



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

A G E N D A

DATE:	25 OCTOBER 2017
VENUE:	TOWN PLANNING COMMITTEE ROOM HERMANUS
TIME:	14:00

OVERSTRAND MUNICIPALITY

Office of the Municipal Manager
Civic Centre
HERMANUS
7200

4 October 2017

TO : THE CHAIRPERSON AND MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

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

NOTICE IS HEREBY GIVEN that a meeting of the **Municipal Planning Tribunal (MPT)** will go into session on **Wednesday, 25 October 2017 at 14:00, Town Planning Committee Room, 16 Paterson Street, Hermanus**, to consider the attached agenda.

You are kindly requested to submit any amendments/additions to Ms S Swart (sswart@overstrand.gov.za) on or before **12 October 2017**.

**COENIE GROENEWALD
CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL**

Distribution:

1. Mr C Groenewald (Chairperson)
2. Mr S Müller (Vice-Chairperson)
3. Mr S Madikane (Member)
4. Mr R Williams (Member)
5. Mr R Kuchar (Member)
6. Ms H Janser (Member)
7. Mr S van der Merwe (Senior Town Planner)
8. Ms H van der Stoep (Senior Town Planner)
9. Mr P Roux (Town Planner)
10. Mr H Olivier (Town Planner)
11. Secretariat

1. OPENING

2. APPLICATIONS FOR LEAVE OF ABSENCE

3. CONFIRMATION OF MINUTES

3.1 Minutes of a Municipal Planning Tribunal Meeting held on 27 September 2017

4. ITEMS FOR CONSIDERATION

4.1 ERF 1583, 19 KWAAIWATER ROAD, EASTCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA : PROPOSED SUBDIVISION : MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF MJUT VAN WIJNGAARDEN

Report attached

4.2 ERF 5160, 6 DE VILLIERS STREET, ONRUSTRIVIER, OVERSTRAND MUNICIPAL AREA : PROPOSED CONSENT USE : MESSRS PLAN ACTIVE ON BEHALF OF LIDIKO PROPERTY DEVELOPMENTS & OTHERS

Report attached

4.3 ERF 106, 2 PRIESTLEYA ROAD, ROOIELS, OVERSTRAND MUNICIPAL AREA : PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS : MESSRS INTERACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF STRUPA INGENIEURSDIENSTE (PTY) LTD

Report attached

4.4 ERF 8395, 65 LAVENDER STREET, KLEINMOND, OVERSTRAND MUNICIPAL AREA : PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS AND CONSENT USE : M MOHAMUD ON BEHALF OF YP MBALI

Report attached

MUNICIPAL PLANNING TRIBUNAL (MPT)

25 October 2017

INDEX

<u>ITEM</u>		<u>PAGE NUMBER</u>
	APPLICATIONS FOR LEAVE OF ABSENCE	
4.1	ERF 1583, 19 KWAAIWATER ROAD, EASTCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA : PROPOSED SUBDIVISION : MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF MJUT VAN WIJNGAARDEN	1
4.2	ERF 5160, 6 DE VILLIERS STREET, ONRUSTRIVIER, OVERSTRAND MUNICIPAL AREA : PROPOSED CONSENT USE : MESSRS PLAN ACTIVE ON BEHALF OF LIDIKO PROPERTY DEVELOPMENTS & OTHERS	64
4.3	ERF 106, 2 PRIESTLEYA ROAD, ROOIELS, OVERSTRAND MUNICIPAL AREA : PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS : MESSRS INTERACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF STRUPA INGENIEURSDIENSTE (PTY) LTD	105
4.4	ERF 8395, 65 LAVENDER STREET, KLEINMOND, OVERSTRAND MUNICIPAL AREA : PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS AND CONSENT USE : M MOHAMUD ON BEHALF OF YP MBALI	191

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

4.1

**ERF 1583, 19 KWAAIWATER ROAD, EASTCLIFF, HERMANUS, OVERSTRAND
MUNICIPAL AREA : PROPOSED SUBDIVISION : MESSRS PLAN ACTIVE TOWN AND
REGIONAL PLANNERS ON BEHALF OF MJUT VAN WIJNGAARDEN**

1583 HEC (3602)

P Roux

25 August 2017

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 1 March 2017 from Messrs Plan Active Town- and Regional Planners on behalf of the owner of Erf 1583, Eastcliff, Hermanus, MJUT van Wijngaarden, in terms of Section 16(2)(d) to subdivide Erf 1583, Eastcliff, Hermanus to create a Remainder measuring approximately 570m² and a new Portion A measuring approximately 545m² for residential purposes.

The Locality Plan of the property concerned is attached as Annexure A, the Motivation Report from the applicant in support of the application is attached as Annexure B and the Site Development Plan is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 1583 is situated in Eastcliff which is a residential extension of Hermanus. The property is 1115m² in extent and is currently vacant.

The applicant seeks to subdivide the subject property into two (2) portions in order to create a Remainder measuring approximately 570m² and a new Portion A measuring approximately 545m² for residential purposes.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the proposed departures can be summarised as follows:

- ❖ the subject property can be subdivided in terms of lawful layout to create the original portions;
- ❖ the subdivision will be in line with the original layout on General Plan M56A, which was approved by the office of the Surveyor-General prior to 1935;
- ❖ the additional property will be sold to an interested buyer;
- ❖ only an existing outbuilding is situated on the property which will be demolished;
- ❖ the criteria considered with the subdivision was the following:

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

- surrounding erf sizes;
- accessibility;
- impact on the character of the area;
- erf shape; and
- planning principles.
- ❖ no title deed restrictions are applicable; and
- ❖ the zoning of the properties will remain unchanged or additional process will be followed in future.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Notices	Yes	16/03/2017	21/04/2017
Ward councillor	Yes	16/03/2017	21/04/2017
Total letters of objection	Three (3)		
Was public participation undertaken in accordance with Section 45 - 49 of the Proposed Draft 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	Recommendation
Operational Services	16/03/2017	No objection.	Positive
Building Department	20/03/2017	Subdivision supported subject to any plan submission being in compliance with SANS10400. Outbuilding to be demolished if dwelling not erected within 12 months.	Positive
Local Heritage	22/03/2017	No objection.	Positive
Electro Technical Services	05/04/2017	In view of the fact that plot 1583 is fully serviced and the new plot will be serviced in line with the Municipality Regulations there are no comments, however keep in mind that each of the 2 erven are only entitled to a single phase 60 Amp service connection.	Positive

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

Environmental Section	06/04/2017	No objection.	Positive
Engineering Services	11/04/2017	Annexure F.	Positive

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

The application was circulated to the relevant property owners and three (3) objection letters were received, two (2) of the letters are from the same property owners which are Mr G and Mrs P Redford. The third objection letter was submitted by J Bettison. Petitions were signed by six (6) other property owners in favour of the objection which was submitted by Mr G and Mrs P Redford.

It should be noted that the letter received from Mr J Bettison did not indicate if he was acting on behalf of the trust and whether or not his objection is only his own opinion.

The objections can be summarized as follows:

Lawful layout has no meaning since none of the Title Deeds in the area regard individual lots as subdivision of ownership. The plan submitted also shows erf numbers, not lot numbers. In addition the plans submitted are misleading.

Applicant's response

Until the promulgation of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016, lawful layouts were successfully registered without any land use approval. The Surveyor-General's letter dated 19 May 2017 confirms this. The letter indicates that the merit and existence of lawful layout remains unchanged by the Surveyor-General's office, however the Overstrand Municipality no longer make provision for lawful layouts without following due process in terms of the By-Law.

The plans submitted correlate to the subject property and the surrounding land uses. A copy of SG Diagram No. 1006/1914 and General Plan No. M56A (Sheet 5), that indicates the lot numbers, were submitted with the application – perhaps the Municipality neglected to attach these plans.

Town Planner's response

What the applicant stated is true in the sense that: *“until the promulgation of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016, lawful layouts were successfully registered without any land use approval”*. This is confirmed by the Surveyor-General's office. The letter indicates that the merit and existence of lawful layout remains unchanged by the Surveyor-General's office, however the Overstrand Municipality does not consider the lawful layout as the only requirement for the subdivision and must therefore consider all the different aspects of the application. Although the Surveyor-General's office still considers the lawful layout to still be in effect, the planning law now requires all applications regarding land use to be first considered by the Municipality. Further, a subdivided erf can only be registered after a decision/approval has been given. This is clearly stated in

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

Section 22(4) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016.

The applicant did submit plans, SG Diagram No. 1006/1914. Only the Motivation, Locality Plan and the proposed Subdivisional Plan were circulated in the notices to the neighbours. Neighbours who inquired regarding the application were provided with the SG Diagram.

There is a minimum erf size of 700m² that applies to this area of Kwaiwater. The other objector stipulates that although the minimum erf size is no longer applicable to the area, it should still govern the decisions for future subdivision. A letter is also attached to one of objections which were addressed to Mrs P Redford. In the letter it is stated that the minimum erf size is 700m².

Applicant's response

The minimum erf size of 700m² was stipulated in the Greater Hermanus Spatial Development Framework (2000). The Greater Hermanus Spatial Development Framework (2000) was repealed and no longer serves as a planning tool to guide development in Hermanus. The statement of the objector must be dismissed.

The applicant further states that it is ridiculous to expect a minimum size of 700m² to be applicable as there is no approved policy/council's decision supporting this guideline. The minimum size of 700m² is a guideline and not a pre-requisite.

Section 66 of the Overstrand Municipality's By-Law on Municipal Land Use Planning, 2016 stipulates the criteria for decision making. Forty to fifty percent of the erven in this area are less than 700m². This is indicative that the proposed subdivisions are compatible with the immediate area.

Although lawful layout cannot be enforced anymore without the Municipality's consent, it can serve as a guide and additional merit which was approved in 1935, as per original layout on General Plan M56A. The layout will allow for the exact same lines as the previous lots.

The reason for the subdivision is because the relevant Land Use By-Law does not provide for the exemption of lawful layout subdivisions.

As stated by Mr G and Mrs P Redford: *"With respect... if lawful layout is substantiated, the application is then made not for approval for consideration of subdivision, but rather an advice by the land owner to the municipality to record the subdivision."* The applicant agrees with this statement and it is substantiated as confirmed by the Surveyor-General's letter dated 19 May 2017. It can however not be enforced without the Municipality's consent.

It is submitted that the proposed means of densification still promotes a sensitive and appropriate proposal within the context of the existing character of the surrounding area.

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

Town Planner's response

The applicant is correct in stating that the minimum erf size of 700m² was stipulated in the Greater Hermanus Spatial Development Framework, 2000 (GHSDF) and that the aforementioned SDF was repealed by the Overstrand Spatial Development Framework, 2006 (OSDF). However, the prescribed minimum erf size of 700m² is still used as a guide in order to ensure that the character of the area which was created since the inception of the GHSDF is maintained.

The applicant contends that the character and existing erf sizes are in practice overall much lower than the minimum erf size of 700m² which was stipulated in the GHSDF. This is noted and will be considered in the evaluation of the desirability of the application.

In the letter which was addressed to Mrs P Redford it is stated that the minimum erf size is 700m². However, it is further stated that the applicant will have to motivate how a proposed subdivision is in keeping with the surrounding erven and that the Municipality is generally not supportive of subdividing erven smaller than the current trend and strategic documents.

The history of the development of the historical centre of Hermanus is relevant to this application. However, new regulations govern the consideration of subdivisions now. With reference to erf sizes of 700m² - mention is also made that the Municipality sent out letters to the property owners regarding special zones which will be created for the Kwaiwater extension. The aforementioned zones are to improve the quality in general and preserve the historical centre of Hermanus.

Applicant's response

A compromise between the General Plan for the establishment of the original township and the current erven in the area indicates the changes in the township over a century. These changes contribute strongly to a sense of place and the identity for the residents of the area. The 40% to 50% of the erven in this area which are less than 700m² also contribute to the sense of place. How is this application any different? The character of the area is not undermined and proposal is consistent with the current erf sizes.

Town Planner's response

The character (sense of place) is one of the aspects which will be considered when evaluating the application. The history of the settlement will also be considered.

The mention made regarding special zones being created for the Kwaiwater extension is noted. In terms of the OMGMS the Kwaiwater extension is to be classified as obtaining a Heritage Overlay Zone. The proposed Heritage Overlay Zone has been drafted and advertised and will be submitted to Council for approval in the second half of 2017.

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

No substantiating documents for the lawful layout were attached to the notice.

Applicant's response

The applicant states that the full set of documents were submitted with the application. It is the Municipality which compiled the notices and distributed it.

Town Planner's response

As stated earlier the applicant did submit plans - SG diagram No 1006/1914. Only the Motivation, Locality Plan and the proposed Subdivisional Plan were circulated in the notices to the neighbours. Neighbours who inquired regarding the application were provided with the SG Diagram. It should be noted that the letter provided by the applicant from the General Surveyor's office was submitted after the closing of public notices.

Application for subdivision is misleading. The only consideration for lawful layout subdivision is if the owner wants to subdivide or not. According to the objector it is an absolute right over the property to subdivide the property to its components; therefore subdivision already exists as to the parameters of the lots and the approved SG Layout Plan. The objectors therefore appeal to the owner to consider their comments and not to proceed with the subdivision.

Applicant's response

As previously stated the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 does not allow for the exemption for lawful layout subdivisions. The applicant restates the comment received from Mr G and Mrs P Redford as in the earlier response.

The applicant restates with the objector and states that criteria will then in fact be irrelevant for the consideration of the application, since it is not a question of merit, but only a confirmation of the lawful layout. However, the Municipality will evaluate the application as stipulated by the relevant By-Law. The proposal motivated in terms of complying with the relevant criteria and the merit of the application, for while also considering the existence of the lawful layout for this subject property. Regardless, the application can be considered for favourable evaluation.

Town Planner's response

The proposed subdivision will be evaluated on merit in accordance with the legislative requirements. As stated earlier the applicant did submit SG Diagram No 1006/1914. Only the Motivation, Locality Plan and the proposed Subdivision Plan were circulated in the notices to the neighbours. Neighbours who inquired regarding the application were provided with the SG Diagram. It should be noted that the letter provided by the applicant from the General Surveyor's office was submitted after the closing of public notices and therefore even though the applicant refers to the letter of the General Surveyor's office, it was not part of the application when it was submitted.

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

The OMGMS governs densification in the area. The aforementioned policy stipulates that the area already achieved the proposed densification by means of subdivision. Densification in the form of second and third dwellings is proposed.

Applicant's response

The applicant states that the means by which densification is achieved must be set aside; the fact is densification is allowed in the Planning Unit No. 6. The OMGMS remains a guideline for densification and the application has to be considered based on its own merit and in terms of desirability. The lawful layout cannot be ignored. The OMGMS is only one of many criteria that have to be met.

The impact of a second dwelling will have the same impact as subdividing the property into two (2) portions [two (2) dwellings, same amount of traffic and same visual impact].

The applicant states that emphasizes must be on the fact that the relevant policy encourages densification. Further, the bulk service levies payable by creating the additional properties will be a greater benefit to the Municipality than the increase of rates due to the construction of a second dwelling. The additional property will cause an additional family to invest in the area. Thus, there is also economic benefit.

Town Planner's response

The objectors are wrong to state that the densification of the area has been achieved and that it stated as such in the OMGMS. As stated by the applicant the township is situated in Planning Unit No. 6 and densification is allowed through subdivision.

Smaller size will impact on the character of the area. Intermediate erf sizes of 1000m² will better serve the area. In addition high density double storey units will destroy values, privacy factor and desirability of the area.

Applicant's response

The objector's property does not meet the intermediate erf size.

The applicant contends that the erf sizes in the area do not have a significant influence on the status of the neighbourhood, bearing in mind that almost 50% of the erven are less than 700m² in extent. Voëlklip is also evident of that, as the minimum erf size are 450m² in extent.

The alternative to the proposed subdivision is that the developer can develop on large scale a dwelling within the maximum bulk in terms of the Zoning Scheme which will be in contrast with the character, whereas two (2) separate dwellings on separate erven will have a lower impact and visually more acceptable.

Town Planner's response

The applicant has indicated that almost 50% of the erven in the extension are less than 700m² in extent. This is noted and will be considered in the evaluation of the application.

It is noted that the objector states that the addition of high density double storey units will destroy values, privacy factor and desirability of the area. However, if this was the case then the property owner would have reconsidered the subdivision as it would have meant that he/she would not be able to sell their property.

Small erven attract overcrowding [two (2) parking bays per erf does not suffice], compromise mobility, parking, public access to amenities and privacy.

Applicant's response

The two (2) parking bays per dwelling are in line with the relevant Scheme Regulations. Future development will have to be in line with the relevant Scheme Regulations.

Town Planner's response

The incremental increase of densification does not necessarily lead to overcrowding, as stated by the applicant that the property will be subject to the relevant Zoning Scheme Regulations. As will be discussed in the evaluation the subdivided properties will be limited to only one dwelling with the subservient outbuildings.

6. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Section 5.

8. MUNICIPAL ASSESSMENT OF COMMENTS

See Section 5.

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

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

The impact of the application for the proposed subdivision is limited to the adjacent residential properties which are established since 1904. It can be motivated that the planning principles are adhered to as follows:

Spatial Justice

The proposed subdivisions are in character with the existing character of the area and will not have a negative effect on the surrounding neighbours. The impact on the biophysical environment will be low as the subject property has been developed since 1904. The subdivision further limits the potential for urban sprawl.

Spatial sustainability

The proposed subdivisions will use the existing property more sufficiently as more erven will be created within the current urban edge.

Efficiency

The subject property is located close to the CBD and attractions. The proposed development is in line with the densification proposal for the area. Vacant erven are limited and therefore the proposed subdivision will meet the demand without having a detrimental effect on the environment.

Spatial resilience

The application will ensure that the existing resource land is used to its maximum potential in an affordable manner.

Good administration

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws and the public process has been followed.

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

Same as above

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

The application is in line with the densification proposals found in the SDF and OMGMS. The subject property is situated in Planning Unit No 6. It is stated in the document that incremental densification is permitted through subdivision to allow the provision of a second and third dwelling respectively. The primary right of the property owner before subdivision is to have two dwelling units. If the proposed subdivision is approved then the property owner (or future owners) will have the opportunity to develop two dwellings on each of the subdivided erven which will equate to four dwellings this will have a negative effect on the density of the area. However, by allowing the subdivision, the provision of a second dwelling is already fulfilled in terms of the proposed incremental densification of the planning unit. Therefore if the application is considered positively, then a condition can be stipulated that the property owner (or future owners) will be limited to one dwelling on each of the subdivided properties.

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

Not applicable.

9.5 Impact on Municipal engineering services

The existing services are available.

No additional accesses are proposed.

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

Not applicable.

9.7 Existing and proposed zoning comparisons and considerations

The subject property is zoned Residential Zone 1 and therefore Residential Zone 1 parameters as described in the relevant Zoning Scheme are applicable. If the application is approved then the additional property will also be zoned Residential Zone 1.

9.8 The desirability of the proposal

Erf 1583, Eastcliff (Kwaaiwater) measures 1115m² in extent and only has a garage on the property. The applicant proposes to subdivide the property in order to create a Remainder measuring approximately 570m² and a new Portion A measuring approximately 545m² for residential purposes.

As stipulated by the applicant Section 66 of the Overstrand Municipality's By-Law on Municipal Land Use Planning, 2016 stipulates the criteria for decision making. One of the considerations is the comments which were received in response to the notice which was sent out. Notice of the application was sent to the adjacent property owners and three (3) objection letters were received. Two (2) of the letters are from the same property owners which is Mr G and Mrs P Redford. The third objection letter was submitted by J Bettison. Petitions were signed by six (6) other property owners in favour of the objection which was submitted by Mr G and Mrs P Redford. The applicant was afforded the opportunity to address the objections. The opinion is held that the applicant sufficiently addressed the issues raised in the objections. Furthermore, the response provided by the applicant also elaborates on the merit of the application.

The motivation of the applicant uses the term lawful layout in order to motivate the proposed subdivision. Although the Surveyor-General's office still considers the lawful layout to still be in effect, planning law now requires all applications regarding land use to be first considered by the Municipality, in accordance with the provisions of the Overstrand Municipality By-Law on Land Use Planning, 2016. Further, a subdivided erf can only be registered after an approval has been given by the Municipality. This is clearly stated in Section 22(4) of the Overstrand Municipality By-law on Municipal Land Use Planning, 2016.

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

As stated earlier, mention is made regarding special zones being created for the Kwaaiwater extension in order to protect the heritage significance. In terms of the OMGMS the Kwaaiwater extension is to be classified as obtaining a Heritage Overlay Zone (HOZ). The proposed HOZ has been drafted and advertised and will be submitted to Council for approval in the second half of 2017. The proposed HOZ does not prohibit the subdivision of properties, but it ensures that the architectural character is maintained. Only a garage is situated on the property as the previous dwelling was demolished in 2015. There is no structure on the property which has heritage status. It must be stated that the HOZ cannot be enforced until approval is granted by Council.

OMGMS indicates that the subject property is situated in Planning Unit No 6. It is stated in the document that incremental densification is permitted through subdivision. However as previously stated; by allowing the subdivision, the provision of a second dwelling is already fulfilled in terms of the proposed incremental densification for the planning unit. Therefore if the application is considered positively, then a condition can be stipulated that the property owner (or future owners) will be limited to one dwelling on each of the subdivided properties. This will further address the objectors concerns regarding overcrowding and in essence protect the character and aesthetics of the planning unit.

The development of both erven will be restricted to Single Residential Zone 1 parameters. There is a high demand for erven in Hermanus and the proposed subdivision will enable the creation of an additional erf without having an adverse impact on the surrounding area. As motivated by the applicant the current character / sense of place and the identity of the area is the fact that 40% to 50% of the erven in this area are less than 700m² in extent. Therefore the character of the area is maintained and proposal is consistent with the current erf sizes. Further, the subject property will be subdivided in width and therefore the street scape will remain unchanged.

There are no Title Deed restrictions which prohibit the proposed subdivision.

The application was circulated to the relevant departments who indicated that there are no objections in terms of service delivery for the proposed erven.

Considering the above the proposed application is considered desirable.

9.9 ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The financial or other value of the rights

N/A

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

N/A

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

N/A

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

N/A

10. RECOMMENDATION

1. that the application to subdivide Erf 1583, Eastcliff (Kwaaiwater), Hermanus in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 (By-Law) in order to create a Remainder measuring approximately 570m² and a new Portion A measuring approximately 545m² for residential purposes, **be approved**, in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
 - (a) that the approval is only for the subdivision as indicated on the Subdivisional Plan as submitted with the application;
 - (b) that the garage be demolished if no building plan is submitted within twelve (12) months, to the satisfaction of the Building Department;
 - (c) that only one dwelling, with subservient outbuildings, be constructed on each of the subdivided properties and that a condition to this effect be included in the title deed of the each property;
 - (d) that should the property owner wish to act on the building plan approved prior to this approval then a new building plan must be resubmitted to the Building Department on the new erf numbers and/or with the new or amended Title Deeds and demonstrating compliance with the Scheme Regulations;
 - (e) that the conditions in the Services Report (attached as Annexure D), be complied with;
 - (f) that the conditions compiled by the Electrical Services (attached as Annexure G), is complied with, and
 - (g) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

2. that the applicant/objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above conditions of approval

11. REASONS FOR RECOMMENDATION

- ❖ The application has followed due procedure.
- ❖ None of the internal departments have any objection.
- ❖ The proposed subdivision is in line with the historical character of the area.
- ❖ The objections from the adjacent property owners are noted and sufficiently addressed.
- ❖ The incremental increase in densification is in line with the proposed densification as indicated in Overstrand Municipal Growth Management Strategy (OMGMS), 2010.
- ❖ By allowing the subdivision, the provision of a second dwelling is already fulfilled in terms of the proposed incremental densification for the planning unit.
- ❖ The property owner (or future owners) will be limited to one dwelling on each of the subdivided properties. This will further address the objectors concerns regarding overcrowding and in essence protect the character and aesthetics of the planning unit.

12. ANNEXURES

- Annexure A: Locality Plan
- Annexure B: Motivation Report
- Annexure C: Subdivisional Plan
- Annexure D: Objections
- Annexure E: Comment on objections
- Annexure F: Services Report
- Annexure G: Electrical Services

SIGNATURES

AUTHOR:

Name: **PETRUS ROUX**

Signature: _____

Date: _____

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

REGISTERED PLANNER

Name : **S VAN DER MERWE**

Signature : _____

SACPLAN registration number: **A/1850/2014**

Date: _____

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

4.1

**ERF 1583, 19 KWAAIWATER ROAD, EASTCLIFF, HERMANUS, OVERSTRAND
MUNICIPAL AREA : PROPOSED SUBDIVISION : MESSRS PLAN ACTIVE TOWN AND
REGIONAL PLANNERS ON BEHALF OF MJUT VAN WIJNGAARDEN**

**1583 HEC (3602)
P Roux
25 August 2017**

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 1 March 2017 from Messrs Plan Active Town- and Regional Planners on behalf of the owner of Erf 1583, Eastcliff, Hermanus, MJUT van Wijngaarden, in terms of Section 16(2)(d) to subdivide Erf 1583, Eastcliff, Hermanus to create a Remainder measuring approximately 570m² and a new Portion A measuring approximately 545m² for residential purposes.

The Locality Plan of the property concerned is attached as Annexure A, the Motivation Report from the applicant in support of the application is attached as Annexure B and the Site Development Plan is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 1583 is situated in Eastcliff which is a residential extension of Hermanus. The property is 1115m² in extent and is currently vacant.

The applicant seeks to subdivide the subject property into two (2) portions in order to create a Remainder measuring approximately 570m² and a new Portion A measuring approximately 545m² for residential purposes.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the proposed departures can be summarised as follows:

- ❖ the subject property can be subdivided in terms of lawful layout to create the original portions;
- ❖ the subdivision will be in line with the original layout on General Plan M56A, which was approved by the office of the Surveyor-General prior to 1935;
- ❖ the additional property will be sold to an interested buyer;
- ❖ only an existing outbuilding is situated on the property which will be demolished;
- ❖ the criteria considered with the subdivision was the following:

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

- surrounding erf sizes;
- accessibility;
- impact on the character of the area;
- erf shape; and
- planning principles.
- ❖ no title deed restrictions are applicable; and
- ❖ the zoning of the properties will remain unchanged or additional process will be followed in future.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Notices	Yes	16/03/2017	21/04/2017
Ward councillor	Yes	16/03/2017	21/04/2017
Total letters of objection	Three (3)		
Was public participation undertaken in accordance with Section 45 - 49 of the Proposed Draft 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	Recommendation
Operational Services	16/03/2017	No objection.	Positive
Building Department	20/03/2017	Subdivision supported subject to any plan submission being in compliance with SANS10400. Outbuilding to be demolished if dwelling not erected within 12 months.	Positive
Local Heritage	22/03/2017	No objection.	Positive
Electro Technical Services	05/04/2017	In view of the fact that plot 1583 is fully serviced and the new plot will be serviced in line with the Municipality Regulations there are no comments, however keep in mind that each of the 2 erven are only entitled to a single phase 60 Amp service connection.	Positive

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

Environmental Section	06/04/2017	No objection.	Positive
Engineering Services	11/04/2017	Annexure F.	Positive

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

The application was circulated to the relevant property owners and three (3) objection letters were received, two (2) of the letters are from the same property owners which are Mr G and Mrs P Redford. The third objection letter was submitted by J Bettison. Petitions were signed by six (6) other property owners in favour of the objection which was submitted by Mr G and Mrs P Redford.

It should be noted that the letter received from Mr J Bettison did not indicate if he was acting on behalf of the trust and whether or not his objection is only his own opinion.

The objections can be summarized as follows:

Lawful layout has no meaning since none of the Title Deeds in the area regard individual lots as subdivision of ownership. The plan submitted also shows erf numbers, not lot numbers. In addition the plans submitted are misleading.

Applicant's response

Until the promulgation of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016, lawful layouts were successfully registered without any land use approval. The Surveyor-General's letter dated 19 May 2017 confirms this. The letter indicates that the merit and existence of lawful layout remains unchanged by the Surveyor-General's office, however the Overstrand Municipality no longer make provision for lawful layouts without following due process in terms of the By-Law.

The plans submitted correlate to the subject property and the surrounding land uses. A copy of SG Diagram No. 1006/1914 and General Plan No. M56A (Sheet 5), that indicates the lot numbers, were submitted with the application – perhaps the Municipality neglected to attach these plans.

Town Planner's response

What the applicant stated is true in the sense that: *“until the promulgation of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016, lawful layouts were successfully registered without any land use approval”*. This is confirmed by the Surveyor-General's office. The letter indicates that the merit and existence of lawful layout remains unchanged by the Surveyor-General's office, however the Overstrand Municipality does not consider the lawful layout as the only requirement for the subdivision and must therefore consider all the different aspects of the application. Although the Surveyor-General's office still considers the lawful layout to still be in effect, the planning law now requires all applications regarding land use to be first considered by the Municipality. Further, a subdivided erf can only be registered after a decision/approval has been given. This is clearly stated in

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

Section 22(4) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016.

The applicant did submit plans, SG Diagram No. 1006/1914. Only the Motivation, Locality Plan and the proposed Subdivisional Plan were circulated in the notices to the neighbours. Neighbours who inquired regarding the application were provided with the SG Diagram.

There is a minimum erf size of 700m² that applies to this area of Kwaiwater. The other objector stipulates that although the minimum erf size is no longer applicable to the area, it should still govern the decisions for future subdivision. A letter is also attached to one of objections which were addressed to Mrs P Redford. In the letter it is stated that the minimum erf size is 700m².

Applicant's response

The minimum erf size of 700m² was stipulated in the Greater Hermanus Spatial Development Framework (2000). The Greater Hermanus Spatial Development Framework (2000) was repealed and no longer serves as a planning tool to guide development in Hermanus. The statement of the objector must be dismissed.

The applicant further states that it is ridiculous to expect a minimum size of 700m² to be applicable as there is no approved policy/council's decision supporting this guideline. The minimum size of 700m² is a guideline and not a pre-requisite.

Section 66 of the Overstrand Municipality's By-Law on Municipal Land Use Planning, 2016 stipulates the criteria for decision making. Forty to fifty percent of the erven in this area are less than 700m². This is indicative that the proposed subdivisions are compatible with the immediate area.

Although lawful layout cannot be enforced anymore without the Municipality's consent, it can serve as a guide and additional merit which was approved in 1935, as per original layout on General Plan M56A. The layout will allow for the exact same lines as the previous lots.

The reason for the subdivision is because the relevant Land Use By-Law does not provide for the exemption of lawful layout subdivisions.

As stated by Mr G and Mrs P Redford: *"With respect... if lawful layout is substantiated, the application is then made not for approval for consideration of subdivision, but rather an advice by the land owner to the municipality to record the subdivision."* The applicant agrees with this statement and it is substantiated as confirmed by the Surveyor-General's letter dated 19 May 2017. It can however not be enforced without the Municipality's consent.

It is submitted that the proposed means of densification still promotes a sensitive and appropriate proposal within the context of the existing character of the surrounding area.

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

Town Planner's response

The applicant is correct in stating that the minimum erf size of 700m² was stipulated in the Greater Hermanus Spatial Development Framework, 2000 (GHSDF) and that the aforementioned SDF was repealed by the Overstrand Spatial Development Framework, 2006 (OSDF). However, the prescribed minimum erf size of 700m² is still used as a guide in order to ensure that the character of the area which was created since the inception of the GHSDF is maintained.

The applicant contends that the character and existing erf sizes are in practice overall much lower than the minimum erf size of 700m² which was stipulated in the GHSDF. This is noted and will be considered in the evaluation of the desirability of the application.

In the letter which was addressed to Mrs P Redford it is stated that the minimum erf size is 700m². However, it is further stated that the applicant will have to motivate how a proposed subdivision is in keeping with the surrounding erven and that the Municipality is generally not supportive of subdividing erven smaller than the current trend and strategic documents.

The history of the development of the historical centre of Hermanus is relevant to this application. However, new regulations govern the consideration of subdivisions now. With reference to erf sizes of 700m² - mention is also made that the Municipality sent out letters to the property owners regarding special zones which will be created for the Kwaiwater extension. The aforementioned zones are to improve the quality in general and preserve the historical centre of Hermanus.

Applicant's response

A compromise between the General Plan for the establishment of the original township and the current erven in the area indicates the changes in the township over a century. These changes contribute strongly to a sense of place and the identity for the residents of the area. The 40% to 50% of the erven in this area which are less than 700m² also contribute to the sense of place. How is this application any different? The character of the area is not undermined and proposal is consistent with the current erf sizes.

Town Planner's response

The character (sense of place) is one of the aspects which will be considered when evaluating the application. The history of the settlement will also be considered.

The mention made regarding special zones being created for the Kwaiwater extension is noted. In terms of the OMGMS the Kwaiwater extension is to be classified as obtaining a Heritage Overlay Zone. The proposed Heritage Overlay Zone has been drafted and advertised and will be submitted to Council for approval in the second half of 2017.

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

No substantiating documents for the lawful layout were attached to the notice.

Applicant's response

The applicant states that the full set of documents were submitted with the application. It is the Municipality which compiled the notices and distributed it.

Town Planner's response

As stated earlier the applicant did submit plans - SG diagram No 1006/1914. Only the Motivation, Locality Plan and the proposed Subdivisional Plan were circulated in the notices to the neighbours. Neighbours who inquired regarding the application were provided with the SG Diagram. It should be noted that the letter provided by the applicant from the General Surveyor's office was submitted after the closing of public notices.

Application for subdivision is misleading. The only consideration for lawful layout subdivision is if the owner wants to subdivide or not. According to the objector it is an absolute right over the property to subdivide the property to its components; therefore subdivision already exists as to the parameters of the lots and the approved SG Layout Plan. The objectors therefore appeal to the owner to consider their comments and not to proceed with the subdivision.

Applicant's response

As previously stated the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 does not allow for the exemption for lawful layout subdivisions. The applicant restates the comment received from Mr G and Mrs P Redford as in the earlier response.

The applicant restates with the objector and states that criteria will then in fact be irrelevant for the consideration of the application, since it is not a question of merit, but only a confirmation of the lawful layout. However, the Municipality will evaluate the application as stipulated by the relevant By-Law. The proposal motivated in terms of complying with the relevant criteria and the merit of the application, for while also considering the existence of the lawful layout for this subject property. Regardless, the application can be considered for favourable evaluation.

Town Planner's response

The proposed subdivision will be evaluated on merit in accordance with the legislative requirements. As stated earlier the applicant did submit SG Diagram No 1006/1914. Only the Motivation, Locality Plan and the proposed Subdivision Plan were circulated in the notices to the neighbours. Neighbours who inquired regarding the application were provided with the SG Diagram. It should be noted that the letter provided by the applicant from the General Surveyor's office was submitted after the closing of public notices and therefore even though the applicant refers to the letter of the General Surveyor's office, it was not part of the application when it was submitted.

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

The OMGMS governs densification in the area. The aforementioned policy stipulates that the area already achieved the proposed densification by means of subdivision. Densification in the form of second and third dwellings is proposed.

Applicant's response

The applicant states that the means by which densification is achieved must be set aside; the fact is densification is allowed in the Planning Unit No. 6. The OMGMS remains a guideline for densification and the application has to be considered based on its own merit and in terms of desirability. The lawful layout cannot be ignored. The OMGMS is only one of many criteria that have to be met.

The impact of a second dwelling will have the same impact as subdividing the property into two (2) portions [two (2) dwellings, same amount of traffic and same visual impact].

The applicant states that emphasizes must be on the fact that the relevant policy encourages densification. Further, the bulk service levies payable by creating the additional properties will be a greater benefit to the Municipality than the increase of rates due to the construction of a second dwelling. The additional property will cause an additional family to invest in the area. Thus, there is also economic benefit.

Town Planner's response

The objectors are wrong to state that the densification of the area has been achieved and that it stated as such in the OMGMS. As stated by the applicant the township is situated in Planning Unit No. 6 and densification is allowed through subdivision.

Smaller size will impact on the character of the area. Intermediate erf sizes of 1000m² will better serve the area. In addition high density double storey units will destroy values, privacy factor and desirability of the area.

Applicant's response

The objector's property does not meet the intermediate erf size.

The applicant contends that the erf sizes in the area do not have a significant influence on the status of the neighbourhood, bearing in mind that almost 50% of the erven are less than 700m² in extent. Voëlklip is also evident of that, as the minimum erf size are 450m² in extent.

The alternative to the proposed subdivision is that the developer can develop on large scale a dwelling within the maximum bulk in terms of the Zoning Scheme which will be in contrast with the character, whereas two (2) separate dwellings on separate erven will have a lower impact and visually more acceptable.

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

Town Planner's response

The applicant has indicated that almost 50% of the erven in the extension are less than 700m² in extent. This is noted and will be considered in the evaluation of the application.

It is noted that the objector states that the addition of high density double storey units will destroy values, privacy factor and desirability of the area. However, if this was the case then the property owner would have reconsidered the subdivision as it would have meant that he/she would not be able to sell their property.

Small erven attract overcrowding [two (2) parking bays per erf does not suffice], compromise mobility, parking, public access to amenities and privacy.

Applicant's response

The two (2) parking bays per dwelling are in line with the relevant Scheme Regulations. Future development will have to be in line with the relevant Scheme Regulations.

Town Planner's response

The incremental increase of densification does not necessarily lead to overcrowding, as stated by the applicant that the property will be subject to the relevant Zoning Scheme Regulations. As will be discussed in the evaluation the subdivided properties will be limited to only one dwelling with the subservient outbuildings.

6. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Section 5.

8. MUNICIPAL ASSESSMENT OF COMMENTS

See Section 5.

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

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

The impact of the application for the proposed subdivision is limited to the adjacent residential properties which are established since 1904. It can be motivated that the planning principles are adhered to as follows:

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

Spatial Justice

The proposed subdivisions are in character with the existing character of the area and will not have a negative effect on the surrounding neighbours. The impact on the biophysical environment will be low as the subject property has been developed since 1904. The subdivision further limits the potential for urban sprawl.

Spatial sustainability

The proposed subdivisions will use the existing property more sufficiently as more erven will be created within the current urban edge.

Efficiency

The subject property is located close to the CBD and attractions. The proposed development is in line with the densification proposal for the area. Vacant erven are limited and therefore the proposed subdivision will meet the demand without having a detrimental effect on the environment.

Spatial resilience

The application will ensure that the existing resource land is used to its maximum potential in an affordable manner.

Good administration

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws and the public process has been followed.

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

Same as above

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

The application is in line with the densification proposals found in the SDF and OMGMS. The subject property is situated in Planning Unit No 6. It is stated in the document that incremental densification is permitted through subdivision to allow the provision of a second and third dwelling respectively. The primary right of the property owner before subdivision is to have two dwelling units. If the proposed subdivision is approved then the property owner (or future owners) will have the opportunity to develop two dwellings on each of the subdivided erven which will equate to four dwellings this will have a negative effect on the density of the area. However, by allowing the subdivision, the provision of a second dwelling is already fulfilled in terms of the proposed incremental densification of the planning unit. Therefore if the application is considered positively, then a condition can be stipulated that the property owner (or future owners) will be limited to one dwelling on each of the subdivided properties.

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

Not applicable.

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

9.5 Impact on Municipal engineering services

The existing services are available.

No additional accesses are proposed.

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

Not applicable.

9.7 Existing and proposed zoning comparisons and considerations

The subject property is zoned Residential Zone 1 and therefore Residential Zone 1 parameters as described in the relevant Zoning Scheme are applicable. If the application is approved then the additional property will also be zoned Residential Zone 1.

9.8 The desirability of the proposal

Erf 1583, Eastcliff (Kwaaiwater) measures 1115m² in extent and only has a garage on the property. The applicant proposes to subdivide the property in order to create a Remainder measuring approximately 570m² and a new Portion A measuring approximately 545m² for residential purposes.

As stipulated by the applicant Section 66 of the Overstrand Municipality's By-Law on Municipal Land Use Planning, 2016 stipulates the criteria for decision making. One of the considerations is the comments which were received in response to the notice which was sent out. Notice of the application was sent to the adjacent property owners and three (3) objection letters were received. Two (2) of the letters are from the same property owners which is Mr G and Mrs P Redford. The third objection letter was submitted by J Bettison. Petitions were signed by six (6) other property owners in favour of the objection which was submitted by Mr G and Mrs P Redford. The applicant was afforded the opportunity to address the objections. The opinion is held that the applicant sufficiently addressed the issues raised in the objections. Furthermore, the response provided by the applicant also elaborates on the merit of the application.

The motivation of the applicant uses the term lawful layout in order to motivate the proposed subdivision. Although the Surveyor-General's office still considers the lawful layout to still be in effect, planning law now requires all applications regarding land use to be first considered by the Municipality, in accordance with the provisions of the Overstrand Municipality By-Law on Land Use Planning, 2016. Further, a subdivided erf can only be registered after an approval has been given by the Municipality. This is clearly stated in Section 22(4) of the Overstrand Municipality By-law on Municipal Land Use Planning, 2016.

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

As stated earlier, mention is made regarding special zones being created for the Kwaiwater extension in order to protect the heritage significance. In terms of the OMGMS the Kwaiwater extension is to be classified as obtaining a Heritage Overlay Zone (HOZ). The proposed HOZ has been drafted and advertised and will be submitted to Council for approval in the second half of 2017. The proposed HOZ does not prohibit the subdivision of properties, but it ensures that the architectural character is maintained. Only a garage is situated on the property as the previous dwelling was demolished in 2015. There is no structure on the property which has heritage status. It must be stated that the HOZ cannot be enforced until approval is granted by Council.

OMGMS indicates that the subject property is situated in Planning Unit No 6. It is stated in the document that incremental densification is permitted through subdivision. However as previously stated; by allowing the subdivision, the provision of a second dwelling is already fulfilled in terms of the proposed incremental densification for the planning unit. Therefore if the application is considered positively, then a condition can be stipulated that the property owner (or future owners) will be limited to one dwelling on each of the subdivided properties. This will further address the objectors concerns regarding overcrowding and in essence protect the character and aesthetics of the planning unit.

The development of both erven will be restricted to Single Residential Zone 1 parameters. There is a high demand for erven in Hermanus and the proposed subdivision will enable the creation of an additional erf without having an adverse impact on the surrounding area. As motivated by the applicant the current character / sense of place and the identity of the area is the fact that 40% to 50% of the erven in this area are less than 700m² in extent. Therefore the character of the area is maintained and proposal is consistent with the current erf sizes. Further, the subject property will be subdivided in width and therefore the street scape will remain unchanged.

There are no Title Deed restrictions which prohibit the proposed subdivision.

The application was circulated to the relevant departments who indicated that there are no objections in terms of service delivery for the proposed erven.

Considering the above the proposed application is considered desirable.

9.9 ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The financial or other value of the rights

N/A

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

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

N/A

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

N/A

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

N/A

10. RECOMMENDATION

1. that the application to subdivide Erf 1583, Eastcliff (Kwaaiwater), Hermanus in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 (By-Law) in order to create a Remainder measuring approximately 570m² and a new Portion A measuring approximately 545m² for residential purposes, **be approved**, in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
 - (a) that the approval is only for the subdivision as indicated on the Subdivisional Plan as submitted with the application;
 - (b) that the garage be demolished if no building plan is submitted within twelve (12) months, to the satisfaction of the Building Department;
 - (c) that only one dwelling, with subservient outbuildings, be constructed on each of the subdivided properties and that a condition to this effect be included in the title deed of the each property;
 - (d) that should the property owner wish to act on the building plan approved prior to this approval then a new building plan must be resubmitted to the Building Department on the new erf numbers and/or with the new or amended Title Deeds and demonstrating compliance with the Scheme Regulations;
 - (e) that the conditions in the Services Report (attached as Annexure D), be complied with;
 - (f) that the conditions compiled by the Electrical Services (attached as Annexure G), is complied with, and
 - (g) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

2. that the applicant/objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above conditions of approval

11. REASONS FOR RECOMMENDATION

- ❖ The application has followed due procedure.
- ❖ None of the internal departments have any objection.
- ❖ The proposed subdivision is in line with the historical character of the area.
- ❖ The objections from the adjacent property owners are noted and sufficiently addressed.
- ❖ The incremental increase in densification is in line with the proposed densification as indicated in Overstrand Municipal Growth Management Strategy (OMGMS), 2010.
- ❖ By allowing the subdivision, the provision of a second dwelling is already fulfilled in terms of the proposed incremental densification for the planning unit.
- ❖ The property owner (or future owners) will be limited to one dwelling on each of the subdivided properties. This will further address the objectors concerns regarding overcrowding and in essence protect the character and aesthetics of the planning unit.

12. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Subdivisional Plan
Annexure D:	Objections
Annexure E:	Comment on objections
Annexure F:	Services Report
Annexure G:	Electrical Services

SIGNATURES

AUTHOR:

Name: **PETRUS ROUX**

Signature: _____

Date: _____

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

REGISTERED PLANNER

Name : **S VAN DER MERWE**

Signature : _____

SACPLAN registration number: **A/1850/2014**

Date: _____

OCEAN



Precinct 6

Precinct 5

PLAN Active Stads- en Streeksbeplanners
Town & Regional Planners

Property Description:
ERF 1583 HERMANUS

Plan Description:
LOCALITY MAP

Scale: NTS
Drawing Nr. hermf1583.dwg
Date: FEBRUARY 2017

All distances approximate and subject to survey.
COPY RIGHT RESERVED

PROPOSED SUBDIVISION

ERF 1583 HERMANUS

DIVISION: CALEDON
OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by M.J.U.T. van Wijngaarden, the owner of erf 1583 Hermanus, to apply for the subdivision of the aforementioned property.

Erf 1583 Hermanus is held by title deed number T4152/2016 and is 1115m² in extent.

The subject property can be subdivided in terms of the lawful layout to create the original two portions. The application therefore proposes to subdivide the subject property into two portions as per the original layout on General Plan M56A (sheet 5), that was approved in the office of the Surveyor-General prior to 1935.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(d) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the subdivision of erf 1583 Hermanus.

3. GENERAL APPLICATION INFORMATION

3.1 PROPERTY DESCRIPTION

Erf 1583 Hermanus is situated on the corner of 48 Mossel River Drive / 19 Kwaiwater Way, Kwaiwater, Hermanus. Please refer to the locality plan attached.

Erf 1583 Hermanus is held by title deed number T4152/2016 and is 1115m² in extent.

The subject property is relatively level surfaced and boasts of beautiful sea views over Walker Bay.

3.2 ZONING

The subject property has the following land use rights:

ERF NUMBER	ZONING
Erf 1583 Hermanus	Residential Zone 1: Single Residential (SR1)

Surrounding properties are zoned for single residential, public road and public open space purposes.

3.3 LAND USE

There is an existing outbuilding situated on erf 1583 Hermanus. A demolition certificate was issued to allow for the demolition of the existing outbuilding. Refer to a copy of the demolition certificate issued by Overstrand Municipality dated 22 June 2015.

Land uses that surround the subject property are dwellings, public open spaces and public roads.

3.4 PROPOSED DEVELOPMENT

- The subdivision of erf 1583 Hermanus in terms of Chapter 4, Section 16(2)(d) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016.

The subject property can be subdivided in terms of the lawful layout to create the two original portions. The application therefore proposes to subdivide the subject property into two portions as per the original layout on General Plan M56A (sheet 5), that was approved prior to 1935.

It is the intention of the owner of erf 1583 Hermanus to subdivide the subject property into two portions to allow him to sell a portion to an interested buyer.

When the proposed subdivision of the subject property was considered cognisance was taken of the following criteria:

- lawful layout;
- surrounding erf sizes;
- accessibility to the subject property;
- impact on the character of the area;
- erf shape;
- availability of services;
- applicable spatial planning policies and densification guidelines.

It is proposed to subdivide the subject property into two portions as follows:

TOTAL AREA:	1115m ²
AREAS FOR SUBDIVISION:	Portion A: ±545m ² Remainder: ±570m ²
OWNER:	M.J.U.T. van Wijngaarden
TITLE DEED	T4152/2016

Please refer to the subdivision plan attached. It should be noted that the two

components of the original lots (with reference to the lawful layout) were not the same area and size and consequently the proposed subdivision is in line with the lawful layout (exactly the same portion sizes are proposed).

The existing outbuilding (garage) will be demolished and consequently the structure will not prohibit the proposed subdivision or require a deviation from the scheme regulations (building line relaxation) to accommodate the existing outbuilding.

Site development plans for both Portion A and the Remainder Portion are not available yet. Any future development of Portion A, a portion of erf 1583 Hermanus, and Remainder erf 1583 Hermanus will be done in accordance with the land use restrictions applicable to the relevant zoning, or alternatively another land use application process will be followed should the owners decide to change the land use or depart from the relevant land use restrictions.

The zoning of the respective portions after subdivision will remain unchanged (SR1).

The proposed subdivision adheres to all other land use restrictions as stipulated in the Overstrand Zoning Scheme Regulations (2013). The proposed subdivision creates one additional portion and therefore the impact on the density of the area will be kept to a minimum.

The coverage for the respective portions after subdivision will be as follows:

- Portion A, a portion of erf 1583 Hermanus: vacant (0%);
- Remainder erf 1583 Hermanus: vacant (0%).

Although there are larger erven in the vicinity the proposed erf sizes after subdivision are compatible with similar sized erven in the residential block and the vicinity since the subject property is subdivided in line with the original lawful layout of the area. When evaluating the application the context of the proposal is the fundamental factor for consideration. The lawful layout applicable to this area, the surrounding erf sizes, erf sizes of previous subdivision applications approved in the immediate area, the street frontage widths of existing erven of similar sizes, etc. proof that the subdivision of the subject property into two portions is compatible with the existing context and character of the area. Properties adjacent to and in the immediate vicinity that were subdivided into similar sized erven in the past include erf 7637 (570m²), erf 1579

(571m²), erf 7008 (488m²), erf 1600 (493m²), erf 1574 (496m²) and erf 1573 (496m²). The shape / layout of the erven as proposed with this application do also not deviate from the layout of the relevant residential block.

Refer to Section 3.10 of this report for further motivation in terms of the relevant spatial planning policies.

It is anticipated that the proposed subdivision will have a low impact on the surrounding erven as the subject property's zoning will remain Residential Zone I: Single Residential and the proposed portion sizes and layout are compatible with similar surrounding property sizes.

The proposed subdivision of erf 1583 Hermanus is not in contrast to the existing land use tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

The proposed subdivision will not have a negative impact on the environment or traffic. We therefore do not anticipate any problems with the proposed application.

3.5 CHARACTER OF THE ENVIRONMENT

It is not proposed to change the land use of the subject property. The impact on the character of the area will therefore remain unchanged. As mentioned in *Section 3.4 Proposed Development* the proposed erf sizes are compatible with the surrounding erf sizes. The proposed portion layouts / shapes after subdivision is consistent with the grid shaped layout of the area. Similar subdivisions with the exact same shape and sizes have been considered and approved in the past (also refer to *Section 3.4 Proposed Development*).

The subdivision plan also indicates that reasonably sized dwellings can be fitted onto both Portion A, a portion of erf 1583 Hermanus and Remainder erf 1583 Hermanus. The development of the aforementioned portions will be done in accordance with the

Overstrand Zoning Scheme Regulations (2013) and the development of the subject properties in future will merge well with the surrounding built environment.

3.6 POTENTIAL OF THE PROPERTY (DESIRABILITY OF THE PROPOSED UTILIZATION)

The subject property's zoning and land use will remain unchanged. The location of the subject property within a single residential area allows the property to be developed (in future) for low impact land uses only such as a Bed-and-Breakfast, guesthouse, home occupation, etc. The proposed subdivision will not hinder any future land use applications on Portion A, a portion of erf 1583 Hermanus, or Remainder erf 1583 Hermanus.

When evaluating the proposed subdivision against surrounding erf sizes, minimum street frontage widths, the lawful layout that applies to this erf, etc. it is evident that the subject property has the potential to be subdivided into two portions. The impact of the proposed subdivision into two portions is seen as a low impact land use application.

No deviations from the municipal zoning scheme regulations are proposed to accommodate the proposed subdivision (all existing structures will be demolished). In addition both erven will be vacant after subdivision and therefore allows for better planning of the design of future dwellings on the respective portions (within the zoning scheme regulations). The impact of the proposed subdivision into two portions is seen as a low impact land use application.

Since the land use and zoning will remain unchanged the impact on the surrounding properties will be kept to a minimum.

3.7 IMPACT ON EXTERNAL ENGINEERING SERVICES

3.7.1 PROVISION OF SERVICES

Erf 1583 Hermanus is fully serviced. New services for the newly created portion will be provided in line with the Overstrand Municipality's regulations for installing services infrastructure.

The Overstrand Municipality's Operational Services Department issued a services certificate dated 8 February 2017. The aforementioned confirms the available sewerage and water services for the proposed subdivision of erf 1583 Hermanus.

Refuse is removed once a week by the Overstrand Municipality.

3.7.2 TRAFFIC IMPACT, PARKING AND ACCESS

Access to Portion A, a portion of erf 1583 Hermanus, will be from Mossel River Drive. Access to Remainder erf 1583 Hermanus will remain unchanged and will be from Kwaiwater Way as shown on the subdivision plan attached. Both the roads referred to are tarred roads and both the aforementioned access points already exist. It is not proposed to create new access points to accommodate the proposed subdivision.

The extent of both portions after subdivision allows for ample space on site for the provision of the required two parking bays / garages per dwelling on the respective portions. Building plans for Portion A, a portion of erf 1583 Hermanus, and Remainder erf 1583 Hermanus are not available yet. The respective portions will however have to comply with the relevant bylaw's parking requirements or alternatively the new owners will have to submit a departure application for any deviations from the zoning scheme regulations.

The impact on the traffic of Kwaiwater and the immediate area will be kept to a minimum since only one additional portion is created – implying a mere two

additional vehicles will travel to the area in future. Consequently the impact on the traffic flow in the area will be kept to a minimum.

3.8 TITLE DEED

Title deed no. T4152/2016 has no title deed restrictions that need to be removed in order for this application to be approved.

Refer to the conveyancer's certificate compiled by K. Bezuidenhout from Van Zyl Kruger Attorneys dated 20 February 2017.

There is no bond registered against Remainder erf 1583 Hermanus.

3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.9.1 HERITAGE VALUE

Remainder erf 1583 Hermanus is situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010).

A demolition permit to demolish the existing structures on the subject property was issued by the municipality on 22 June 2015. The existing dwelling has since been demolished. Only the existing outbuilding (garage) is still on the site but will also be demolished to accommodate the proposed subdivision (and to ensure no deviations from the building lines are required). It is therefore evident that the heritage value of the structures on the subject property was already considered in the past and the structures / property was not deemed as conservation worthy for Hermanus' Heritage.

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

In the light of the abovementioned it is evident that the proposed subdivision does not trigger any listed activities in terms of Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

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

3.10 FORWARD PLANNING AND LAND USE DOCUMENTS

The ***Overstrand Spatial Development Framework (2006)*** earmarks the area where erf 1583 Hermanus is situated, for residential purposes. Please refer to the Spatial Development Framework Plan (2006) attached. The zoning of the subject property will remain unchanged (Residential Zone I: Single Residential) and therefore the proposed application falls within the existing planning for the Hermanus area.

The ***Overstrand Municipal Growth Management Strategy (OMGMS, 2010)*** specifies that erf 1583 Hermanus forms part of Planning Unit no. 6. This planning unit allows for an increase in density from 8,7 to 11,6 density units per hectare. The subject property allows itself to be developed with two portions in terms of the lawful layout. The proposal to create one additional portion is in line with the densification strategy for the area since densification is promoted in Planning Unit no. 6. The impact on the overall density of the Kwaiwater area will therefore be kept to a minimum since the proposed application still promotes a low density residential area.

From the above it is evident that the proposed subdivision adheres to the spatial planning policies for the Hermanus area and consequently falls within the existing planning for the Hermanus area.

3.11 PLANNING PRINCIPLES

The planning principles of spatial justice do not apply to this application.

Spatial sustainability: The proposed subdivision of erf 1583 Hermanus is to create one additional portion only. The visual impact will be kept to a minimum since the portions will be developed in line with the relevant municipal zoning scheme regulations. It is submitted that the new dwellings on the respective portions after subdivision are compatible with the character of the area and will not impact negatively on the existing rights of anyone else. The impact on the biophysical environment will also be kept to a minimum. Furthermore the proposed subdivision will be in line with the layout pattern and erf sizes in the area and will therefore contribute towards sustainable development in the area. The proposed subdivision is to an improved erf within an established residential area and therefore will not impact on urban sprawl or upon a sensitive environment.

Efficiency: The subject property is easily accessible and conveniently located close to the Hermanus CBD and tourist attractions. The proposed subdivision allows for the densification of the area through the preferred land uses (second dwelling or subdivision). Vacant erven in Kwaiwater are scarce and therefore the proposal will also meet the demand for properties in the area, without having a detrimental impact on the surrounding properties or Greater Hermanus.

Furthermore it proves efficient to allow the subdivision of erf 1583 Hermanus into two portions as per the original lawful layout. The impact would have been exactly the same if the lawful layout was taken up a few years ago already and the erven (lots) created accordingly.

Good administration: Our firm is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation.

4. RECOMMENDATION

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

- All services on the subject property already exist and additional services for the newly created portion will be provided to the satisfaction of the local authority;
- The proposed subdivision will only create one additional portion and is in line with the densification strategies for Planning Unit no. 6;
- The zoning of the portions after subdivision will remain unchanged;
- The proposed subdivision does not have a negative impact on the layout pattern of the existing Kwaiwater area;
- No deviations from the relevant zoning scheme regulations are proposed to allow the proposed subdivision of erf 1583 Hermanus;
- A reasonably sized dwelling (in line with surrounding dwelling house sizes) can be constructed on both portions after subdivision;
- The proposal is compatible with the existing built character of the area;
- There are no conditions in the title deed that prohibit the proposed subdivision;
- There are no environmental aspects that will negatively impact the application and the application will not have a negative impact on any environmental factors.
- The proposal is compatible with the spatial planning and densification strategies for the area.

The application can be supported for your favourable evaluation. The opinion is held that this application will have no negative impact on the land values, privacy and traffic of the area.



21, Kwaiwater Way,
Hermanus

13th April 2017

TR A Theart
CH v d Steep

To:

Director, Infrastructure and Planning,

Town Planning Department,

Hermanus.

Your Ref: 1583, HEC (3602) 16/03/2017

FILE NO:	EZ 1583
	Hermanus
SCAN NO:	32
COLLABORATOR NO:	1016168

Re: ERF 1583 HERMANUS

Dear Sirs,

Thank you for your Notice to Affected Persons, regarding the proposed sub-division of Erf 1583 (19 Kwaiwater Road, Eastcliff, Hermanus).

On behalf of the Trustees of the John Bettison Family Trust, I wish to formally lodge our objection to the proposed sub-division. The Trust is the owner of Erf 1585 which abuts the proposed sub-division of Erf 1583.

For the sake of clarity, our response follows the numbered paragraphs of the applicant's motivation report:-

Background

Paragraph 3.4 "The subject property can be sub-divided in terms of the lawful layout to create the original two portions. The application proposes sub-division into 2 portions as per the original layout on General Plans M56A that was approved by the office of the Surveyor General prior to 1935."

(Our records S.G. 10722/1904).

According to records in the file of Erf 1585 in our possession, Erf 1585 in the division of Caledon, F.C. Uilenkraal Sea Front, being Lots 4 and 5, and Lots 16 and 17, Block

EB

D, Mossel River, was granted to the Mossel River Estate Company, Ltd, on 22nd March 1904.

The lots laid out by the surveyor were very much all of small size, approximately 15m wide x 35m deep. Marketing was in the role of M.R. Estate Co., but with the outbreak of the Great War, appears to have stopped. In 1917 however, Lots 4 and 5, and Lots 16 and 17, Block D, were sold as one Erf, 1585 to Carel P. Hoffman as one property, who appears to be the first purchaser of the Erf 1585.

After the Great War, sales were obviously very slow. Buyers started purchasing either single Lots or adjoining multiples of 2 lots which were confirmed as Erven, for each consolidated property.

An Erf was allotted a number on the Transfer Deed as well as the land size in m². Hence:

Erf 1583 = 2 Lots (+- 500m² each totaled 1115m²) numbers 15 + 3.

Erf 1585 = 4 lots (+- 500m² each totaled 2000m²) numbers 4, 5, 16, 17.

Erf sizes were given in sides/Cape feet and corners in degrees.

It is important to note there is no mention on any of the Title Deeds we have seen regarding individual Lots being regarded as a sub-division of ownership.

The Erven identified by No. of Plan M56A show Erf No., not Lot No. In our opinion "lawful layout" has no meaning.

Plan Active's proposed sub-division plan is misleading as it shows the N/S boundary between 1583/1585 as a subdivision whereas it was laid out as a boundary between 2 Erven 1583/1585.

Further confusion is caused using street numbers to identify Erven or Lots.

Paragraph 3.2 Zoning:

Erf 1583 Hermanus is zoned "Residential Zone 1" single residential (SR1)

Comment: On 2nd December 1987 the Trust was advised that council intended amending its Town Planning Schemes by the creation of 2 special zones improving "the urban quality in general and preserving the historical center of Hermanus". Our property at 21 Kwaaiwater Way, falls within Special Zone 1. (Copy of council letter attached).

(NB Erf 1583 is also included).

Subsequently various requirements were added. Most importantly the minimum size of Zone 1 properties in future was to be 800m² (since reduced to 700m²)

Plan Active Town and Regional Planners acting on behalf of the owner of Erf 1583, makes repeated, frequent use of the term "lawful layout" in an attempt to justify their understanding of the surveyor's layout as the basis of the only legal description of identifying the ownership of an Erf. It is not. Obviously their planning on a 'one size suits all' basis was a fair and equitable solution easily pegged out in the field.

But any committee assessing the application will be conscious of the fact that the conditions in 1904 were very different from today. Farmers from the Boland came to holiday at the coast, probably in their wagons bringing their tents and food supplies (often literally 'on the hoof'). They chose to be near water for drinking, and needed place for small animals, hence the inclusion of grazing rights.

Therefore the system of choice in the number and total size of Lots was a practical one decided on the buyer and the Co. and confirmed in the Deed of Transfer, which included the Erf no. and size of land with details of measurements and position of Lots.

There were also no sophisticated survey instruments, computers, copiers etc. and all the contracts had to be copied by hand so simplicity was essential.

But 112 years later in today's time the zoning regulations govern any contract. Zone 1 Single Residential means only 1 property per erven. The requirements of 700m² minimum Erf size rules the application for subdivision into 2 smaller Lots out of order.

Conclusion:

We request that the council decline to accept the proposed sub-division.

A handwritten signature in cursive script that reads "John Bettison". The signature is written in black ink and is positioned above the printed name.

JOHN BETTISON.

Professional Engineer. (BSC ENG)

F.I.C.E (S.A.)

~~Fellow~~ Institute of Civil Engineers (U.K)
MEMBER

MUNISIPALITEIT

MUNICIPALITY

P.O. BOX
 POSBUS 20
 HERMANUS 7200

In reply please quote Ref. No.
 Meld asb. in u antwoord Verw No.:

TELEPHONE
 TELEFOON (02831) 21122

T/9/4

Enquiries	Mrs Burman
Navrae	

9 December 1987

Bettison, C J
 Russet Rise
 Spaarman Avenue
 Constantia
 7800

Dear Sir/Madam

TOWN PLANNING SCHEME: SPECIAL ZONES

We wish to draw your attention to the fact that the Council intends amending its town planning scheme by the creation of two special zones which will have the effect of improving urban quality in general and preserving the historical centre of Hermanus.

Your property situated at 21 Kwaaiwater Road falls within Special Zone I, the primary goal of which is to preserve and enhance the natural and developed environment and is aimed at properties which abut the most important roads and recreation areas within the town.

To this end it is intended that the Council may withhold its approval of building plans if it, in collaboration with the Aesthetics Committee, is of the opinion that any proposed development is not in keeping with the above-mentioned goals.

Further details and a plan of the area affected may be inspected at the municipal offices during office hours.

Objections to these proposals may be lodged in writing not later than 15 January 1988.

Yours faithfully,

TOWN CLERK

CB/1b

1583 HEC (3602)

1583 Community 1

S. Muller - Hanneen van der Stoep
Director Infrastructure and Planning
Overstrand Municipality Town Planning
14 April 2017



TP A Theart
(Huld Stoep)

Comments re: Proposed Subdivision: PlanActive
(obo M.J.U.T. VAN WIJNGAARDEN)

Your Ref: 1583 HEC (3602)

Dear Sirs,

We thank you and acknowledge receipt of your Notice to Affected Persons in respect of an application for the subdivision of erf 1583, 19 Kwaiwater Way, Eastcliff, Hermanus, Overstrand. (herein referred to as "1583" or the "Subject erf")

Our comments in this Document A are made as:

- a) Owners of erf 1580 an adjoining property that shares a common boundary to the west of erf 1583 adjacent to the proposed subdivision Portion A.
- b) We support the "collective objection"¹ to the proposed subdivision of erf 1583, by many of the property holders in blocks C and D between Mussel River Dr and Kwaiwater Rd/Way; and also
- c) As members of the broader Hermanus community that are committed to sustainable growth development and preservation of the "unique character" of Hermanus. This character embodies a sense of "freedom and space". These are core emotional and physical elements that deliver the very positive experience enjoyed in Kwaiwater and indeed Hermanus.

We hereby lodge our appeal to the Application of the proposed subdivision of erf 1583 as discussed below.

1. Background

- The Applicant avers "the property can be subdivided in terms of the "lawful layout" to create the two original portions".

¹ Objectors listed in Annex 1

FILE NO:	EL 1583
	Hermanus
SCAN NO:	33
COLLABORATOR NO:	1016171

TP 21 APR 2017

- *If the Application is based on "lawful layout", the Municipality should substantiate the claim facts from the required information provided by the Applicant under ref. 39 (1) (k) and make this available in the notice to interested and affected parties.*
- *The Application for subdivision is misleading, as is the considered cognisance of any criteria. The only consideration for the owner is to subdivide or not.*
- *lawful layout - is a unique and absolute right over property to subdivide the property to its component parts, extinguishable only by expropriation. Subdivision already exists as to the parameters of the lots and approved in the S General layout plan.*
- *surrounding erf sizes, accessibility to the subject property; impact on the character of the area; erf shape; availability of services; applicable spatial planning policies and densification guidelines etc. have no effect whether the owner subdivides or not.*
- *So we appeal to the owner to consider our comments, they are personal, not directed at the person, but are rather informed for the preservation of the character of Kwaaiwater.*

2. Development of Hermanus

- *The character and development of Kwaaiwater has origins well over a hundred years ago of farmers holidaying for extended periods after the harvest in the area.*

The SG. General Plan M.56 A, for the Mossel River Sea Side Township - Division of Caledon is dated 1904. The grid plan layout was generally taken up as large units and some first registrations of the erf's being a whole block. From the original titles we have seen all were subject "To Rules, Regulations or By-laws to be promulgated for the good conducted management of the Village".

Kwaaiwater developed as large properties used for holiday purposes having an informal and relaxed, free and open dwelling environment. The trend continued and now days the increased numbers of permanent residents is evident and growing. Dwelling structure capacity generally services the need of family and friends. Rooms for rent provide additional capacity for over flow, weekend and public holiday influx in the form of 2nd dwellings.

The ease and convenient safe access to beaches, town centre, the market, mountains and trails in this unobstructed open space are key elements of the value of Kwaaiwater. Poole Street, is an important busy connector through Kwaaiwater, that runs within 40m of Erf 1583 and terminates to single vehicle-width access thoroughfares to two popular public beaches, sea viewing-sights and the cliff path. Kwaaiwater amenities facilitate a high number of pedestrians, family and tourists groups, strollers, walkers and cyclists.

Often the carrying capacity is stretched particularly i.r.o of traffic mobility, parking and pedestrian safety

3. Application Details

- *Subdivided or not the Municipality's By-law on Municipal Land use Planning, 2016 governs land use.*

4. General Application Information

4.1 Property Description.

- *The locality plan attached to the notice correctly positions Erf 1583.*

4.2 Zoning ... Residential Zone 1 Single Residential (SR1).

4.3 Land Use -

Note:

"the outbuilding" is a single unit construction having a common centre wall running through the roof ridge line and a common roof. The structure is built across what has subsequently become the boundary between erf 1580 and 1583. The north wall of the building is built on the Mussel River road boundary of both even.

4.4 The Development

4.4.1. *The applicant avers" The subject property can be subdivided in terms of the lawful layout to create the two original portions."....*

- *We are advised by the Municipality that currently no erf size is stipulated as all past laws used to regulate erf size are repealed.*
- *The erf size regulation is implied and prescribed in the "Overstrand Municipality Growth Strategy, The Overstrand Municipality's Municipal By-law on Municipal Land Use Planning, 2016 and The Overstrand Municipality Zoning Scheme, 2013. For practical considerations the area for block C and D, Kwaaiwater already meets the densification objectives. This calculation will improve slightly with the inclusion of a few existing 2nd dwelling units.*
- *The erf 1583 falls within the planning unit 6. Residential Densification ... Incremental development through subdivision to allow for second and third dwelling units respectively (housing typologies B1 and B2) is proposed for an assumed 20% of the area / dwellings of this Planning Unit 6. Based on this projection the dwelling units increase from 8.7 DU/ha to 11.3 DU/ha.*
- *An analysis of the Strategic Interventions Plan: Sheet H. Proposal plan for unit 6. (Overstrand Spatial Growth Management Strategy 2010) follows:*

General analysis for Planning unit 6 . Data Sheet H				
Existing Density DU/ha	Target DU/ha	Avg Current Erf size	Avg. Erf at 11.7 DU/ha	
8.7 DU/ha	11.7 DU/ha	1120 m ²	861 m ²	
General analysis - Blocks C&D, Data Consultation and Calculations				
Current Sub-area blocks D Kwaiwater	No of erf's	DU	Current DU/ha	Add opportunity of existing 2nd DU's
Erf Area 1.277ha Avg 1064 m ²	12	14	10.9	12.48
Note. Block C data is almost identical to block D.				

This analysis is submitted to demonstrate:

- *that the area is already subdivided to achieve the proposed densification objective of the growth strategy;*
- *the character and property values of the Kwaiwater area are better served by intermediate sized even in and about 1000m²;*
- *The subdivision of erf 1583, is inconsistent with the past rules of not less than 700m². These regulations (although not applicable or a restriction under lawful layout on 1583), are still a good guide whether to subdivide or not.*

5. Some interesting Considerations

- *About 40% of the erven in Block C and D are of a similar size to the proposed subdivided portions of 1583. All but one of these small erven, when fully occupied results in significant stress on the system. Primarily parking violations and blocking of road access for through traffic occurs daily. The sidewalks are not well constructed or maintained as pedestrian walkways. Pedestrians have no alternative but to use the road surface when vehicles are parked either side on sidewalks or the roadside in both directions. Mobility is compromised and pedestrians risk being run over.*
- *Kwaiwater property owners are alert to the unique and specific character of the area. The spatial layout of erven currently allows for a reasonable vista of mountain and/or sea from most of the properties. The encroachment of high density double story units cheek by jowl will destroy the property values, privacy factor and will be clearly incompatible with the desirability of this special area.*
- *Consideration must be given to the negative practical impact the smaller size erf's have on the character of Kwaiwater. In terms of planning legislation off street*

parking is required for minimum 2 vehicles, however in reality an additional 4 or 5 vehicles are active daily around each property providing services, garden maintenance, refuse collection, deliveries, lifts etc. It is disingenuous to "imply that a mere two additional vehicles will travel to the area as a result the development on a 500m² Moreover one must be cognisant of the "Costal Management Zone", "Open Space and "Sea Front Setback" overlays applicable to the front verge on Kwaaiwater Way. This is not a "wide verge for off street parking"

- Small erven attract overcrowding, compromise mobility, parking, public access to amenities and privacy.*
- We believe on balance, despite the lawful layout provisions to facilitate a subdivision, that the development at 1583 will benefit far more significantly by not subdividing.*

In closing this community welcomes the opportunity to engage with the owner of 1583 to discuss the views expressed here and any other considerations he may have

Sincerely

Guy & Pat Redford

082 9052365;

082 9084002

Box 1557 Hermanus 7200

Signed objections in support of Document A are attached:

*Glenda Furst
Roosa Nesor
Carien de Clerk
Liane Frew
Robert Hill
Gert Viljoen
John Bettison
Pat Redford*

Signed Objection to Application for Sub Division of Erf 1583

I, Robert Buchanan Hill....., the legal owner of Erf1579.

Kwaaiwater, Hermanus hereby confirm my support for the objection to the application for sub-division of Erf 1583, for the reasons as indicated on the attached document A.

Contact details:

Address:17 Kwaaiwater Road Hermanus 7200.....

Postal Address:(same).....

Contact email address:bobhill@sonicmail.co.za.....

Signature:Robert Hill.....

Date:21 April 2017.....

Signed Objection to Application for Sub Division of Erf 1583

I, GERT CHRISTAAN VILJOEN, the legal owner of Erf 1607...

Kwaaiwater, Hermanus hereby confirm my support for the objection to the application for sub-division of Erf 1583, for the reasons as indicated on the attached document A.

Contact details:

Address: 51 MOSSEL RIVER DR, KWAAIWATER, HERMANUS

Postal Address: C/O BREE STREET CAPITAL, 185 BREE STR, CAPE TOWN, 8001

Contact email address: gert@brestreetcapital.com

Signature:

Date:


21 APRIL 2017

Signed Objection to Application for Sub Division of Erf 1583

I, PIERRE BERNARD DECLERK, the legal owner of Erf 1596.....

Kwaaiwater, Hermanus hereby confirm my support for the objection to the application for sub-division of Erf 1583, for the reasons as indicated on the attached document A.

Contact details:

Address: 33 KWAAIWATERSTR, HERMANUS.

Postal Address: PO BOX 1056, HERMANUS 7200.

Contact email address: pdeclerk@gmail.com.

Signature: Pdeclerk

Date: 21.04.2017.

Signed Objection to Application for Sub Division of Erf 1583

I, MARIUS RICHARD FURST....., the legal owner of Erf 1576
FOR M M FAMILY TRUST

Kwaaiwater, Hermanus hereby confirm my support for the objection to the application for sub-division of Erf 1583, for the reasons as indicated on the attached document A.

Contact details:

Address: 4 KWAALWATER ROAD HERMANUS

Postal Address: 4 KWAALWATER ROAD, HERMANUS 7200

Contact email address: mariusfurst@hotmail.com

Signature: 

Date: 21.04.2017

Signed Objection to Application for Sub Division of Erf 1583

I, JR NESER, the legal owner of Erf 5470

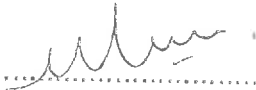
Kwaaiwater, Hermanus hereby confirm my support for the objection to the application for sub-division of Erf 1583, for the reasons as indicated on the attached document A.

Contact details:

Address: 53 MUSSE RIVER DRIVE KWAAIWATER.

Postal Address: P.O. Box 1530 HERMANUS 7200

Contact email address: rosa.neser@gmail.com

Signature: 

Date: 21.04.2017.

Signed Objection to Application for Sub Division of Erf 1583

I, CECIL JOHN BETTISON, the legal owner of Erf 1583
 P.O. JOHN BETTISON FAMILY TRUST

Kwaaiwater, Hermanus hereby confirm my support for the objection to the application for sub-division of Erf 1583, for the reasons as indicated on the attached document A.

Contact details:

Address: 21 KWAAIWATER WEG E.C. HERMANNUS

Postal Address: 11, SPRANKMAN AVE. CONSTATIN 7130

Contact email address: johnbettison@spithead.co.za

Signature: [Signature] (TRUSTEE)

Date: 21 APRIL 2019

Signed Objection to Application for Sub Division of Erf 1583

I, Liane Frew, the legal owner of Erf 1593 and Erf 1589

Kwaaiwater, Hermanus hereby confirm my support for the objection to the application for sub-division of Erf 1583, for the reasons as indicated on the attached document A.

Contact details:

Address: 52, Mussel River Drive, Kwaaiwater, Hermanus

Contact email address: lianefrew@gmail.com

Contact phone: 0283131053/0836556715

ff Signature:



Date: 21/04/2017

46

46
response

Pat Redford

From: Pat Redford <patred@iafrica.com>
 Sent: Wednesday, December 09, 2015 4:40 PM
 To: 'Petrus Roux'
 Subject: RE: Enquiry about minimum stand size for subdivision of seafront erf in Kwaiiwater

Hi Petrus,

Many thanks for your response, it is very helpful and much appreciated, I have downloaded the Hermanus East file and will review and revert back to the relevant department if necessary.

Kind Regards

Pat Redford
 patred@iafrica.com
 082 908 4002

From: Petrus Roux [mailto:petrusroux@overstrand.gov.za]
 Sent: Wednesday, December 09, 2015 3:34 PM
 To: patred@iafrica.com
 Subject: Re: Enquiry about minimum stand size for subdivision of seafront erf in Kwaiiwater

Good day Pat

Please find my answers to your questions below:

- 1) Confirmation of the minimum size of erf required for subdivision in the seafront Kwaiiwater area.
- 2) I understood that the erf had to be a minimum size of 700m2. Has this been amended recently?

The minimum is 700m2. Although the applicant will have to motivate that it is in keeping with the surrounding erven.

- 3) Under what conditions can one apply for a smaller subdivision than the spatial development plan currently indicates?

Council is generally not supportive of subdividing erven smaller than the current trend / strategic documents.

- 4) What process is required if one intends to object to plans for a development which is not in keeping with the general aesthetics and integrity of the surrounding architecture.

One can only object to a proposed Town Planning application during the 35days which is given in the public participation process. If it is an existing use which is not in line with the character of the area or usage or does not comply with the relevant regulations then it is better to send a complaint to the relevant department.

- 47
- 5) How does town planning establish whether or not a development is planned as a guest house in disguise?

Any usage must be clearly indicated on the proposed plans. If a development is not in keeping with the approved/ proposed plans it is then considered that the owner/applicant misled the Council and it is seen as fraud.

- 6) Under what circumstances is there an obligation by an owner/developer to consult with neighbours regarding their intended re development of a vacant site?

When the owner/applicant proposes to change the usage or departs from the relevant regulations.

- 7) How is permission to demolish a building granted, what are the criteria required?

Please refer this question to the building department

- 8) Does the town planning department have intentions to densify and bulk up the seafront properties in the future, or is it being managed? If so please provide me with the relevant layout of densifications planned for the seafront in the Kwaiwater area.

Our current policy is available on the website.

Please follow the link:

<http://www.overstrand.gov.za/en/documents/town-planning/strategic-documents-1/overstrand-municipality-spatial-growth-management-strategy-2010>

Kind Regards

Petrus Roux

TOWN PLANNER

OVERSTRAND MUNICIPALITY

Tel: 028 313 8983

Fax: 028 313 2093

>>> "Pat Redford" <patred@iafrica.com> 2015/12/05 10:25 AM >>>
Good Day Petrus,

I am hoping you will be able to assist me with the following queries:

- 1) Confirmation of the the minimum size of erf required for subdivision in the seafront Kwaiwater area.
- 2) I understood that the erf had to be a minimum size of 700m2. Has this been amended recently?

- 3) Under what conditions can one apply for a smaller subdivision than the spatial development plan currently indicates?
- 4) What process is required if one intends to object to plans for a development which is not in keeping with the general aesthetics and integrity of the surrounding architecture.
- 5) How does town planning establish whether or not a development is planned as a 'guest house' in disguise?
- 6) Under what circumstances is there an obligation by an owner/developer to consult with neighbours regarding their intended re development of a vacant site?
- 7) How is permission to demolish a building granted, what are the criteria required?
- 8) Does the town planning department have intentions to densify and bulk up the seafront properties in the future, or is it being managed? If so please provide me with the relevant layout of densifications planned for the seafront in the Kwaiwater area.
- 9) The densification of the Abalone Guest Lodge is extensive, is this going to be the norm for the area now? How is this being controlled?
- 10) To what extent is an EIA study taken into account when plans are submitted for properties directly alongside the Fernkloof/Kwaiwater/ Musselriver Conservation Biom.

I value your opinion and would greatly appreciate a written response,

Kind Regards

Pat Redford
patred@iafrica.com
082 908 4002

1583 HEC (3602)



1

Mr P. Roux

Town Planner

Overstrand Municipality Town Planning

14 April 2017

Per email: petrusroux@overstrand.gov.za

TR A Theart
C P Roux

Comments re: Proposed Subdivision: PlanActive

(obo M.J.U.T. VAN WIJNGAARDEN)

Dear Sir

1. The proposal is a motivation in the form of an Application for "SUBDIVISION" and made in terms of Municipal Land Use Planning, 2016 i.r.o Erf 1583.
 - 1.1. The clients Application stipulates that lawful layout is the basis for subdivision.
 - 1.2. The lawful layout is not substantiated by the Applicant, and the Municipality has not requested that the Applicant do so.
 - 1.3. With respect ... if lawful layout is substantiated, the Application is then made not for approval for consideration of subdivision, but rather an advice by the land owner to the Municipality to record the subdivision.
 - 1.4. Upon the registration of the subdivision, lawful layout is extinguished and the current law is then applicable.
2. From the above it is clear that to argue or comment on the Application in its current form as presented, can only be subjective.
3. Our professional council indicate that conclusive research is required to verify the claim.
4. It is not our intention or that of the community in Kwaiwater to frustrate the process. However we have over the past few days requested for a consultation to point out various issues i.r.o of the Application document as laid open for inspection. A request for a postponement of the return date for comments, was rejected.
5. We have lodged our comments and also the comments on behalf of many of the property owners of Kwaiwater.
6. To be clear - we believe whether or not the Applicant has the right to "Subdivide" erf 1583, that it would be in his best interest and also the interest of preserving the character of Kwaiwater not to do so. In this regard our motivation is include in our comments including our invitation to engage with the Applicant to discuss mutual interests.

In closing we thank you for taking my call today, and agreeing to receive this input in consideration of dealing with this matter.

Kind regards

Guy & Pat Redford

FILE NO:	E 1583
	Hermanns
SCAN NO:	18
COLLABORATOR NO:	1016297

TP

21
APR 2017

PLAN Town & Regional Planners
Stads-en Streeksbeplanners
Active

6 Magnolia St / Str
PO Box / Posbus 296
HERMANUS
7200
Tel: (028) 313 1673
Fax / Faks: (028) 312 1351
Email: planactive@hermanus.co.za
Website: www.planactive.co.za

Our reference: PA17008/ML
Your reference: 1583 HEC (3602)

23 MAY 2017

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

FOR ATTENTION: MR PETRUS ROUX

Sir

PROPOSED SUBDIVISION: ERF 1583 HERMANUS
• **M.J.U.T. VAN WIJNGAARDEN**



TR-AThear
(P Roux)

FILE NO:	EL 1583
	Hermanus
SCAN NO:	47
COLLABORATOR NO:	1029283

Reference is made to our application dated 28 February 2017 as well as your letter dated 2 May 2017 with objections attached thereto.

Objections were received from J. Bettison and G. & P. Redford, with last mentioned containing eight signatories in support of the objection. The objection from John Bettison did not include a Trust Resolution stipulating that he may act on behalf of the trust and consequently it is questionable whether this is merely his opinion or indeed the trust's opinion. Regardless, the objections and our response can be summarized as follows:

- ***Lawful layout has no meaning since none of the title deeds of the area regard individual lots as subdivision of ownership. The plan submitted also shows erf numbers, not lot numbers. In addition the plans submitted are misleading.***

We beg to differ with the above statement. Until the Overstrand Municipality's By-law on Municipal Land Use Planning, 2015, was promulgated, lawful layouts were successfully registered without any attached. This is confirmed by the Surveyor-General's letter dated 19 May 2017. The aforementioned confirms that subdivision by lawful layout exists but that the Overstrand Municipality's Bylaw does no longer make provision for lawful layouts without following due process in terms of the bylaw. However, the existence and merit of a lawful layout remains unchanged at the Surveyor-General's office.

The subdivision and locality plans submitted are correct. The plans for the purposes of the land use application have to reflect the surrounding property numbers and street numbers, not the lots.

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

John Mc Lachlan: Ndip (Town Planning) Tech Witwatersrand; MSAPI
Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)
Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACTRP

A copy of SG-diagram no. 1006/1914 & General Plan no. M56A (sheet 5) that indicate the lot numbers were submitted with the application – perhaps the municipality neglected to attach these plans to the notices sent to the public.

- *There is a minimum erf size of 700m² that applies to this area of Kwaaiwater. The other objector stipulates that although the minimum erf size is no longer applicable to the area, it should still govern the decisions for future subdivisions.*

The minimum erf size of 700m² was a guideline stipulated in the Greater Hermanus Spatial Development Framework (2000). The aforementioned structure plan was repealed and no longer serves as a planning tool to guide development in the Greater Hermanus area. This statement of the objector should therefore be dismissed.

It is ludicrous to expect the minimum size of 700m² that was applicable in the past to still be enforced without any approved policy / council's decision supporting this guideline. We would also like to emphasize that the 700m² was also exactly that – a guideline, not a pre-requisite for subdivisions in this area.

Chapter VI, Section 66 of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2015, stipulates criteria for decision making. Each application has to be evaluated based on these criteria.

As agreed by one of the objectors almost 40-50% of the erven in this area (residential block below Main Road) are less than 700m² in extent:

- ±17 erven are smaller than 500m²;
- ±11 erven are between 500-600m² in extent;
- ±15 erven are between 600-700m² in extent, of which 8 erven are smaller than 630m² in extent.

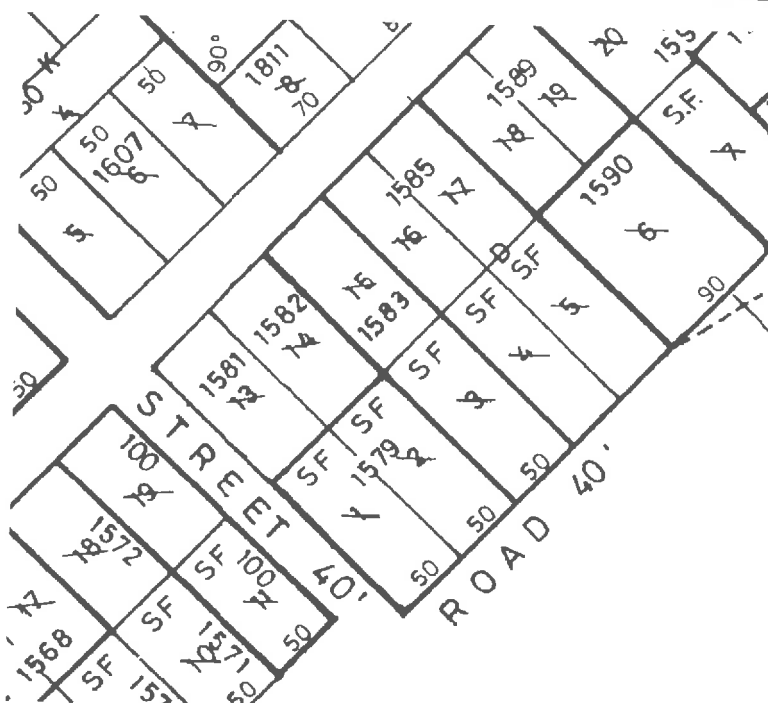
Refer to the erf sizes plan attached: Erf Sizes Map Kwaaiwater

From the above mentioned plan it is evident that there are less larger erven, than smaller erven situated in the area. The plan also indicates that the proposed subdivision creates portions that are compatible with the immediate Kwaaiwater area.

The existence of the lawful layout of the subject property allows for two portions to be created.

Although a subdivision according to the lawful layout cannot be enforced anymore without the municipality's consent, it can serve as additional merit and guideline for erf sizes that were (are) allowed for in the area. The application therefore proposes to subdivide the subject property into two portions as per the original layout on General Plan M56A (sheet 5), that was approved prior to 1935. Refer to the extract from General Plan No. M56 (sheet 5) below:

Extract from General Plan No. M56 (sheet 5) – erf 1583 Hermanus



(The numbers indicated on the plan above that have been crossed out refer to the old lot numbers, lots 3 and 15 were renumbered to Erf 1583)

The proposed subdivision will follow the exact same lines as the previous lots (hence the small difference in the two portions sizes proposed with the application). The reason for the subdivision land use application at hand is because the relevant land use planning bylaw does not provide for the exemption of lawful layout subdivisions.

But as rightfully emphasized by G. & P. Redford: **“1.3 With respect... if lawful layout is substantiated, the application is then made not for approval for consideration of subdivision, but rather an advice by the land owner to the municipality to record the subdivision”.** We agree with the objector that the application in its current form can therefore only be considered **subjective.** The Lawful layout for erf 1583 Hermanus can be substantiated as confirmed by the Surveyor-General’s letter dated 19 May 2017. It can however not be enforced (approved by the Surveyor-General’s office) without the municipality’s consent.

It is submitted that the proposed means of densification still promotes a sensitive and appropriate proposal within the context of the existing character of the surrounding area (as described above).

- ***The history of the development of the historical centre of Hermanus is relevant to this application. However, new regulations govern the consideration of subdivisions now (with reference to the 700m² erf sizes).***

A comparison between the General Plan for the establishment of the original township (in the area known as Kwaaewater) and the current erven in the area indicates the changes in the township over a century. We agree that in time, these changes have contributed strongly towards a sense of place and identity for the residents of the area.

This sense of place and identity is also made up by the ±40-50% smaller erven in the Kwaaiwater area as well. These existing smaller sized erven do not impact on the sense of place and identity of the area, thus how will this application be any different? It is therefore evident that the current sense of place and identity will not be undermined by this subdivision proposal that creates similar shaped and size erven than the surrounding Kwaaiwater erven. As motivated in the previous paragraphs the proposal is therefore consistent with the current erf sizes in the area.

- ***No substantiating documents for the lawful layout were attached to the notices.***

We cannot answer to the above statement since the notices were compiled and distributed by the municipality. The land use application was a complete set of documents.

- ***Application for subdivision is misleading, as is the considered cognizance of any criteria applicable to this application. The only consideration for lawful layout subdividing is if the owner wants to subdivide or not. According to the objector it is an absolute right over property to subdivide the property to its component parts, i.e. subdivision already exists as to the parameters of the lots and the approved SG layout plan. G. & P. Redford, as well as the eight neighbouring properties, therefore they appeal to the owner to consider their comments and not to proceed with the subdivision.***

As previously mentioned the reason for the subdivision application at hand is because the relevant land use planning bylaw does not provide for the exemption of lawful layout subdivisions. But as rightfully stipulated (agreed) by G. & P. Redford: "1.3 With respect... if lawful layout is substantiated, the application is then made not for approval for consideration of subdivision, but rather an advice by the land owner to the municipality to record the subdivision". We agree with the objector that the application in its current form can therefore only be considered subjectively.

We also agree with the statement that the criteria will then in fact be irrelevant for the consideration of the application, since it is not a question of merit but only a confirmation of the lawful layout (and endorsement of the plan accordingly). However, since the municipality will evaluate the application as stipulated by the relevant bylaw the application was motivated in line with the relevant criteria. The proposal meets the criteria for favourable consideration if the evaluation and recommendation is based on the criteria and the merit of the application only, while also considering the existence of the lawful layout for this subject property. Regardless, the application can be considered for favourable evaluation – consistent with the relevant policy, the character of the area and the LUPA principles.

- ***The Overstrand Municipal Growth Management Strategy (2010) governs densification in the area. The aforementioned policy stipulates that the area has already achieved the proposed densification objective by means of subdivision. Densification in the form of second and third dwellings is proposed.***

The means of densification set aside, the fact is that densification is allowed for planning unit no. 6. The OMGMS (2010) remains a guideline for densification and the application has to be considered based on its own merit and in accordance with the criteria to determine the desirability of the application. The subdivision by means of lawful layout for this area cannot be ignored. It is also argued that the OMGMS is only one of many criteria that have to be met.

It is submitted that the impact of a second dwelling on erf 1583 Hermanus will have the same impact than subdividing the subject property into two properties (i.e. still two dwellings, same amount of traffic generated to the area, same visual impact, etc.).

Emphasizes should be on the fact that the relevant policy encourages densification. It is submitted that the municipality will benefit more from the subdivision of the subject property concerning the bulk services levies payable to them as well as the rates and taxes payable for two erven instead of one erf later on. A subdivision will not only benefit the municipality more but also the local economy since two separate plots will allow two families to invest in this area. This investment is not only a once off investment in the economy with the sale of the property, but also a monthly / annual investment to the area for the family residing / visiting here. From an economical benefit point of view it makes more sense to allow the densification by means of subdivision since the proposed portion sizes are compatible with the area and the impact on the character of the area will be the same for a second dwelling and subdivision.

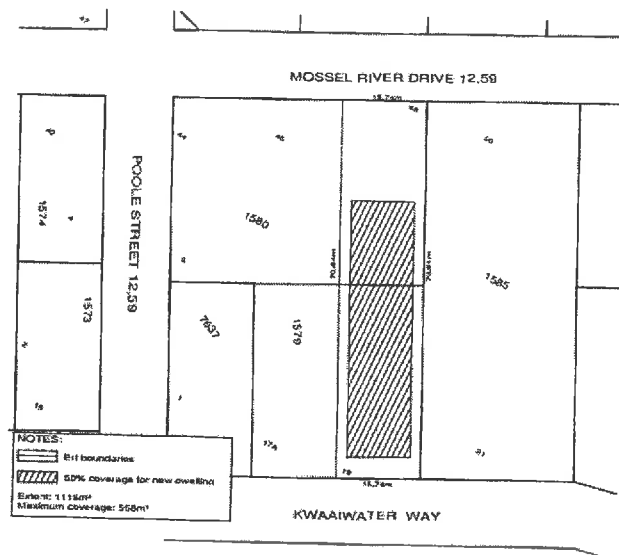
- **Smaller erf sizes will impact on the character of the area. Intermediate erf sizes of 1000m² will better serve the area. In addition high density double storey units will destroy the property values, privacy factor and desirability of the area.**

Firstly note that some of the objectors' erven also do not meet the intermediate erf size proposal.

In addition, the upmarket character of Kwaiwater is determined by the locality of the neighbourhood in the Walker Bay and Hermanus area. The erf sizes in the area do not have a significant influence on the status of the neighbourhood, bearing in mind that almost 50% of the erven are less than 700m² in extent. Voëlklip is another upmarket neighbourhood in Hermanus and the minimum erf size of merely 450m² has not detracted from the upmarket character. In fact smaller erven can be developed very effectively with great aesthetic value – the existing Voëlklip and Kwaiwater areas are proof thereof.

The objectors and municipality must also consider the alternative of constructing a single large dwelling on the subject property (maximum height, coverage etc.) and how this will impact the neighbours. The existing erf has a depth of 70,84m and can be developed by means of a monstrosity in its existing configuration but still within the applicable zoning scheme regulations (see image below for 50% coverage within the relevant building lines; also note the scheme regulations have no limit on the maximum bulk / floor factor). It is submitted that the impact of two smaller erven will be lower and the potential development area for construction will be visually more acceptable - with reference to two separate dwellings with building lines in between and the impact on views (one long building versus two separate structures).

Maximum coverage on erf 1583 Hermanus (no subdivision alternative)



- *Small erven attract overcrowding (2 parking bays per erf does not suffice), compromise mobility, parking, public access to amenities and privacy.*

The two parking bays per dwelling are in line with the parking requirements of the Overstrand Zoning Scheme Regulations (2013). As mentioned in our motivation report the future development of the properties will have to adhere to the land use planning restrictions for SR1 zoned properties.

We trust that you find the above in order and that you will now be able to proceed with the processing of the application.

Yours faithfully



M. LERM Pr. Pln. (A/158/2009)
PLAN ACTIVE



rural development
& land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

OFFICE OF SURVEYOR-GENERAL: WESTERN CAPE

Private Bag X9028, CAPE TOWN, 8000
E-mail: sgsecretarywc@drdlr.gov.za

Tel No (021) 467 4800
Fax No (021) 465 3008

Mr. V. van Dyk
Professional Land Surveyor

Enquiries: A Ballantyne
Extension: 320

Our Reference: S/2479/45
Your Ref: not supplied

Per email: info@vandyksurvey.co.za

19th May 2017

Dear Sir

LAWFUL LAYOUT ENQUIRY REGARDING ERF 1583 HERMANUS

Your email dated 12th May 2017 refers.

We can confirm that Erf 1583 Hermanus would be considered as been subject to a lawful layout as per the repealed Land Use Planning Ordinance 15 of 1985 (Section 23(2)) into two erven as per the original layout of Lots 3 and 15 as shown on General Plan M56^A (S.G. No. 10722/1904).

The reasons for our decision are set out as below:

1. The GP M56^A reads "This plan is exempt from the provisions of the Townships Ordinance 1927.
2. It states that it is survey by the two land surveyors and shows the data of the lots.
3. The diagram 1006/1914 was dated 1904 and described as being Lots 3 and 15 of Block D. This diagram was later renumbered to Erf 1583 Hermanus. Title Deed 6302/1914 describes the property the same way.

However the Overstrand Planning By-Law does not make provision for lawful layouts anymore. Currently only the City of Cape Town's By-Law makes such a provision.

Yours faithfully

A Ballantyne
for SURVEYOR-GENERAL : WESTERN CAPE

Attachments: None

ERF NO.	EXTENT	ERF NO.	EXTENT
1600	± 490 m ²	5296	± 493 m ²
7008	± 486 m ²	1552	± 618 m ²
7007	± 642 m ²	1550	± 618 m ²
1579	± 568 m ²	1549	± 618 m ²
7637	± 567 m ²	7339	± 618 m ²
1573	± 495 m ²	6203	± 542 m ²
1574	± 494 m ²	6863	± 576 m ²
1567	± 492 m ²	1548	± 542 m ²
1563	± 494 m ²	7338	± 542 m ²
1569	± 492 m ²	5722	± 655 m ²
5297	± 492 m ²	5723	± 655 m ²
5295	± 495 m ²	6710	± 644 m ²



NOTES

- Erf 1583 Hermanus: proposed subdivision
- Erven with similar sizes as the proposed subdivision in the south of Kwaaiwater

Property Description:
**ERF 1583
 HERMANUS**

Plan Description:
 ERF SIZES
 MAP: KWAAIWATER

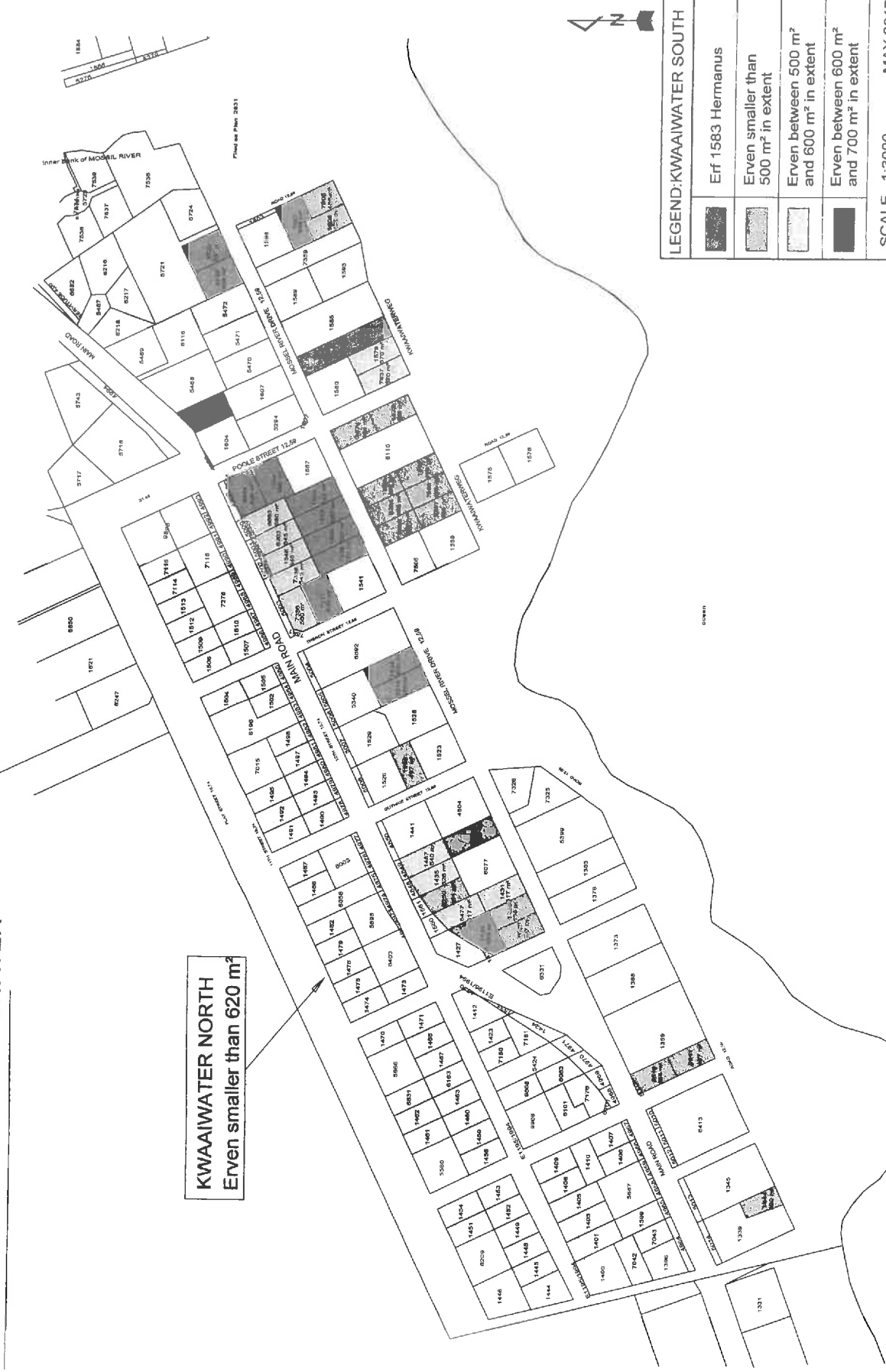
Scale: NTS
 Drawing No: hgrm1583erven2.dwg
 Date: MAY 2017

Stads- en Streeksbeplanners
PLAⁿ Active
 Town & Regional Planners

All distances approximate and subject to survey.
 COPY RIGHT RESERVED

ERF LAYOUT PLAN OF KWAAIWATER

KWAAIWATER NORTH
Erven smaller than 620 m²



LEGEND: KWAAIWATER SOUTH

	Erf 1583 Hermanus
	Erven smaller than 500 m ² in extent
	Erven between 500 m ² and 600 m ² in extent
	Erven between 600 m ² and 700 m ² in extent

SCALE 1:3000 MAY 2017

py n ctive
Towns and Regional Planners
Stads- en Streeklaaniers

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR SUBDIVISION: ERF 1583, EASTCLIFF (3602)**

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

Conditions:

1. That a Bulk Services Contribution Levy (BICL) be paid by the developer to supplement municipal services and amenities in accordance with the relevant legislation and as determined by the Council. The BICL tariff is adjusted by Council annually. The total BICL payable will be the amount as determined by the BICL Policy and tariff at the date of **actual payment**. BICL amounts quoted in any document will normally be applicable to the particular year in which the document was compiled and Council will not be bound by the quoted amounts.

1.1 Developments containing Sectional Title Units/ Commercial Buildings
(non-free standing properties – property is not to be subdivided)

The BICLs are to be paid in full **prior** to submission of the building plans. Building Plans will not be accepted unless the BICL is paid in full.

1.2 Developments with free standing properties (property that is subdivided and plots to be sold individually).

The BICLs are payable **prior** to clearance being issued by the Income Department of the Municipality.

The contribution according to the current policy (**2016/2017**) is as follows:

Freehold erven:

Water	R 21 500.00 x 1	=	R 21 500.00
Sewerage	R 14 496.00 x 1	=	R 14 496.00
Roads	R 6 500.00 x 1	=	R 6 500.00
Stormwater	R 7 500.00 x 1	=	R 7 500.00
Solid Waste	R 1 300.00 x 1	=	R 1 300.00
Electricity	R 30 197.80 x 1	=	R 30 197.80
TOTAL (inclusive of VAT)		=	R 81 493.80

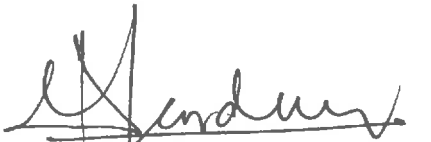
Note:

1.3 The above figures are estimates

1.4 The above figures do not include connection fees

2. that only the standard 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 developer's cost;

3. that each individual erf be provided with its own water and sewerage connections;
4. that only a standard 60 Amp single phase electricity connection will be available per erf;
5. that stormwater be allowed to discharge through the proposed erven , Eastcliff, unobstructed.



DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

11 / 4 / 2017.

DATE

63

Alida Conradie - Re: Erf 1583, Eastcliff (subdivision)

From: "Jamie Klem" <jklem@overstrand.gov.za>
To: <alida@overstrand.gov.za>, "Loriaan Isaacs" <loriaanisaacs@overstrand.go...>
Date: 2017/04/05 01:48 PM
Subject: Re: Erf 1583, Eastcliff (subdivision)

Sir / Madam.

In view of the fact that plot 1583 is fully serviced and the new plot will be serviced in line with the Municipality Regulations there are no comments, however keep in mind that each of the 2 erven are only entitled to a single phase 60 Amp service connection.

Regards

Jamie Klem

Snr Superintendent Projekte
Elektrotegniese Dienste
Overstrand Munisipaliteit
Email: jklem@overstrand.gov.za
Tel: 028-316 2630
Faks: 028-316 2632

>>> Loriaan Isaacs 2017/03/16 03:34 PM >>>

Sir / Madam

Attached please find an Internal Memo for your attention. Kindly provide your department's comments directly to Alida Conradie (alida@overstrand.gov.za) on or before **Friday, 21 April 2017**.

NB: Kindly provide all comments in English. Your comments, as received, are copied straight into the Council & Delegated Reports.

Thank You
Lolly

Stadsbeplanning / Town Planning
Munisipaliteit / Overstrand / Municipality
Patersonstraat 16 / Hermanus / 16 Paterson Street
Tel **028 3138966**