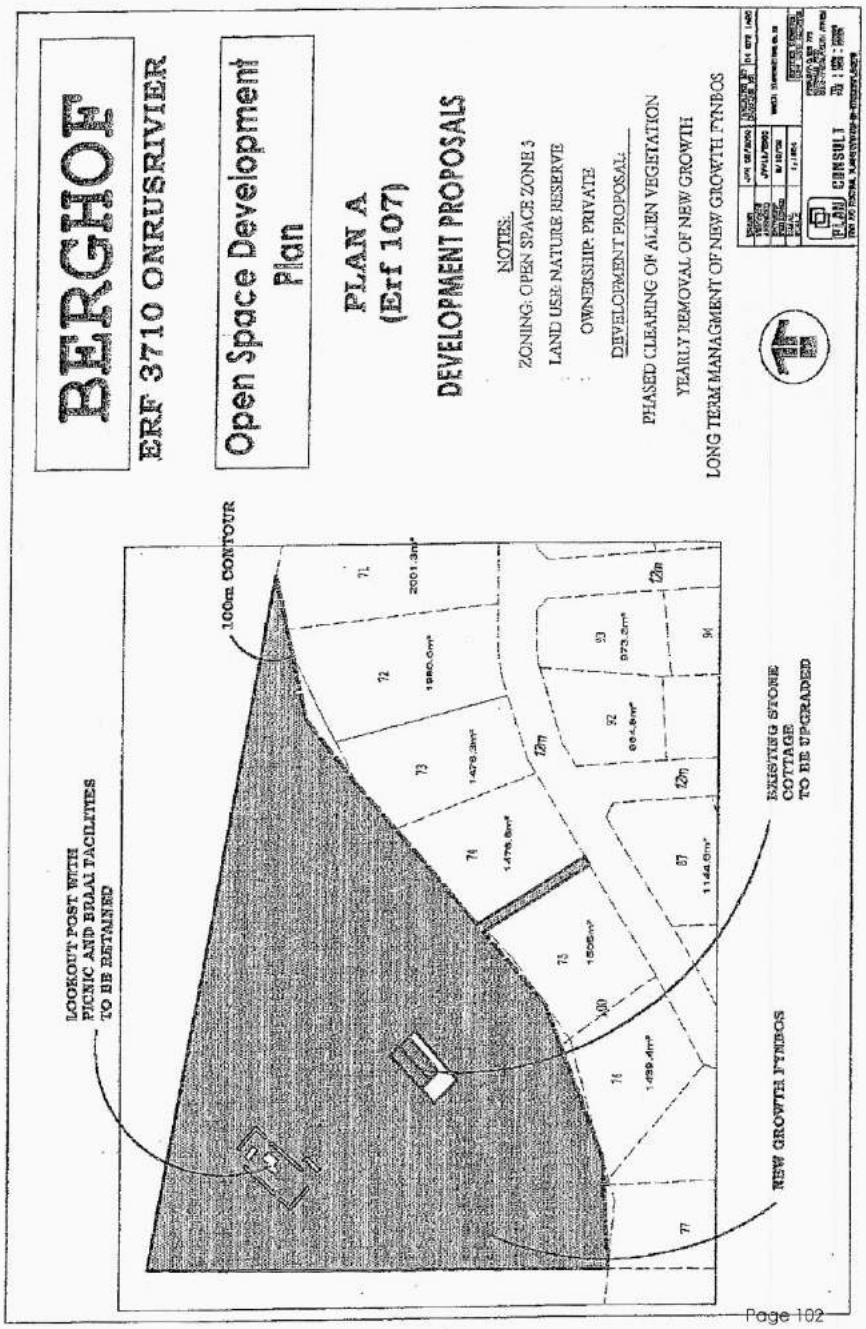
3. DEVELOPMENT AND MANAGEMENT PROPOSALS

3.1 General

The proposed open space areas will still be allowed to function as natural open spaces by retaining the present topographical features (watercourses) and clearing the alien vegetation (Blue Gum trees) to allow the natural Fynbos species to return.

These open space erven will therefore function as passive open space areas with the emphasis on their visual qualities and vegetation.

Erf 107 will function in the same fashion with the exception that the zoning will be Open Space Zone III (Nature Reserve) in order to comply with the policy of Council to restrict development to 100m contour line and zone the land above the 100m contour as nature reserve.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ERF 3710 ONRUSRIVIER
Open Space Development Plan
PLAN A
(Erf 107)
DEVELOPMENT PROPOSALS
NOTES:
ZONING: OPEN SPACE ZONE 3
LAND USE: NATURE RESERVE
OWNERSHIP: PRIVATE
DEVELOPMENT PROPOSAL:
PHASED CLEARING OF ALIEN VEGETATION
YEARLY REMOVAL OF NEW GROWTH
LONG TERM MANAGMENT OF NEW GROWTH FYNBOS
100m CONTOUR
LOOKOUT POST WITH PICNIC AND BRAAI FACILITIES TO BE RETAINED
EXISTING STONE COTTAGE TO BE UPGRADED
NEW GROWTH FYNBOS
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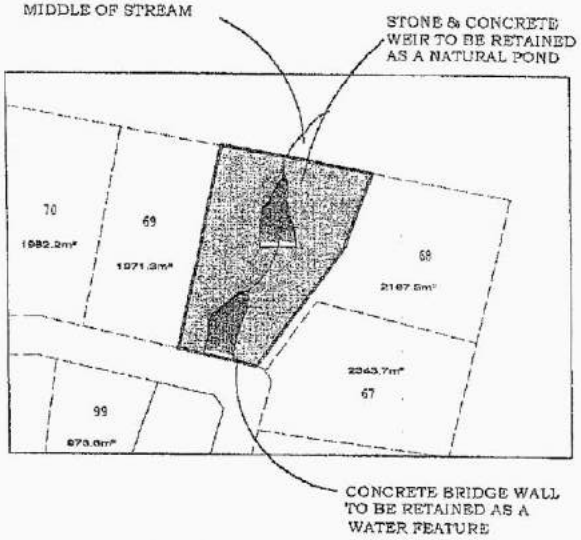
ERF 3710 ONRUSRIVIER

Open Space Development Plan



PLAN B
(Erf 104)

DEVELOPMENT PROPOSALS

NOTES:

ZONING: OPEN SPACE ZONE 2

LAND USE: PRIVATE OPEN SPACE

OWNERSHIP: ESTATE OWNERS

DEVELOPMENT PROPOSALS

PHASED REMOVAL OF ALIEN VEGETATION

YEARLY REMOVAL OF NEW GROWTH

CONTINEOUS MANAGMENT OF FYNBOS

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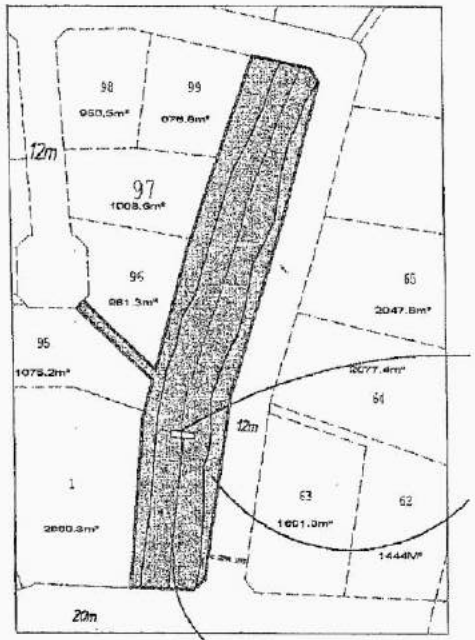
ERF 3710 ONRUSRIVIER

Open Space Development Plan

PLAN C
(Erf 103)



DEVELOPMENT PROPOSALS

NOTES:

ZONING: OPEN SACE ZONE 2

LAND USE: PRIVATE OPEN SPACE

OWNERSHIP: ESTATE OWNERS

DEVELOPMENT PROPOSALS:

REMOVE NEW GROWTH ALIEN VEGETATION

MANAGE NEW GROWTH FYNBOS

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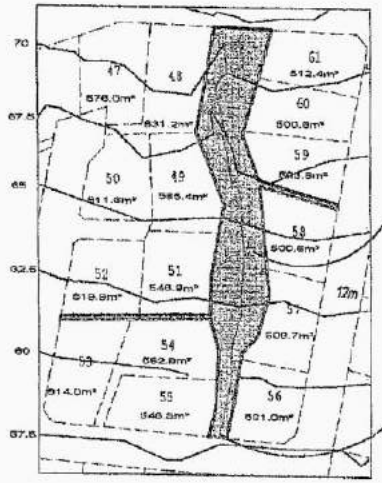
ERF 3710 ONRUSRIVIER

Open Space Development Plan

PLAN D
(Erf 102)



NEW GROWTH FYNBOS

SHALLOW WATER COURCE
±1m DEEP

DEVELOPMENT PROPOSALS

NOTES:

ZONING: OPEN SPACE ZONE 2

LAND USE: PRIVATE OPEN SPACE

OWNERSHIP: ESTATE OWNERS

DEVELOPMENT PROPOSALS:

PHASED REMOVAL OF ALIEN VEGETATION

YEARLY REMOVAL OF NEW GROWTH

MANAGE NEW GROWTH FYNBOS

PLAN CONSULT

DEVELOPMENT PROPOSALS

NOTES:

ZONING: OPEN SPACE ZONE 2

LAND USE: PRIVATE OPEN SPACE

OWNERSHIP: ESTATE OWNERS

DEVELPMENT PROPOSALS:

PHASED REMOVAL OF ALIENS

YEARLY REMOVAL OF NEW GROWTH

MANAGE NEW GROWTH FYNBOS

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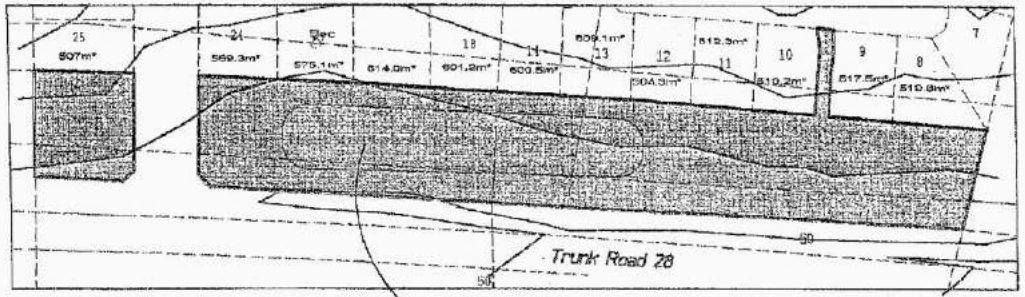
ERF 3710 ONRUSRIVIER

Open Space Development Plan

PLAN E
(Erf 1008 101)



DETENTION POND AREA TO BE GRASSED WITH INDIGENOUS GROUND COVERS AND FYNBOS

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3.2 Development Schedule

In order to address the detail development and management of each open space the following table was compiled to provide a compact schedule for this purpose. (Also refer to the particular plans showing the development proposals)

Plan & Erf No.	Zoning	Land Use	Ownership	Development Proposal	Management Proposal	Planning Phase	Construction Phase
A 107	Open Space Zone III	Nature Reserve	Private	➢ Clearing all alien vegetation ➢ Retain cottage	➢ Annual removal of new alien growth ➢ Prevent erosion ➢ Monitor new Fynbos growth	Phase 1B	2
B 104	Open Space Zone II	Private Open Space	Estate Owners	➢ Clearing all alien vegetation ➢ Clean existing dam and weir	➢ Annual removal of new alien growth ➢ Prevent erosion ➢ Monitor new Fynbos growth ➢ Keep dam and weir clean	Phase 2	3
C 103	Open Space Zone II	Private Open Space	Estate Owners	➢ Clearing all alien vegetation ➢ Clean existing weir	➢ Annual removal of new alien growth ➢ Prevent erosion ➢ Monitor new Fynbos growth	Phase 2	3
D 102	Open Space Zone II	Private Open Space	Estate Owners	➢ Clearing all alien vegetation	➢ Annual removal of new alien growth ➢ Prevent erosion ➢ Monitor new Fynbos growth	Phase 2	3
E 101& 100	Open Space Zone II	Private Open Space	Estate Owners	➢ Clearing all alien vegetation ➢ Build water detention Pond	➢ Annual removal of new alien growth ➢ Prevent erosion ➢ Monitor new Fynbos growth	Phase 1A	1

4. IMPLEMENTATION

The previous schedule indicating the development and management proposals also indicates the phasing of the development.

It should be noted that each open space erf would be developed simultaneously with the particular construction phase within which the particular open space erf is situated.

Plan Consult
February 2001

KONTRAK NR._____

Onrusrivier Erf 3710

OOREENKOMS MET DORPSTIGTER VIR DIE VERSKAFFING EN INSTALLASIE VAN NOODSAAKLIKE EN ANDER DIENSTE

EIENDOM: Erf 3710

MUNISIPALITEIT: OVERSTRAND

OVERSTRAND
MUNISIPALITEIT U-MASIPALA MUNICIPALITY

Posbus 20
HERMANUS
7200

Tel: (028) 3138000
Fax: (028) 3121894
E-mail: townclerk@hermanus.org.za

P O Box 20
HERMANUS
7200

Datum: Isuku: Date: 17 April 2001

Verwysing Reference: 15/3/2/1-9/98

Navrae: Imibuzo Enquiries: Mrs Burman

Messrs Spronk & Associates Inc
Land Surveyors
P O Box 819
HERMANUS
7200

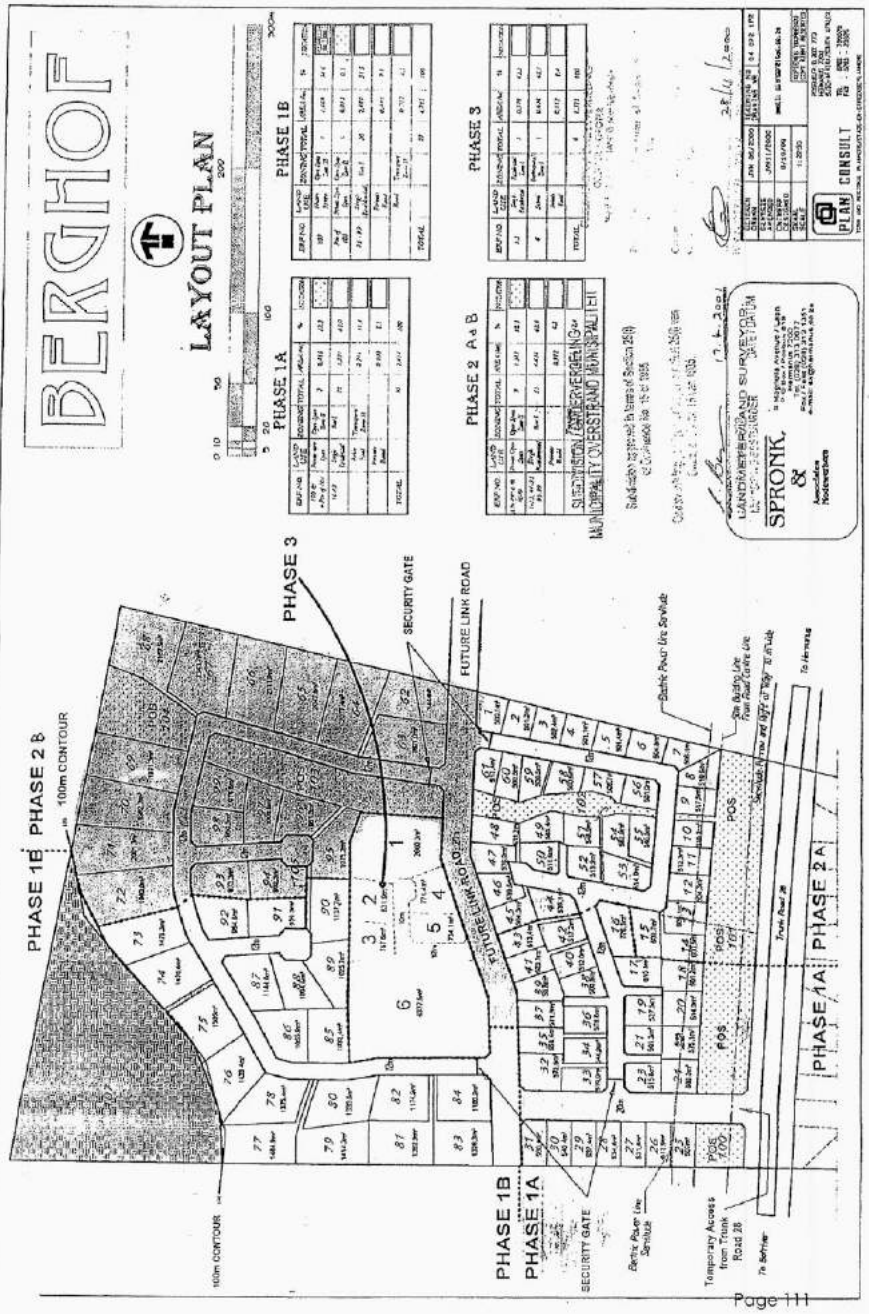
Dear Sir

SUBDVISION OF THE REMAINDER OF ERF 3710 ONRUST RIVER

I refer to your letter of 10 April 2001 and return herewith a copy of the amended phase plan which has been endorsed in terms of section 25 of Ordinance 15 of 1985.

Yours faithfully

INTERIM MUNICIPAL MANAGER


BERGHOF
LAYOUT PLAN
PHASE 1B
PHASE 1A
PHASE 2 A & B
PHASE 3
SUBDIVISION / CONSOLIDATION
MUNICIPALITY OVERSTRAND MUNICIPALITY
SPRONK & Associates
PLAN CONSULT
PHASE 1B PHASE 2 B
100m CONTOUR
PHASE 3
SECURITY GATE
FUTURE LINK ROAD
Electric Power Line Servitude
PHASE 1B
PHASE 1A
SECURITY GATE
Temporary Access from Trunk Road 28
To Bettar
PHASE 1A
PHASE 2 A
To Hermanus
POS