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ERVEN 107, 109 AND 110, VAN DYK- & GEELBEK STREETS, VAN DYKSBAAI (KLEINBAAI), OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, CONSOLIDATION, CONSENT USE AND DEPARTURE: MESSRS WRAP CONSULTANCY ON BEHALF OF EXACT AFRICA PROJECT MANAGEMENT

107, 109 & 110 GKB (2828/2018)

**SW van der Merwe
20 August 2020**

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Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 14 December 2018 from Messrs WRAP Consultancy on behalf of Exact Africa Project Management applicable to Erven 107, 109 and 110, van Dyksbaai in terms of the Overstrand By-Law on Municipal Land Use Planning, 2015 (By-Law) for the following:

- ❖ removal of restrictive title deed conditions 1.C.6, 1.C.7(a), 1.C.7(b), 1.C.7(c), 1.C.8(a), 1.C.8(b), 1.C.8(c), 1.C.9 & 1.C.10 contained in Title Deed T53947/2005 applicable to Erf 107 van Dyksbaai, as well as title deed conditions D.1, D.2, D.3, D.4 & D.5 contained in Title Deed T44460/2013 applicable to Erf 109, van Dyksbaai in terms of Section 16(2)(f) of the By-Law;
- ❖ rezoning of Erf 109, van Dyksbaai from Authority Zone: Authority Usage (AZ) to Business Zone 3: Local Business (B3) in terms of Section 16(2)(a) of the By-Law;
- ❖ consolidation of Erven 107, 109 and 110, van Dyksbaai to create a consolidated property measuring 5790m² in terms of Section 16(2)(e) of the By-Law;
- ❖ consent use to accommodate a business premises and residential building in terms of Section 16(2)(o) of the By-Law, and
- ❖ departure in terms of Section 16(2)(b) of the By-Law for the following:
 - relaxation from the southern lateral building line from 3m to 0m to accommodate an existing store room;
 - relaxation of the north-eastern lateral building from 3m to 1,9m to accommodate guest room 2;
 - relaxation of the south-western lateral building line from 3m to 0,3m to accommodate guest room 3;
 - relaxation of the south-eastern lateral building line from 3m to 2m to accommodate the existing office, and
 - departure of the 8,5m height restriction to 10,5m to accommodate a proposed new building on the consolidated property.

A 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 (SDP) is attached as Annexure C. Title Deeds T53948/2005 and T44460/2013 are attached as Annexure D.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erven 107 and 110, van Dyksbaai is zoned for Business Zone 3: Local Business purposes. Following rezoning to Business Zone 3 with consent to conduct a tourism business in terms of the former Gansbaai Zoning Scheme, 2003 the applicant acquired Erf 109, Van Dyksbaai via a successful tender from the Municipality imposing development restrictions upon the property owner in terms of the tender, Deed of Sale and Title Deed. The applicant did not commence with development within the applicable period and as such the business zoning lapsed. Erf 109 is therefore zoned for Authority Zone: Authority Usage.

Erven 107, 109 and 110, Van Dyksbaai, hereafter referred to as the property, are currently being used for business purposes and developed as follows:

- (i) Erf 110 is developed with a commercial building housing the Great White Restaurant, a curio shop and offices within the main building. Containers were also illegally placed on the parking area and converted into offices.
- (ii) Erf 107 contains an informal parking area not in accordance with the approved building plans and unauthorised buildings and structures encroaching the property boundaries with Erven 109 and 110.
- (iii) Erf 109 also contains unauthorised buildings and structures encroaching the property boundary onto Erf 110 and an unauthorised informal parking area.

This application is intended to ensure that the consolidated erf obtain the same development rights under the Overstrand Integrated Zoning Scheme Regulations as intended in the original town planning approval in terms of the definition of tourism business and to legalize the unauthorized development on the consolidated property.

The proposed rezoning of Erf 109, van Dyksbaai and subsequent consolidation with Erven 107 and 110, Van Dyksbaai would create a consolidated property of 5970m² in extent, zoned for Business Zone 3: Local Business purposes. The application also comprises an application for consent use (business premises and residential buildings), departure of the 8,5m height restriction to 10,5m and departures to accommodate the existing storage building and guest rooms due to the more restrictive lateral building line of the proposed zoning, as well as a departure of the lateral building line in order to accommodate the unauthorised office building.

In addition, to the aforesaid, the application also entails removal of restrictive title conditions applicable to Erven 107 and 109 as set out below, namely:

Erf 107, Van Dyksbaai, T53947/2005

Condition 1.C.6

“Hierdie erf mag alleenlik gebruik word om 'n gebou bestaande uit winkels en sakepersele, met die reg om bo die grondverdieping voorsiening te maak vir woonakkommodasie, of enige ander geboue wat die Administrateurs van tyd tot tyd na oorleg met die die Dorpekommissie en die plaaslike owerheid goedkeur, daarop op te rig, met dien verstande dat indien die erf in die gebied van 'n dorpsaanlegskema ingesluit is die plaaslike owerheid enige ander gebruike wat deur die skema toegelaat word kan toelaat onderworpe aan die voorwaardes en beperkings wat in die skema bepaal word.

Condition 1.C.7

“Behalwe met die voorafverkreë toestemming van die Administrateur:

Condition 1.C.7(a)

Mag geen gebou of struktuur of enige gedeelte daarvan bo die grondverdieping nader as vyf meter of helfte van die hoogte van 'n gebou, watter ookal die meeste is, van die sy- of agtergrens van die erf opgerig word nie, met dien verstande dat daardie deel van die sygrens wat binne 'n afstand van dertien meter gemeet vanaf 'n straatgrens geleë is, van hierdie voorskrif uitgesluit is.

Condition 1.C.7(b)

Mag nie meer as 80% van die oppervlakte van hierdie erf bebou word nie, met dien verstande dat enige verdieping wat geheel en al of gedeeltelik vir woondoeleindes gebruik word nie 'n totale vloeroppervlakte van meer as die helfte van die oppervlak van die erf mag hê nie.

Condition 1.C.7(c)

Moet die ontwerp en uiterlike voorkoms van die fasade van enige gebou wat op hierdie erf opgerig word, in ooreenstemming wees met die veranderskap en kroonlisyne wat die plaaslike owerheid voorskryf en die material wat die voorkant daarvan gebruik word, moet voldoen aan die standaard wat die plaaslike owerheid voorskryf.

Conditions 1.C.8

Geen woonakkommodasie mag op hierdie erf voorsien word nie, tensy voorsiening tot genoeë van die plaaslike owerheid gelyktydig gemaak word vir 'n parkeergebied om minstens een motorkar vir elke woonstel of in die geval van ander woonakkommodasie vir elke twee slaapkamers in die gebou, te huisves met dien verstande dat:

Conditions 1.C.8(a)

Indien genoemde parkeergebied onder die gebou geleë is hoogstens 50% van die omtrek daarvan afgetrek mag word.

Condition 1.C.8(b)

Genoemde parkeergebied en die ingang en uitgang daarvan geleë is, hardgemaak en van 'n oppervlak voorsien moet wees tot genoeë van die plaaslike owerheid.

Condition 1.C.8(c)

Indien die eienaar wanneer hy sy gebou opgerig, op die erf voorsiening maak vir motorhuise wat gesluit kan word die vereiste parkeergebied met een parkeerruimte verminder mag word vir elke motorhuis tot op 'n maksimum van 75% van die oorspronklike gebied wat ingevolge die voorafgaande vereis word.

Conditions 1.C.9

By konsolidasie van hierdie erf of enige gedeelte daarvan met enige aangrensende erf wat onderworpe is aan dieselfde voorwaardes as die wat hierin uiteengesit word, is hierdie voorwaardes op die gekonsolideerde erf van toepassing asof dit een erf is.

Condition 1.C.10

Ingeval hierdie erf onderverdeel word is elke onderverdeelde gedeelte, uitgesonderd enige gedeelte afgesny vir pad- of derglike doeleindes onderworpe aan die voorwaardes hierin uiteengesit asof dit die oorspronklike erf is."

Erf 109, Van Dyksbaai, T44460/2013Condition D.

"SUBJECT FURTHER to the following conditions imposed by the Overstrand Municipality:

Condition D.1

The property may only be used for General Business Zone II.

Condition D.2

The development on the property must comply with the provisions of the Van Dyksbaai Zoning Scheme Regulations for Local Business Zone as promulgated in terms of the Land Use Planning Ordinance, No, 15 of 1985.

Condition D.3

Access to the property shall be from Perlemoen Street.

Condition D.4

The height of the buildings is limited to two storeys as defined in the applicable Scheme Regulations at the time of the start of the development.

Condition D.5

All the required parking must be provided as stipulated by the applicable Scheme Regulations as from date of start of the development."

4. SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation is summarized as follows (the Motivation Report is attached as Annexure B):

- ❖ Removal of restrictive title conditions applicable to Erf 107, Van Dyksbaai will permit development of the subject property in accordance with the provisions of the Scheme Regulations.
- ❖ Removal of restrictive title conditions applicable to Erf 109, Van Dyksbaai inserted in the title deed flows from the Deed of Sale and will ensure development is in keeping with the character of the area and aligns with the

development parameters in terms of the Overstrand Integrated Zoning Scheme Regulations.

- ❖ The restrictive conditions do not have a beneficial personal or other value for the property owner or anyone else.
- ❖ There is no personal benefit that will accrue to the holder of the restrictive title conditions.
- ❖ The personal benefit that will accrue to the property owner will be as follows:
 - the owner will be able to run a joint enterprise on the consolidated property;
 - permit the consolidation of existing and proposed land uses, and
 - improve the viability of the commercial enterprise.
- ❖ There is no social benefit if restrictive condition remains in place.
- ❖ Social benefit of removal of the restrictive conditions:
 - expansion of the subject enterprise;
 - increase in property value, municipal rates and taxes that contribute to improved service delivery, and
 - restaurant and guestrooms will enhance intercultural interaction, thus an enhanced social fabric contributing to the social cohesion of van Dyksbaai.
- ❖ The proposal is in harmony with the prevailing urban form/fabric.
- ❖ The development complies with the Scheme Regulations and where applicable departure was applied for.
- ❖ Municipal services are available.
- ❖ Access/egress is obtained from existing roads (Geelbek- and Perlemoen Streets).
- ❖ Development will have a positive economic impact and creates many employment opportunities.
- ❖ The land uses on the property attracting tourists from all over the world, enhancing the image of Van Dyksbaai which is a positive social impact in area.
- ❖ The property owner heavily invested in the development of the property that also contributes to the enhancement of the built environment.
- ❖ Low key non disruptive commercial uses on the property are in harmony with the surrounding residential land uses and do not constitute a deprivation of land use rights for adjoining owners.
- ❖ The development will not negatively impact on the health, safety and wellbeing of the local community.
- ❖ There will be no heritage impact.
- ❖ The development impact could be mitigated with the imposition of conditions of approval.
- ❖ The development is consistent with the PSDF, SDF, OMGMS, van Dyksbaai (Kleinbaai) Nodal Development Framework.
- ❖ The development is consistent with the applicable planning principles in terms of LUPA and SPLUMA.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Newspaper	Yes	7 March 2019	12 April 2019
Gazette	Yes	8 March 2019	12 April 2019
Notices	Yes	8 March 2019	12 April 2019
Ward councillor	Yes	7 March 2019	12 April 2020

Total comments	ONE (1)	
Total letters of support	NONE	
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?	Yes	
Was the application processed correctly?	Yes	
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?	Yes	
In case of application for removal, amendment or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies?	Yes	

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

Name	Date received	Summary of comments
Heritage Western Cape	19/02/2019	Annexure G.
Waste Management	18/03/2019	The provisions for refuse storage needs to be in compliance with part U of the National Building Regulations (SANS 10400)
Environmental Section	12/04/2019	No objection.
Fire Department	12/04/2019	No objection.
Engineering Services	5/06/2019	Annexure H.
Traffic Department	2/05/2019	Take note. Will assist where needed.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Property Administration, Overstrand Municipality

Comment was received from the Manager: Property Administration, Infrastructure and Planning Directorate which states the following:

"I do not support the application for the total removal of the conditions imposed by the Overstrand Municipality (Condition D - Title Deed No. T44460/2013). After our discussion, I can recommend the following:

Condition D1.

Only be amended to refer to the zoning that will be obtained in the application.

Condition D2.

Only be amended to refer to the correct Scheme Regulations.

Condition D3.

Be removed as we do not register it in Title Deeds anymore (unless specifically requested to). Please just ask the relevant department if they are satisfied that the entrance may be changed to Geelbek Street.

Condition D4.

This condition must remain in the Title Deed as contained and no relaxation will be supported to go higher.

Condition D5.

Be removed as this is dealt with in terms of the relevant Scheme Regulations already.

Please, as supported by Director Müller, include in your approval a condition that the portion of to be consolidated property, which represents Erf 109, must be development within a period of 2 years from date of obtaining all the Town Planning approvals.

Please also note the contents of the submitted tender which was sent to you. In terms of the tender they committed to a specific type of development on Erf 109 - they must keep to this as we accepted a lower purchase price on the basis of this commitment.”

Objections

One (1) letter of objection was received from AM van Ellewee, the owner of Erf 112, Van Dyksbaai and a letter of comment from Messrs Bosman Smit Pretorius Inc. on behalf of the Otto Family Trust, the owners of Erf 111, Van Dyksbaai, stating that they have no objection subject to conditions. The letters of objection and comment is attached as Annexure E. The applicant's comment to the objection is attached as Annexure F.

The main ground of objection/comment is the following:

AM van Ellewee**1. Point of objection**

The means of sewage disposal, currently conservancy tanks that needs to be emptied every other day, resulting in smells so that the objector need to close the windows of her property.

Response from applicant

The property owner will ensure sewage disposal complies with municipal requirements in terms of size of the sewage tank. The applicant further states the Municipality is responsible for the collection and disposal of sewage and therefore accountable for the smells generated in the process. Thus, the Municipality to provide input on measures to address the comment of the objector.

Response from Town Planner

Van Dyksbaai, typical of coastal towns, has not been provided with a formal sewage system, thus sewage is collected in a conservancy tank and disposed of by means

of a honey sucker. The installation of a formal sewage system currently is not a priority due to huge capital costs involved. Save for the office building, and the structures that encroach the property boundaries of Erven 107 and 109, the development relates to existing approved buildings and structures. The Operational Department confirmed that sewage is collected from the property three (3) times per week, thus not every other day as per the objector. Any future additions will have to demonstrate compliance with the National Building Regulations and municipal requirements pertaining to the capacity of the conservancy tank.

2. Point of objection

The objector questions the need for accommodation establishments in Van Dyksbaai, which has not been demonstrated by the applicant.

Response from applicant

The applicant states that the consent use for residential building not only targets the shark cage diving tourists on the property, but also tourists visiting Van Dyksbaai. Business owners expand and decrease their business in response to a changing market and that the applicant is of the opinion that there is a definite need.

Response from Town Planner

The consent use application for residential buildings relates to existing structures, formerly approved as office buildings. These buildings had been converted into self-catering units, without approved building plans and have been used for a number of years for self-catering purposes without any objections. As stated by the objector these facilities are not exclusively related to visitors of the business activities on site, but directed at tourist generally visiting Kleinbaai. The desirability of the residential buildings will be further elaborated upon in paragraph 12. under desirability.

Messrs Bosman Smit Pretorius Inc. on behalf of the Otto Family Trust, the owner of Erf 111, Van Dyksbaai:

1. Point of objection

The construction of a 2,5m high wall is required between Erven 110 and 111 for privacy purposes.

Response from applicant

The applicant states that the request has no bearing on the application.

Response from Town Planner

The applicant's comment in this regard is not necessarily agreed with. The office buildings, specifically office no. 3 was not constructed in accordance with the approved building plans which indicate the office to maintain a distance of 1m from the property boundary with the objector. The corner of this building is situated 0,3m from the objectors' property boundary. The office buildings do not have an Occupation Certificate and in the meantime had been converted illegally into guest rooms. Thus, increasing the height of the boundary wall may improve privacy for the objector. It should however be noted that boundary walls are subject to a height restriction of 2,1m, which is considered adequate to retain the objectors' privacy.

2. Point of objection

Roof water to be canalised so that roof water does not fall directly into Erf 111, Van Dyksbaai.

Response from applicant

The applicant advised that this point of comment is a Zoning Scheme requirement and will be complied with.

Response from Town Planner

The applicant's comment is noted and will be addressed at building plan submission stage to ensure storm water is received on the roof and drain onto the application property.

3. Point of objection

Implementation of stricter rules pertaining to parking in front of the trust's property on red lines required.

Response from applicant

The SDP indicates that additional parking bays will be made available onto the property, thus addressing the parking concern of the objector.

Response from Town Planner

The applicant will be required to submit a detailed parking layout should the recommendation be accepted, thus ensuring that on-site parking requirements are being met. The enforcement of parking in restricted areas with red lines is an operational matter and should be directed to the relevant user department for enforcement.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See paragraph 7. above.

9. MUNICIPAL ASSESSMENT OF COMMENTS

See paragraph 7. above.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)**10.1 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)**

The proposed application is considered consistent in the following manner from a town planning perspective:

Spatial Justice

Approval of the application will maintain the contribution of the subject property towards addressing spatial development imbalances caused by apartheid planning.

Spatial sustainability

Approval of the proposal will enable the operations on the subject property to continue to contribute to a more spatially resilient landscape.

Efficiency

The proposal will result in the optimal use of the property within existing service infrastructure and energy limits available.

Spatial resilience

Approval and implementation of the proposal is aligned with all the relevant spatial planning policies and is therefore spatially resilient.

Good administration

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws, including public participation.

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

Same as 10.1 above.

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

The proposed rezoning is consistent with the SDF, OMGMS and Kleinbaai Nodal Development Framework.

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

N/A

10.5 Impact on municipal engineering services

Erf 110 is already connected to municipal services and it is not expected that the proposal will require upgrading of these services. The redevelopment of former Erf 109 will be subject to conditions pertaining to the provision of an Engineering Services Report and payment of bulk contribution levies.

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

The proposed rezoning does not trigger the provisions of NEMA or the National Heritage Resources Act.

10.7 Existing and proposed zoning comparisons and considerations

The development parameters applicable to Business Zone 3: Local Business will be applicable, should the application be supported, which amongst others imposes a two storey and 8,5m height restriction. The application amongst other entail a departure from the height restriction from 8,5m to 10,5mm as well as relaxation of the 3m lateral buildings to accommodate the conversion of four

(4) offices into guest rooms, an office building as well as outbuildings as set out under paragraph 1. above.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

Erf 107, van Dyksbaai

Application is made for removal of restrictive title conditions 1.C.6, 1.C.7(a), 1.C.7(b), 1.C.7(c), 1.C.8(a), 1.C.8(b), 1.C.8(c), 1.C.9 & 1.C.10 contained in Title Deed T53947/2005 applicable to Erf 107 van Dyksbaai.

The title deed conditions inserted at the time was in response to the prevailing development trends and pressures prevalent at the time. Today there are new trends and developments not anticipated at the time and are these conditions outdated. The removal of restrictive title deed conditions will permit the use and development of the property in accordance with the provisions of the Scheme Regulations and due to the proposed consolidation is necessary to accommodate the existing and proposed development on the property.

In view of the above being stated, the following directly relates to Section 39(5) of LUPA, 2014 (Act 3 of 2014):

The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement?

Although the applicant states there is no financial value for the applicant or anyone else, the opinion is held that the removal of restrictive conditions will be financially beneficial for the owner as it will enable the owner to act upon the rights conferred to him in line with the Zoning Scheme, thus adding value to his property.

The personal benefits which accrue to the holder of rights in terms of the restrictive condition:

The Municipality gains no benefits in keeping or removing the restrictive conditions.

The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended:

The removal of restrictive title conditions will confer the most appropriate development rights to the property and will increase the viability of the commercial enterprise permitting the owner to run a joint enterprise, see the consolidation of existing and proposed land uses and will also improve the viability of the enterprise.

The social benefit of the restrictive condition remaining in place in its existing form and the social benefit of the removal, suspension or amendment of the restrictive condition:

The social benefit will be that employment opportunities will be retained, as well as additional employment opportunities be created, that commercial rates and services charges be applicable, thereby ensuring improving service delivery. Furthermore, the business attracts tourists from across the world, thereby improving intercultural

interaction and enhanced social fabric which contributes to social cohesion in Van Dyksbaai.

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

Only the rights as specified above will be removed.

Erf 109, van Dyksbaai

Application is made for removal of restrictive title conditions D.1, D.2, D.3, D.4 & D.5 contained in Title Deed T44460/2013 applicable to Erf 109, van Dyksbaai. The aforesaid conditions follow from the tender that was awarded to the applicant at a lower purchase price and was incorporated in the Deed of Sale and written into the Title Deed. The conditions were imposed by Overstrand Municipality as transferor of the property.

Only the removal of condition D.5 is supported since it relates to the development at hand and the provision of on-site parking is catered for in the Zoning Scheme. Condition D.1 contradicts condition D.2. Therefore, it is recommended that condition D.1 be amended to correctly refer to Business Zone 3: Local Business. The removal of condition D.2 and D.4 is not supported as the conditions flows from the tender and Deed of Sale, but it is recommended that condition D.2 also be amended to refer to the correct Zoning Scheme. The tender was awarded to the property owner at a lower purchase price and as such consideration should be given to the fact that the developer through the application does not acquire an upgrade in development rights. The retention of the conditions will therefore ensure the original development intent is enforced.

In view of the above being stated, the following directly relates to Section 39(5) of LUPA, 2014 (Act 3 of 2014):

The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement?

Although the applicant states there is no financial value for the applicant or anyone else, the opinion is held that the removal of restrictive conditions will be financially beneficial for the owner as it will enable the owner to act upon the rights conferred to him in line with the Zoning Scheme, thus adding value to his property.

The personal benefits which accrue to the holder of rights in terms of the restrictive condition:

Due to the acquisition of Erf 109 via tender, the applicant may not upgrade his rights beyond that envisioned in the tender document and carried over to the Deed of Sale and Title Deed. As such, conditions directly relating to the extent of development, namely conditions D.2 and D.4 should be retained, whilst conditions D.1, D.2 and D.3 (as amended) should also be retained in the public interest, thus enforcing the provisions of the tender in accordance with the provisions of the MFMA. There is no benefit for the Municipality to retain condition D.5 relating to parking, since parking provisions is contained in the Zoning Scheme.

The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended:

The removal of restrictive title conditions could potentially result in the upgrade of development rights beyond that envisioned in the tender and subsequently the Deed of Sale.

The social benefit of the restrictive condition remaining in place in its existing form and the social benefit of the removal, suspension or amendment of the restrictive condition:

The social benefit of the conditions to remain in place or to be amended as per the recommendation is to ensure the applicant do not obtain an unintended upgrade in development rights, thus an unfair advantage not in the public interest due to the conditions of tender and the Deed of Sale.

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

The applicant requires the removal of all rights contained in the title deed. In terms of the recommendation only condition D.5 will be removed, conditions D.1 and D.3 (as amended) D.2 and D.4 will be retained.

12. THE DESIRABILITY OF THE PROPOSAL

Proposed rezoning

The property is situated in the business node of Van Dyksbaai, comprising a variety of business uses, such as a shop, liquor store, filling station as well as guest houses and several tourism businesses. The property owner runs a shark cage diving and whale watching tour operation with associated office infrastructure, a restaurant and self-catering accommodation units from the property.

Following rezoning approval to Business Zone 3: Local Business with consent use to conduct a tourism business in terms of the former Gansbaai Zoning Scheme Regulations, Erf 109, part of the application property, was alienated for the development of a tourist interpretation centre with associated tourism business facilities. The property owner did not act upon the zoning rights in the applicable time period. As such the zoning lapsed. The application for rezoning therefore seeks to re-establish the former rights applicable to Erf 109 to the consolidated property.

The zoning of Erven 107 and 110, van Dyksbaai is Business Zone 3 : Local Business. The proposed rezoning is in line with the applicable forward planning policy documents and the character of the area comprising a variety of commercial uses being consolidated and legalized onto a single property is not considered to detract from vested rights of adjoining property owners. The proposed rezoning is considered desirable and supported.

Proposed consolidation

The proposed consolidation of Erven 107, 109 and 110, Van Dyksbaai will consolidate the business operations of the applicant and allow the applicant to accommodate unauthorised encroachment of the storage and ablution facilities that transgress the boundaries of the aforesaid properties onto one (1) cadastral property with the same rights over the entire land unit. The consolidation will also ensure parking requirements are being met in accordance with the provisions of the Scheme Regulations. The proposed consolidation will not detract from the character of the area or vested rights of adjoining properties and is considered desirable.

Proposed consent use (business premises and residential building)

The application for consent use for business premises seeks to obtain the same rights over the consolidated property that was granted in respect of Erf 109 (i.e. consent for tourism business) due to the more restrictive Integrated Zoning Scheme Regulations.

Tourism business in terms of the former Gansbaai Scheme Regulations, 2003 is defined as follows:

“Tourism business facilities means the utilization of a site, and/or the buildings on the site for business activities, such as deemed by the council as important to encourage the tourism trade and seen as relevant to the tourism trade and which are related to the tourism trade and includes restaurants, guest houses, souvenir shops, tourist information centres, knickknack shops, antique shops, local artwork shops, art galleries, travel bureau’s tour operators, etc., but does not include in the case of tour operators parking facilities for buses or related tour vehicles and is subject to the same development rules as that of “shop” in the local business zone and in the case of Single Residential Zone subject to the same development rules as that of Single Residential Zone.”

Business premises in terms of the Integrated Zoning Scheme Regulations, 2013 is defined as follows:

“Business premises means a property from which business or services is conducted and includes a shop, supermarket, restaurant, sale of alcoholic beverages, plant nursery, offices, service trade, financial institution and building for similar uses, sale of any small and big items, but does not include a place of assembly, place of entertainment, institution, service station, motor repair garage, industry, industrial hive, noxious trade, risk activity, adult entertainment business, or bottle store.”

The applicant states approval of consent use will ensure that land use on the property is in harmony with the intent of the lapsed zoning rights. The underlined sections indicate the applicable rights in terms of the Integrated Zoning Scheme that accord with tourism business under the Gansbaai Zoning Scheme. The applicant’s statement is agreed with save for supermarkets which were not included under tourism business. In terms of the former Scheme a shop with a floor space of more than 350m² was considered a supermarket. Thus, should the recommendation be accepted the consent for business premises will be limited to buildings, structures and land uses in accordance with the definition of a business premises contained in terms of the former Gansbaai Scheme Regulations, 2003.

The property is developed with four (4) guest rooms towards the north-eastern and south-western lateral property boundaries. The guest rooms had historically been approved as offices. The application for consent use (residential building) will permit the use of the properties' guest rooms and not considered to detract from the amenity of the adjoining properties or character of the area. They are seen as an extension of the business activities on site and form a natural buffer to the adjoining single residential properties south-east of the property and will not have a greater impact compared to the lawful office use. The proposal is considered desirable, subject to compliance with the Building- and Fire Regulations.

Proposed building line departure

The Integrated Zoning Scheme introduces a more restrictive lateral building line of 3m where it abuts Erven 66, 111 and 431, opposed to a 0m building line in terms of the former Gansbaai Scheme Regulations. The conversion of the former offices to guest rooms (guest rooms 2 and 3) therefore triggers the departure application. Guest room 2 maintains 1,9m from the lateral boundary whilst guest room 3 is situated 0,3m from the lateral boundary. Given the historic building line of 0m applicable to the property when the offices were approved, the opinion is held that the current use as guestroom will not have a greater impact onto the adjacent Erf 111, opposed to the approved utilisation for office purposes.

The corner of the unauthorised office building situated south of guest room 3, encroach the 3m building line with 1m. The approved and extended storage building, situated north-west of the Great White House encroach the 3m building line onto the property boundary with Erf 431. The encroachment of the office is of such a small nature and not considered to negatively impact upon vested rights of adjoining property owners. The storage buildings abuts the parking area of Erf 431 and are not considered to detract from the character of the area or vested rights of the property owner.

Proposed departure of the height restriction

The development of Erf 109, Van Dyksbaai is limited in terms of the tender, Deed of Sale and Title Deed to a two storey height restriction. The aforesaid documents as well as the former rezoning approval limited development to Business Zone 3: Local Business, which zone imposes an 8,5m height restriction, limited to two storeys in terms of the tender, Deed of Sale and Title Deed.

It should be borne in mind that the property owner acquired the property at a price lower than market value and cannot in the planning application process negotiate for an upgrade of development rights. For this reason, the application for removal of restrictive title condition that limits the development to two storeys is not supported.

Further, the Integrated Zoning Scheme imposes a two storey height restriction, which is not addressed in the application, only the relaxation of the height restriction from 8,5m to 10,5m. It should be noted that in addition to Hermanus, Gansbaai and Kleinmond has been identified as towns with the highest growth potential in the Overstrand area. As such, the highest order business nodes are contained within these towns that also comprises Bulk Zone I areas that contain in terms of development parameters the least restrictions. The surrounding towns such as De Kelders, Kleinbaai, Franskraal only have neighbourhood nodes where the scale and massing of the commercial node is more in keeping with the character of the surrounding single residential area in terms of its Business 3 zoning. Having had

regard to the aforesaid the opinion is held that the encroachment of the height restriction from 8,5m to 10,5m is not in keeping with the provisions of the Scheme Regulations, conditions flowing from the tender in terms of the Deed of Sale and Title Deed, will result in a development which by reason of its bulk and massing is not in keeping with the character and appearance of the surrounding area and will detract from the visual amenity of the locality. The departure of the height restriction is thus not considered desirable.

Conclusion

Having had regard to the evaluation above the application for rezoning, consolidation, and building line departures are considered desirable and supported.

The application for removal of restrictive title conditions are partially supported as per the recommendation below, save for the removal of the two storey height restriction and application for departure of the height restriction from 8,5m to 10,5m, is not desirable and should not be supported.

13. RECOMMENDATION:

1. that the comments be noted;
2. that, in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) the application for the removal of restrictive title conditions 1.C.6, 1.C.7(a), 1.C.7(b), 1.C.7(c), 1.C.8(a), 1.C.8(b), 1.C.8(c), 1.C.9 & 1.C.10 contained in Title Deed T53947/2005 applicable to Erf 107 Van Dyksbaai, as well as title deed condition D.5 contained in Title Deed T44460/2013 applicable to Erf 109, Van Dyksbaai **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that in terms of Section 16(2)(f) of the By-Law the application for the removal of restrictive title conditions D.1, D.2, D.3 and D.4 contained in Title Deed T44460/2013 applicable to Erf 109, Van Dyksbaai **not be approved**, subject to the following:

that condition D.1, D.2 and D.3 be amended as follows:

D.1: The property may only be used for Local Business purposes.

D.2: The development on the property must comply with the provisions of the Gansbaai Zoning Scheme Regulations, 2003 for Local Business Zone as promulgated in terms of the Land Use Planning Ordinance, No. 15 of 1985.

D.3: Access to the property shall be from Perlemoen- and Geelbek Streets.

4. that the application in terms of Section 16(2)(a) of the By-Law for the rezoning of Erf 109, Van Dyksbaai from Authority Zone: Authority Usage (AZ) to Business Zone 3: Local Business (B3) for development of a tourist interpretation centre and tourism business, **be approved** in terms of the provisions of Section 61 of the By-Law;
5. that the application in terms of Section 16(2)(e) for consolidation of Erven 107, 109 & 110, Van Dyksbaai to create a consolidated property measuring 5790m², **be approved** in terms of the provisions of Section 61 of the By-Law;

6. that the application in terms of Section 16(2)(o) for a consent use to accommodate a business premises and residential building, **be approved** in terms of Section 61 of the By-Law;
7. that the application in terms of Section 16(2)(b) of the By-Law, for the following departures:
 - relaxation of the southern lateral building line from 3m to 0m to accommodate an existing store room;
 - relaxation of the north-eastern lateral building from 3m to 1,9m to accommodate guest room 2;
 - relaxation of the south-western lateral building line from 3m to 0,3m to accommodate guest room 3, and
 - relaxation of the south-eastern lateral building line from 3m to 2m to accommodate the existing office,

be approved in terms of the provisions of Section 61 of the By-Law;
8. that the application in terms of Section 16(2)(b) of the By-Law, for departure of the height restriction from 8,5m to 10,5m **not be approved** in terms of the provisions of Section 61 of the By-Law;
9. that the approvals above, be subject to the following conditions:
 - (a) that a detailed parking layout be submitted within thirty (30) days of the decision date for approval by the Authorised Official, indicating on-site parking provision in accordance with the provisions of the Scheme Regulations;
 - (b) that the approved parking layout referred to in paragraph (a) above be implemented within thirty (30) days following approval thereof by the Authorised Official;
 - (c) that following consolidation the future development of the area represented by former Erf 109 be subject to the submission of a Site Development Plan (SDP) for prior approval by the Authorised Official, which SDP shall demonstrate that the development is in accordance with the development committed in terms of the tender awarded to Exact Africa Project Management (Pty) Ltd which SDP shall as a minimum indicate access/egress, parking arrangements, sidewalk- and aesthetic treatment, floor and elevation plans of the proposed development);
 - (d) that development of that portion representing former Erf 109, Van Dyksbaai, must be developed within a period of two (2) years from the date of obtaining the relevant town planning approvals;
 - (e) that building plans in respect of all unauthorised buildings/structures be submitted within thirty (30) days following approval of the application and that all requirements of the Building Control and Fire Department shall be adhered to;

- (f) that the consent uses for business premises be restricted to the buildings, structures and land uses provided for in the definition of tourism business in accordance with the former Gansbaai Zoning Scheme Regulations, 2003;
 - (g) that applicable rates and service tariffs, as determined by the annual budget be made applicable, which tariffs are automatically be adjusted in terms of the annual budget;
 - (h) that the display of advertising shall comply with the Overstrand Signage By-law;
 - (i) that all the conditions in the Services Report (attached as Annexure H), be complied with;
 - (j) that this approval does not absolve the applicant from compliance with any other relevant legislation; and
 - (k) that all other development parameters as prescribed in the Overstrand Municipality Land Use Scheme, 2020 be complied with.
10. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above conditional approvals.

14. REASONS FOR RECOMMENDATION

Reasons for approval

- ❖ The proposal is consistent with the IDF, SDF, OMGMS and Kleinbaai Nodal Development Framework.
- ❖ The relevant legislation was considered with the removal of the restrictive conditions in the Title Deed.
- ❖ The proposal is consistent with the spatial principles as set out in SPLUMA and LUPA.
- ❖ The existing unauthorised business activities, promoting tourism, economic development and employment opportunities will have a positive social advantage.
- ❖ The proposed removal, rezoning, consolidation, consent use and departure will not detract from the character of the area, amenity of adjoining properties and is considered desirable.

Reasons for non-approval

- ❖ The proposal is in conflict with the original development intent as per the tender and Deed of Sale and contained in the Title Deed.
- ❖ Amendment of Conditions D.1, D.2 and D.3 will ensure the original intent of the alienation of Erf 109, for development of a tourism interpretation centre and tourism business be adhered to and that it would not result in the upgrade of development rights.

- ❖ Departure of the height restriction from 8,5m to 10,5m is not in keeping with the scale, bulk and massing of development in neighbourhood business nodes, thus detracting from the amenity of adjoining properties and character of the area.

15. Annexures

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed T53947/2005 and Title Deed T44460/2013
Annexure E:	Objections received
Annexure F:	Applicant's comment on the objection
Annexure G:	Comment: Heritage Western Cape
Annexure H:	Services Report

SIGNATURE

REGISTERED PLANNER

Name: **SW VAN DER MERWE**

SACPLAN Reg No: **A/1850/2014**

Signature: _____

Date: _____

Plan 1: Locality Plan Erven 107, 109 and 110 Van Dyksbaai

-  Erf 107 Van Dyksbaai (1009m²)
-  Erf 109 Van Dyksbaai (2317m²)
-  Erf 110 Van Dyksbaai (2384m²)

Plan prepared by: Reetlehlle Jankke

All distances are approximate
and subject to a survey


WRAP



Scale 1 : 2 000



Scale 1 : 8 000

2. ABBREVIATIONS

Abbreviation	Description
OMZS	Overstrand Municipality Zoning Scheme, 2013
OMGAZR	Overstrand Municipality Gansbaai Administration Zoning Scheme Regulations, 2003
SDF	Overstrand Municipality Spatial Development Framework, 2006
OM	Overstrand Municipality
OM By-Law	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015
SPLUMA	Spatial Planning and Land Use Management Act, 2013
LUPA	Land Use Planning Act, 2014
PSDF	Western Cape Provincial Spatial Development Framework 2014
IDP	Overstrand Municipality Integrated Development Plan
DEADP	Western Cape Department of Environmental Affairs and Development Planning
SDP	Site Development Plan

3. SUMMARY OF PROPERTY DETAILS

Applicant	WRAP (Wright Approach Consultancy)		
Registered owner	ExactAfrica Project Management (Pty) Ltd		
Erf number	Erven 107, 109 and 110		
Suburb	Van Dyksbaai		
Property extent	ERF 107 VAN DYKSBAAI 1009m ²	ERF 109 VAN DYKSBAAI 2397m ²	ERF 110 VAN DYKSBAAI 2384m ²
Proposed building footprint	1376,8m ² = 23% coverage on the consolidated erf.		
Title deed	ERF 107 VAN DYKSBAAI T53947/2005	ERF 109 VAN DYKSBAAI T44460/2013	ERF 110 VAN DYKSBAAI T53947/2005
Restrictive title deed conditions	ERF 107 Van Dyksbaai T53947/2005 C.6, 7.(a), 7.(b), 7.(c), 8, 8.(a), 8.(b), 8.(c), 9 and 10.	ERF 109 Van Dyksbaai T44460/2013 D, D.1, D.2, D.3, D4 and D.5	
Applicable zoning scheme	OMZS		
Current zoning	ERF 107 VAN DYKSBAAI BUSINESS ZONE 3: LOCAL BUSINESS (B3)	ERF 109 VAN DYKSBAAI Authority Zone: Authority Useage (AU)	ERF 110 VAN DYKSBAAI BUSINESS ZONE 3: LOCAL BUSINESS (B3)
Current land use	ERF 107 VAN DYKSBAAI	ERF 109 VAN DYKSBAAI	ERF 110 VAN DYKSBAAI

	Used for parking and storage	Temporary containers used as outbuildings.	Restaurant, offices and meeting area for shark cage diving operations
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4. BACKGROUND

Erven 107 and 110 Van Dyksbaai

ExactAfrica Project Management (Pty) Ltd are the owners of Erven 107 and 110 Van Dyksbaai. The properties are zoned Business Zone 3: Local Business (B3). The properties are improved with buildings and utilized in terms of their zoning.

Erf 109 Van Dyksbaai

The Overstrand Municipality sold Erf 109 Van Dyksbaai to ExactAfrica Project Management (Pty) (refer **Annexure C**).

On recommendation of the Overstrand Municipality, DEADP approved the removal of conditions 4a of the conditions of township establishment of Van Dyksbaai, Extension no.11 in terms of the Removal of Restrictions Act 1967 (Act 84 of 1967). DEADP also approved that a consent use for a tourism business be approved. (refer **Annexure D**).

Extension for the validity period of the rezoning was extended to 22 March 2015 (refer **Annexure F**). The zoning of the subject property has therefore lapsed as illustrated in the zoning certificate (refer **Annexure G**) and it is currently zoned Authority Zone: Authority Usage (AU). This application is therefore intended to ensure that the consolidated erf enjoys the same development rights under the integrated OMZS as it was intended for in the initial town planning approval in terms of the definition of the tourism business.

General conditions in the deed of sale

The deed of sale had several general conditions and the compliance or deviation of this proposal from these conditions will herewith be illustrated and remedies proposed where applicable.

Extract of conditions	Compliance or deviation	Remedy
"It is placed on record that the property is not serviced. The PURCHASER and/or his appointed developer must submit an engineering services report with reference to the services required and the capacity thereof with submission of the site development plan for approval."	Comply	It is proposed that Erf 109 be consolidated with Erven 107 and 110, which makes the submission of a separate engineering services report unnecessary.
"Any required upgrades will be for the account of the PURCHASER."	Comply	All upgrades and improvements required with regards to services on the


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		subject property will be paid for by the developer.
"the development must comply with the conditions as set out in the services report attached per Annexure E, or any written and mutually agreed upon amendment thereof. A services agreement for all the services, including water, sewage, electricity, roads, storm water and refuse removal services will be finalized by the Manager: Engineering Services. The PURCHASER must enter into services agreements with the seller (being the Overstrand Municipality) for all the services, including water, sewage, electricity, roads, storm water and refuse removal before the commencement of the development.	Comply	It is proposed that Erf 109 be consolidated with Erven 107 and 110, which makes the submission of a separate engineering services report unnecessary.
"The bulk infrastructure must be constructed by the PURCHASER . Bulk Infrastructure includes all services excluding the services required for the development itself. Bulk Services Levies will be payable by the PURCHASER according to the prescribed fees as contained in Council's budget, which fee varies from year to year. Bulk Services Levies will be payable before the occupation certificates or the clearance certificate will be issued, whichever is issued earlier.	Comply	It is proposed that Erf 109 be consolidated with Erven 107 and 110, which makes the submission of a separate engineering services report unnecessary.
"The PURCHASER shall be responsible for all costs relating to the connections for water, sewage and electricity supply to the property and other services, if needed."	Comply	No separate water, sewage and electricity connection will be required.
"The PURCHASER shall further, at its cost, construct the internal Municipal civil and electrical services for the development as well as any link or bulk municipal services that need to be provided. The SELLER will provide infrastructure up to the entrance of the property."	Comply	No internal civil and electrical services will be required as Erf 109 will be consolidated with Erven 107 and 110.
"The PURCHASER shall not erect or cause or permit to be erected any	Comply	Building plans will be submitted


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<i>buildings and or structures on the property until such time as the plans therefore have been approved by the Building Control Manager of the Overstrand Municipality."</i>		
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Deed of sale special conditions

The deed of sale has several special conditions which will be addressed below. These special conditions were also inserted into the title deed of Erf 109 Van Dyksbaai. The special conditions and title deed conditions which are not in line with the subject application will be illustrated. Application is made for the removal of restrictive title deed conditions, but it may be required that the conditions contained in the original deed of sale may also need to be amended, for which the approval of Council may be required.

This table illustrates the proposed remedies to Council in addressing some special conditions which are restrictive to this proposal.

Extract of conditions	Compliance or deviation	Remedy
<i>"Access to the property shall be from Perlemoen Street."</i>	Deviation	The proposed consolidation will also result in access to the consolidated erf to be gained from Geelbek Street. It may therefore be necessary that this is removed.
<i>"The development on the property must comply with the provisions of the Van Dyksbaai Zoning Scheme Regulations for Local Business Zone as promulgated in terms of the Land Use Planning Ordinance, No 15 of 1985."</i>	Deviation	The reference to the "Van Dyksbaai Zoning Scheme Regulations" is supposed to be the Gansbaai Zoning Scheme Regulations which has been repealed. This condition is therefore no longer applicable and proposed to be removed. The consolidated erf will be subject to the provisions of the Overstrand Zoning Scheme
<i>"The property may only be used for General Business Zone II as specified by the applicable Scheme Regulations at the time of the development, which condition will be registered against the title deed of the property as a condition imposed by the Overstrand Municipality."</i>	Deviation	This proposal does not entail the subject property being rezoned to Business Zone 2: General Business. It is therefore proposed that this special condition be removed to allow the envisaged Business Zone 3: Local Business on the consolidated erf.
<i>"The height of the buildings is limited to 2 storeys as defined in the applicable Scheme Regulations at the time of the start of the development."</i>	Deviation	The subject property is limited to a height of 8,5m and the property owner envisaged having a building which is 10,5m high. This conflicts with this special condition and are

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		proposed for removal. The details which justify the removal of this special condition will be discussed in Section 8 of this report.
"All the required parking must be provided as stipulated by the applicable Scheme Regulations as from date of start of the development."	Comply	The prescribed parking requirements are complied with as illustrated in the Section 9 of this report. This special condition is proposed for removal as the OMZS already regulates the provision of parking on properties.
Should the PURCHASER not complete the construction of the proposed building on the property and obtain an occupation certificate within a period of 2 (TWO) years from date of the registration of transfer of the property (which time period of 2 (TWO) years may on prior written application of the PURCHASER to the SELLER stating the reasons for the request, be extended by consent of the SELLER given under the hand of the Municipal Manager, which consent will not be withheld unreasonably ownership of the property shall revert back to the SELLER and the PURCHASER , or its successors in title, shall be compelled to sign the transfer documents within 7 days within receiving a notice to that effect, failing which the duty authorised agent of the SELLER is hereby appointed by the PURCHASER to sign such documentation, and shall be responsible for all transfer costs and statutory duties payable in connection with the retransfer of the property to the SELLER and/or any third party with regards to the purchase or retransfer of the property, and 12.7.3 may be entitled, by written mutual agreement between the	Deviate	<p>The deed of sale was signed on 21 May 2013. The transfer of the property to ExactAfrica Project Management (Pty) Ltd took place on 27 August 2013. The consolidation, rezoning and construction on the property has not occurred as prescribed in this special condition. It is therefore requested that Council provide condonation for this request for consent to extend the applicable implementation period and word it as follows:</p> <p>"The PURCHASER should initiate either the submission of building plans or construction on the consolidated erf within 2 (TWO) years after the town planning decision letter for this proposal has been granted. Should the PURCHASER not do this, the PURCHASER may apply for an extension of the implementation period either before or after the lapsing of the 2 (TWO) year period and provide the Municipal Manager with written reasons of why the consent for extension may be granted."</p> <p>The reason why the Purchaser could not comply with this condition are as follow:</p> <ul style="list-style-type: none"> • The funds for the proposed development was not available within this period; • The timing for this proposal currently is in synchrony with the increasing

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<p>parties, to a refund of the total purchase price mentioned in paragraph 2 hereof free of interest on the date of registration of transfer less any damages or loss incurred by the SELLER, which time period of 2 (TWO) years stipulated above, may on written application of the PURCHASER to the SELLER stating the reasons for the request, be extended by consent of the SELLER given under the hand of the Municipal Manager, which consent will not be unreasonably withheld.</p>		<p>trend of Van Dyksbaai functioning as a shark cage diving and tourist's destination which was not as prevalent in 2013. The desirability for the implementation of the proposal is therefore higher now which justifies the implementation; and</p> <ul style="list-style-type: none"> • The projected impact of the envisaged investment in the built environment will make a more positive impact in the economy of Van Dyksbaai under the current economic climate considering that unemployment and access to opportunities is a more pressing challenge currently.
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Considering the above, it is requested that Council considers the proposed remedies with regards to the conditions in the original deed of sale.

5. STATUS QUO

Erf 110 Van Dyksbaai currently functions as follows:

There is a restaurant which operates as the Great White House Restaurant. There is also an authentic Southern Right Whale skeleton named 'Suzi' which is secured to the ceiling of the restaurant. The skeleton is aimed at making the patrons aware of actual the size of the whales in the area and to have a greater appreciation for the creatures.

Adjacent to the restaurant is the Southern Right Bar which is stocked with a selection of local wines and international favourites.

Marine Dynamics Shark Tours also operates from the premises and tourists report to the premises and are then escorted to the boats where they are provided with a close encounter of the sharks and whales in the ocean.

There are also 4 guest rooms which are rented out short-term on the subject property.

Erf 109 Van Dyksbaai currently functions as follows:

The erf is improved with 4 containers which are used as storage facilities as well as change rooms with associated facilities for the guests. The guests register for the boat cruise on Erf 110, collect diving suits at the expanded store room and change into their diving suits in the containers. The containers are outbuildings and are vital to the viability of the commercial enterprise on the subject property. The containers are however used for temporary purposes as they will be removed from the current location in the future to accommodate the expansion of the existing tourism business on the subject property.

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MOTIVATION

Erf 107 Van Dyksbaai currently functions as follows:

The subject property predominantly functions as a parking area to accommodate the expanded store room. The store room is located on two cadastral boundaries and the purpose of the proposed consolidation is to ensure that the store room is located on a single cadastral unit. A building line departure is also applied for the building which encroaches on the side building line.

6. OWNERS' INTENT

The intent of the owners of the subject properties is primarily to ensure that the appropriate land use rights are granted to permit all the existing land uses and buildings on the subject property (refer **Plan 5**). The property owner also has future expansion plans for the consolidated erf and this proposal will not delve into much detail regarding the future expansions but will propose appropriate land use rights which would enable the future expansion of the subject enterprise when deemed necessary. To allow the developer to achieve the above, application is made for the following:

Application	<p>Removal of the following restrictive title deed conditions:</p> <p>Erf 107 Van Dyksbaai T53947/2005 C.6, 7.(a), 7.(b), 7.(c), 8, 8.(a), 8. (b), 8.(c), 9 and 10</p> <p>Erf 109 Van Dyksbaai T44460/2013 D, D.1, D.2, D.3, D4 and D.5</p>
Rationale	<p>These title deed restrictions prohibit what is applied for which necessitates the removal thereof. Some conditions in the title deed of Erf 107 were inserted in 1984 in response to the development pressures which were prevalent at the time. Currently there are different development pressures at play which drive development into a different direction in comparison to when these restrictive title deed conditions were inserted. The outdatedness of these title deed conditions also justifies the removal thereof and will be further discussed in Section 8 of this report.</p>
Application	<p>Rezoning of Erf 109 Van Dyksbaai from Authority Zone: Authority Usage to Business Zone 3: Local Business.</p>
Rationale	<p>Approval was granted in 2011 for the rezoning of Erf 109 Van Dyksbaai to Local Business Zone with a consent use for tourism business. The rezoning lapsed on 22 March 2015 and the zoning certificate dated 8 May 2018 highlights that (refer Annexure G). The initial intention was for the property to be rezoned for commercial purposes and is clearly illustrated in the special conditions which were inserted into the deed of sale (refer Annexure E). This proposal is therefore to align this town planning application with the initial land use rights which were envisaged for the subject property.</p>
Application	<p>Consolidation of Erven 107, 109 and 110 Van Dyksbaai to create a consolidated erf measuring 5790m².</p>

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Rationale	The proposed consolidation is for the buildings on the subject property to be on one land unit and function as one entity with the same development rights on the entire land unit. The expansion of the store room is located over cadastral boundaries and the property owner has plans for further expansion on the consolidated erf.
Application	Consent use for business premises.
Rationale	<p>The purpose of applying for the consent use is to ensure that the rights which were granted to Erf 109 Van Dyksbaai which lapsed are granted on the entire property. The purpose of this proposal is not to grant the property owner rights under the current OMZS which are more restrictive than the rights which were granted in the approval which lapsed on 22 March 2015. This proposal is to ensure that the property owner is granted rights under the current OMZS which are in harmony with the rights approved before.</p> <p>The original approval also included a consent use for tourism business which is defined in the OMGAZR as follows:</p> <p><i>"Tourism business facilities means the utilization of a site, and/or the buildings on the site for business activities, such as deemed by council as important to encourage the tourism trade and includes <u>restaurant, guest houses, souvenir shops, tourist information centers, knickknack shops, antique shops, local artwork shops, art galleries, travel bureau's, tour operators, etc.</u> but does not include in the case of tour operators, parking facilities for buses or related tour vehicles and is subject to the same development rules as that of "shop" in the local business zone and in the case of single residential zone subject to the same development rules as that of the single residential zone."</i></p> <p>In terms of the OMZS the only way to bestow the rights above on the subject property is to apply for a consent use for business premises. Herewith underlined are rights under the business premises definition which allow the rights which are highlighted in the OMGAZR above.</p> <p><i>"Business premises means a property from which <u>business or services is conducted and includes a shop, supermarket, restaurant, sale of alcoholic beverages, plant nursery, offices, service trade, financial institution and building for similar uses, sale of any small and big items;</u> but does not include a place of assembly, place of entertainment, institution, service station, motor repair garage, industry, industrial hive, noxious trade, risk activity, adult entertainment business, or bottle store"</i></p> <p>This will therefore ensure that the land uses on the subject property are in harmony with the initial intent of the approval which has lapsed.</p>

Application	Consent use for a residential building.
Rationale	<p>Background</p> <p>Considering that there was an approval for a consent use for a tourism business which has lapsed on Erf 109 Van Dyksbaai, the definition for tourism business under the OMGAZR included a guest house as mentioned in the previous table. A guest house is defined in terms of the OMGAZR as follows:</p> <p><i>"Guest house means a building, excluding a hotel, hostel or boarding house, consisting of a number of dwelling units or guest rooms, which are equipped for and may be utilized by travellers or holiday makers which in the opinion of council are of a short term nature, provided that the units or guest rooms are marketed for rental only and which can be licensed in terms of the Liquor Act 1989 (Act 27 of 1989) as amended, for on-site consumption of alcohol and subject to any conditions or restrictions that may be imposed by council, and can include a restaurant, but excludes a cash bar."</i></p> <p>Status quo</p> <p>There are 4 (four) existing guest rooms which are not interleading with one another on the subject property. The zoning of Business Zone 3: Local Business makes provision for a consent use for a residential building. This proposal would therefore constitute the most appropriate allocation of land use rights on the subject property.</p> <p><i>"Residential building means a building where lodging is provided, other than a dwelling house, block of flats, or licensed hotel, for human habitation, together with such outbuildings as are ordinarily used therewith and includes residential rooms that are rented, boarding houses, hostels, old age homes and residential clubs, but does not include a retirement village, institution, guest rooms, tourist accommodation, or a place of instruction"</i></p> <p>The subject guest rooms can therefore only be accommodated under the above definition, hence the application for a consent use.</p>
Application	Departure from the 3m southern side building line to 0m to accommodate an existing store room.
Rationale	<p>The owner has extended the existing store room up to the side boundary. The store room is used for the storage of boats as well as diving suits which are linked to the commercial enterprise operated from the property. The storage facilities can be defined as outbuildings in terms of the OMZS:</p> <p><i>"outbuilding" means a structure, whether attached or separate from the main building, which is ancillary and subservient to the main building on a land unit, and includes a building which is designed to be normally used for the garaging of motor vehicles, for storage purposes and any normal activities in so far as these are usually and reasonable required in the</i></p>

	<p>connection with the main dwelling, and includes the accommodation of recreational activities such as a pool room, braai room; tapa and the practicing of hobbies but does not include a dwelling unit; and outbuildings are primary uses under each zoning except open space zones, where Council may permit outbuildings should it be deemed necessary."</p> <p>The subject storage facility complies with the definition above. The building line departure which is sought is to allow the existing storage.</p>
Application	<p>Departure from the 3m north eastern side building line to 1,9m to accommodate guest room 2;</p> <p>Departure from the 3m south western side building line to 0,3m to accommodate a guest room 3; and</p> <p>Departure from the 3m south eastern side building line to 2m to accommodate an office.</p>
Rationale	<p>The subject guest rooms (refer Plan 6.1) were historically used and approved as offices. The owner has converted the offices to guest rooms which are used as tourist overnight accommodation. The change in land use therefore necessitates a departure from the building lines. The owner has also constructed an office which encroaches on the 3m south eastern building line. The departures can therefore be motivated as follows:</p> <ul style="list-style-type: none"> • There is no building on Erf 66 Van Dyksbaai which abuts the boundary where guest room 2 is located 1,9m from the side boundary. Parking is to be developed on Erf 66 which means that the guest room will have no impact on the intended parking use of the property. • Only 3m² of the building footprint of guest room 2 encroaches on the building line which is a minimal encroachment. • Only 16m² of guest room 3 encroaches on the side building line which abuts Erf 111 Van Dyksbaai which is minimal. Considering that the guest room will be used for short term rental purposes and the neighbouring Erf 111 Van Dyksbaai is zoned Residential Zone 1: Single Residential, the two land uses are in harmony with one another and there is no conflict; • Offices are generally regarded as one of the most tranquil land uses as this is essential towards the functionality of the establishment. The part of the office which encroaches on the side building line is only a corner which is approximately 2m² in extent and is insignificant. This is not projected to adversely impact owner of Erf 111 Van Dyksbaai; and • The offices are also visually appealing and add value to the street scape. <p>Both of the subject guest rooms have historically been approved as offices which encroach on the side building line which can be regarded as being used for habitable reasons. The conversion from an approved habitable use of offices to a habitable use of guest rooms ensures that</p>



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	the buildings are still used for habitation purposes. The departure sought is therefore not projected to have an adverse impact on the neighbouring properties in any way and will not upset the urban fabric in any way.
Application	Departure from the 8,5m height restriction to 10,5m.
Rationale	<p>The motivation for this departure is for property owner to erect a building similar to the architectural model as illustrated in Plan 6.2. The future expansions which are sought, although it does not form part of this application, the proposed departure from the 8,5m height restriction to 10,5m is sought to allow the building in the future when building plans are submitted. The owner only seeks the additional height of 2m in addition to what is permissible to allow large whale skeleton to be hung from the roof of the property as it is currently done in the restaurant (refer Plan 6.2).</p> <p>The 10,5m departure which is sought is not extraordinary in the OMZS for commercial properties as the zoning of B2 permits a height of 10,5m with three storeys. The proposal is however for the subject property to have a height of 10,5m.</p> <p>The parking required for the future expansion of the property will only be addressed when building plans are submitted.</p> <p>The definition of a storey in terms of the OMZS is as follow:</p> <p><i>"storey" means that portion of a building included between the surface of any floor and the surface of the next floor above, or if there is no floor above, the ceiling; provided that:</i></p> <p><i>(i) A basement does not constitute a storey;</i></p> <p><i>(ii) A roof, or dome which forms part of a roof, shall not constitute a separate storey, unless the space within the roof or dome is designed for, or used for human habitation, in which case it will be deemed to be a storey; and</i></p> <p><i>(iii) Any storey which is greater than 3,0 m but equal to or less than 6,0 m in height shall for the purposes of the height measurement, be deemed to be two storeys, and every additional 3,0 m in height or a portion thereof, shall be deemed to be a storey;</i></p> <p><i>(iv) Where the floor or ceiling of a storey is not level or has different levels, the average level shall be taken;</i></p> <p><i>(v) In counting the number of storeys of a building, the ground floor is one storey and the next floor above is the second storey;"</i></p> <p>It is therefore proposed that one storey be 3m high and that the next 2 storeys be double volume to accommodate the skeleton of the whale which will hang from the ceiling. The skeleton will utilise a proportional</p>



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	amount of space in the 10,5m and is not used for habitation purposes. The proposal for one storey to be double volume will also ensure that the proposed height is not an adverse departure from the intent of the B3 zoning.
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7. URBAN FORM- AND FABRIC

The urban form of Van Dyksbaai is characterised by erven which are mostly shaped as squares in the part of the settlement which is a grid and has polygon shapes in the part of the settlement which has cul de sac and curved suburban layout. The size of the erven ranges from 700m² to 1400m². The proposed consolidated erf has a polygon shape and measures 5790m² in extent which will be the largest erf within the urban edge in Van Dyksbaai. The size of the erf is justified because commercial erven are generally larger than residential erven due to the GLA and parking requirements which commercial properties require. The size and shape of the proposed consolidated erf is therefore complementary to the prevailing urban form in Van Dyksbaai.

The urban fabric of Van Dyksbaai is predominantly characterised by residential properties which have a variety of housing typologies. The area is also renowned as a tourist destination which offers boat cruises to visitors who explore the sea life particularly sharks and whales. The settlement is located much higher from the ocean in terms of the topography and results in most property owners enjoying a great view of the ocean. The subject restaurant, cruise booking facilities and guest rooms are complementary to the function of the town as a tourist destination as it provides the tourists with essential services. The approval and implementation of this proposal is therefore in harmony with the prevailing urban fabric of Van Dyksbaai.

8. TITLE DEED CONDITIONS PROPOSED FOR REMOVAL

When properties are consolidated, all the content in the title deed is transferred to the title deed of the consolidated erf. It is therefore proposed that all restrictive title deed conditions which prohibit this proposal be removed in the individual title deeds so that there will be no prohibition for this proposal once the properties are consolidated.

The applicable title deed restrictions which are proposed for removal as well as the rationale for the removal thereof will herewith be elucidated.

Erf 109 Van Dyksbaai (T44460/2013)

Title deed restriction	D "SUBJECT FURTHER to the following conditions imposed by the Overstrand Municipality" D.1 "The property may only be used for General Business Zone II"
Motivation	Erf 109 Van Dyksbaai is proposed to be zoned B3. The above restrictive title deed condition is therefore in conflict with what is proposed on the

	<p>subject property and the immediate intent for the removal of this restrictive title deed condition can be illustrated.</p> <p>This restrictive title deed condition was inserted with the intention of conferring land uses on the subject property which allow high commercial intensity. Considering that Van Dyksbaai is a small predominantly residential area which has no high intensity commercial land uses, conferring the zoning of B2 on the subject property would be out of character with the scale of the immediate surrounding settlement. This restrictive title deed condition is also in conflict with the zoning of B3 applicable to this property which also justifies the removal thereof.</p>
Title deed restriction	D.2 "The development on the property must comply with the provisions of the Van Dyksbaai Zoning Scheme Regulations for Local Business Zone as promulgated in terms of the Land Use Planning Ordinance, No. 15 of 1985."
Motivation	There is no Van Dyksbaai Zoning Scheme and the applicable zoning scheme is the OMZS. This restrictive title deed condition is therefore proposed for removal as it is not relevant to the subject property.
Title deed restriction	D.3 "Access to the property shall be from Perlemaen Street"
Motivation	Once the properties are consolidated, access will be gained to the restaurant from Geelbek Street and Perlemaen Street. This restrictive condition is therefore proposed for removal from the title deed as it would exclusively allow access from Perlemaen Street and prevent the existing access from Geelbek Street. Considering that the subject property has 3 street frontages, the removal of this restrictive title deed conditions is an imperative.
Title deed restriction	D.4 "The height of the buildings is limited to two storeys as defined in the applicable Scheme Regulations at the time of the start of the development"
Motivation	This restrictive title deed condition is proposed for removal to allow future expansions on the consolidated erf to be 10.5m high. The reason why this departure is sought is because the property owner wants to hang a skeleton of a whale under the roof where future expansions will occur (refer Plan 6.2). The skeleton space requirement necessitates a departure from the height restriction of two storey. The space where the skeleton is



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	intended to be hung will also not be used for habitation purposes. Considering that the subject property is proposed to be zoned B3, it is proposed that 2 of the storeys be double volume to allow to ensure that the subject building visually looks like it only has two storeys from the inside and the outside.
Title deed restriction	<i>D.5 "All the required parking must be provided as stipulated by the applicable Scheme Regulations as from date of the start of the development"</i>
Motivation	The subject property must comply with the parking prescripts of the OMZS. This title deed condition is proposed for removal as it is an unnecessary duplication.

Erf 107 Van Dyksbaai (53947/2005)

Title deed restriction	<i>C.6 "Hierdie erf mag alleenlik gebruik word om 'n gebou bestaande uit winkels en sakepersele, met die reg om bo die grondverdieping voorsiening te maak vir woonakkommodasie, of enige ander geboue wat die Administrateurs van tyd tot tyd na ooreleg met die Dorpskommissie en die plaaslike owerheid goedkeur, daarop van 'n dorpsaanlegskema ingesluit is die plaaslike owerheid enige ander gebruike wat deur die skema toegelaat word kan toelaat onderworpe aan die voorwaardes en beperkings wat in die skema bepaal word."</i>
Motivation	<p>Rationale for the proposed removal</p> <p>This proposal also entails an application for a departure for guest rooms on the ground floor which constitutes a residential use. This application therefore contradicts this provision in the above title deed restriction which highlights that there may not be any living accommodation on the ground floor but only on the first floor. This title deed restriction is therefore proposed for removal to enable the request for guest rooms on the ground floor to be permissible.</p> <p>Background</p> <p>This restrictive title deed condition was inserted in the title deed in 1984 when land uses on commercial properties were separated on different floors.</p> <p>Status quo</p> <p>Considering that the current development trend is complementary mixed land uses as promoted in the spatial planning policies, this restrictive title deed condition is not in harmony with current urban development pressures. The consolidated erf is proposed to be zoned B3 which is a commercial zoning, the guest rooms only constitute 16,8% of the total floor area on the property and the commercial land uses with</p>



	storage facilities which are complementary to the commercial component constitute 83,2%. The approval of the guest rooms and removal of this restrictive title deed condition will ensure that the commercial land use remains dominant on the subject property.
Title deed restriction	7 (a) "Mag geen gebou of struktuur of enige gedeelte daarvan bo die grondverdieping nader as vyf meter of helfte van die hoogte van 'n gebou, watter ookal die meeste is, van die sy- of agtergrens van die erf opgerig word nie, met dien verstande dat daardie deel van die sygrens wat binne 'n afstand van dertien meter gemeet vanaf 'n straatgrens gelee is, van hierdie voorskryf uitgesluit is.
Motivation	<p>Rationale for the proposed removal</p> <p>The owner of the subject property has expansion plans for the consolidated erf which is not addressed in this application. It is therefore proposed that this restrictive title deed condition be removed to not hinder with any of the future plans. The building lines which are applicable to the B3 zoning will still be applicable on the subject property and can act as a sufficient regulation when future building plans are submitted.</p> <p>Background</p> <p>This restrictive title deed condition was inserted in an era when each additional storey above the ground floor would be located further from the side building line which would result in buildings having a "pyramid" height transition from one storey to the next.</p> <p>Status quo</p> <p>Buildings in the current era do not follow this architectural style. The removal of this restrictive title deed condition can be regarded as desirable as it is out of sync with the prevailing development trend and could potentially result in the owner of the subject property having to build a structure in the future which is not in harmony with current modern trends.</p>
Title deed restriction	7 (b) "Mag nie meer as 80% van die oppervlakte van hierdie erf bebou word nie, met dien verstande dat enige verdieping wat geheel en al of gedeeltelik vir wooneindes gebruik word nie 'n totale vloeroppervlakte van meer as die helfte van die oppervlak van die erf mag hê nie."
Motivation	The buildings on the subject property do not exceed the above 80% coverage limit and 50% limit for buildings which are used for living accommodation purposes. The OM2S is more restrictive for the subject zoning as the coverage is restricted to 75%. It is therefore proposed that the more restrictive coverage of 75% be applied on the subject property and that this restrictive title deed condition be removed to eliminate regulatory duplication.

Title deed restriction	8 (a) Geen woonakkommodasie mag op hierdie erf voorsien word nie, tensy voorsiening aan die standaard waf die plaaslike owerheid gelyktydig gemaak word vir 'n parkeergebied om minstens een motorkar vir elke woonstel of in die geval van ander woonakkommodasie vir elke twee slaapkamers in die gebou, te huisves met dien verstande dat: (a) Indien genoemde parkeergebied onder die gebou gelee is hoogstens 50% van die omtrek daarvan afgetrek mag word. (b) Genoemde parkeergebied en die ingang en uitgang daarvan gelee is, hardgemaak en van 'n oppervlak voorsien moet wees tot genoeg van die plaaslike owerheid. (c) Indien die eiendaar wanneer hy sy gebou opgerig, op die erf voorsiening maak vir motorhuise wat gesluit kan word die vereiste parkeergebied met een parkeer ruimte verminder mag word vir elke motorhuis tot op maksimum van 75% van die oorspronklike gebied wat ingevolge die voorafgaande vereis word.
Motivation	The parking standards above were inserted into the title deed in 1984 in harmony with vehicle ownership of the time. The parking requirement contained in the Section 17 of the OMZS are not in harmony with the requirements in the title deed restriction above. The removal of this restrictive title deed condition will therefore eliminate this contradiction and only allow the OMZS to be used as a regulatory tool for parking on the subject premises.
Title deed restriction	9 "By konsolidasie van hierdie erf of enige gedeelte daarvan met enige aangrensende erf wat onderworpe is aan dieselfde voorwaardes as die wat hierin uiteengesit word, is hierdie voorwaardes op die gekonsolideerde erf van toepassing asof dit een erf is."
Motivation	Considering that several restrictive title deed conditions are proposed for removal, the relevance of the restrictive condition is nullified and can be justified for removal.

Requirements for the amendment, suspension or removal of restrictive conditions:

Section 35(4) of the Overstrand By-Law on Municipal Land Use Planning, 2015, highlights the relevant Municipal considerations for the removal, suspension or amendment of restrictive title deed conditions. Herewith are the relevant considerations assessed in conjunction with this proposal.

(a) The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vests in the personas of the owner of a dominant tenement.

This restrictive condition does not have a beneficial financial or other value for the property owner or anyone else.

(b) The personal benefits which accrue to the holder of rights in terms of the restrictive condition.

There are no personal benefits which accrue to the holder of these restrictive title deed conditions.

(c) The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if removed.

The removal of these restrictive title deed conditions will enable the property owner to derive the following benefits:

- The owner of the property will be able to run a joint enterprise on the consolidated erf;
- The existing and proposed land uses will be consolidated on the subject erf; and
- The subject commercial enterprise will become more viable.

(d) The social benefit of the restrictive condition remaining in place.

There is no social benefit if the restrictive conditions remain in place.

(e) The social benefit of the removal of the restrictive condition.

Herewith are the social benefits

- The property owner will expand the subject enterprise which will increase the need for more employment which will contribute to the reduction of unemployment in Van Dyksbaai;
- The value of the subject property will increase which will subsequently lead to more rates and taxes which are paid to the Municipality. The rates and taxes contribute improving service delivery in the Overstrand Municipality which is a positive aspect; and
- The subject restaurant and guest rooms accept people from different countries which enhances intercultural interaction on the subject property. The approval of this proposal will enable this to occur and subsequently contribute to an enhanced social fabric which contributes to social cohesion in Van Dyksbaai.

(f) Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

There are no rights which are enjoyed by any member of the society and the removal of these restrictive conditions do not constitute a deprivation of rights.

9. ZONING

The following zoning parameters of the subject property were assessed in conjunction with the proposal.

Business Zone 3: Local Business (B3)			
	Parameters	Proposal	Comply/ deviate
Primary use	shops, flats (above ground floor), offices	Shop and offices	Comply
Consent use	bottle store, business premises , clinic, conference facility, flats (on	Restaurant and residential building	Comply

	ground floor), town housing, guest house, hotel, informal trading, institution, place of assembly, place of entertainment, place of instruction, place of worship, recreational facilities, residential building , restaurant, rooftop base station, sale of alcoholic beverages, service station, service trade, transmission tower.		
Land Use Restrictions			
Coverage	The maximum coverage for all buildings on the land unit is 75%. The definition of coverage is the following: <i>"Coverage" means the total area or percentage area of a land unit which may be covered by buildings and covered by a roof.</i>	Total building size is 1376,8m ² = 23%	Comply
Floor factor	The maximum floor factor is 1.5	0,23	Comply
Height	(i) The maximum height of a building measured from the base level to the top of the roof is 8,5 m; (ii) The maximum number of storeys is 2; and (iii) Earth banks and retaining structures shall comply with 16.6.	(i) 10,5m proposed; (ii) 3 storeys of which one is proposed to be double volume; (iii) Comply	Departure applied for and motivated
Setback	(i) Council may require that all buildings and structures on the property are set back at least 6,5 m from the centre line of the street; (ii) Where special circumstances exist, Council may require a wider setback; and (iii) The general provisions of 16.2 apply.	(i) This is subject to the request of Council; (ii) This is subject to the request of Council; (iii) Comply	Comply
Building lines	(i) The street building line is 0 m; provided that a 3,5 m building line applies where fuel pumps are erected; (ii) The side building line is 0 m provided that where any Business Zone 3 abuts another	(i) 2m; (ii) Departure from the 3m side building line to 1,9m; Departure from the 3m side building line to 0,3m;	Departure applied for and motivated

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	<p>zone, the side building line is 3,0 m;</p> <p>(iii) The rear building line is 3,0 m; provided that where any Business Zone 3 abuts another zone, the rear building line is 4,5 m;</p> <p>(iv) Provided that Council may require more restrictive building lines in the interests of public health or safety or the environment or in order to enforce any applicable law or right; and</p> <p>(v) The building line exemptions in 16.1 apply.</p>	<p>Departure from the 3m side building line to 0m; and</p> <p>Departure from the 3m side building line to 2m.</p> <p>(iii) Not applicable</p> <p>(iv) Comply</p> <p>(v) Comply</p>	
Window and door placement	<p>(i) Where a 0 m building line applies and where a wall of a building is erected 1,0 m or less from the side or rear building line, no door or window shall be permitted in the wall concerned; and</p> <p>(ii) Any portion of the building which contains a door or window onto a side or rear boundary, shall be placed at least 1,5 m away from such boundary. The portion of the building that is required to be set back shall include the door or window, together with such additional length of wall as is required to make up a total of 3,0 m.</p>	<p>(i) There are no doors or windows on the store room where the building encroaches on the side boundary; and</p> <p>(ii) The guest room 3 is located 0,3m from the side boundary and the building has been approved.</p>	Complies with previous approval
Parking and access	<p>The restaurant was approved when the OMGAZR was applicable which prescribed parking of 1 bay per 25m² of floor space.</p> <p>The change of land use as applied for in this application for the guest rooms requires that parking calculation be done in accordance with the OMZS which prescribes the following parking standard;</p>	<p>800m² of the restaurant requires 32 parking bays;</p> <p>The 4 guest rooms require 4 parking bays;</p> <p>43m² offices require 3 parking bays.</p>	Comply

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	<p>"Bed and breakfast establishments require 1 bay per guest room."</p> <p>The temporary containers which are used as changing facilities and the expanded store room are outbuildings and do not require any parking.</p>	39 parking required and 39 provided.	
Loading Bays	<p>Loading bays must be provided on the land unit in accordance with 17.2.</p> <p>The minimum off-street parking loading requirements are 1 bay per 500 m² for the first 1 000 m² of GLA, thereafter 1 bay per 1 000 m².</p>	1020 m ² GLA requires 2 loading bays which are provided.	Comply
Screening	<p>(i) The Council may require screening in accordance with 16.7; and</p> <p>(ii) Where a Business Zone 3 abuts a residential zone, Council may require a suitable wall of no less than 1.8 m in height to be erected on the common boundary.</p>	<p>(i) Subject to the request of Council; and</p> <p>(ii) Subject to the request of Council.</p>	Comply
Site development plan	Council may require that a site development plan be submitted for approval in accordance with 16.3.	An SDP is submitted with the application (refer Plan 5)	Comply

10. SERVICES

The availability of services on the subject property is herewith illustrated:

10.1 Electricity

The subject buildings are connected to the existing electricity network in Van Dyksbaai and the approval and implementation of this proposal will not alter this.

10.2 Water

The subject property is connected to the existing reliable water network which is provided by the OM and the approval and implementation of this proposal will not alter this.

10.3 Sewage

Sewage on the subject property is disposed of by means of conservancy tanks and the approval and implementation of this proposal will not alter this.

10.4 Access and egress

Access and egress to the subject property is gained from Geelbek Street and Perlemoen street.



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11. DESIRABILITY

DEADP issued the "Provincial support document on Relevant Considerations 2015" which should be considered before the Municipality makes a decision. The desirability guideline in the document was used to assess the desirability of the approval and implementation of this proposal.

Element consideration	for	Motivation of the impact of the approval and implementation of this proposal.	Impact Positive or Negative
Economic impact		The restaurant and guest rooms on the subject property are a positive economic impact in Van Dyksbaai and contribute to a creation of many employment opportunities in the area. The approval of this proposal is therefore essential in enabling the existing employment opportunities on the subject property to be retained.	Positive
Social impact		The land uses on the subject property attract tourists from different parts of the world and contributes to promoting Van Dyksbaai as a popular and viable tourist destination. This therefore contributes to enhancing the image of the town which is a positive social impact in the area.	Positive
Scale of the capital investment		Several millions have been invested in the construction of the subject property. This illustrates the commitment of the property owner towards contributing to the enhancement of the built environment in Van Dyksbaai.	Positive
Compatibility with surrounding uses		The low key and non-disruptive commercial land uses on the subject property are in harmony with the surrounding residential land uses and do not constitute a deprivation of land use rights which are enjoyed by surrounding property owners.	Positive
Impact on safety, health and wellbeing of the surrounding community;		The approval and implementation of this proposal will enable the status quo which attracts numbers of people to the subject property. This will subsequently maintain the surveillance on the street and contribute towards a safer environment characterised by a reduction in crime levels. The land uses on the subject property do not constitute noxious land uses and will not in any	Positive



	<p>way compromise on the health of the surrounding property owners.</p> <p>The subject property also provides some educational knowledge of marine life to guests who go on boat cruises. The dissemination of knowledge which happens on boat cruises where guest book in at the subject property plays an integral role towards educating tourists about marine life and the importance of marine conservation. This subsequently contributes to enhancing the wellbeing of the community.</p>	
Impact on heritage	The is no building on the subject property which is older than 60 years. The approval and implementation of this proposal will therefore have no impact on any heritage value in the area.	Positive
Whether the imposition of conditions can mitigate an adverse impact of the proposed land use	<p>The imposition of conditions of approval on the subject proposal is essential as it will ensure that the land use rights which surrounding property owners enjoy are not deprived.</p> <ul style="list-style-type: none"> • That all signage complies with the Overstrand Municipality By-Law on Signage. This will ensure that all signage will not be visually intrusive; • That all development parameters in the applicable zoning and other title deed restrictions be complied with. This will ensure that the scale of the subject development remains within reasonable bounds; • That building plans be submitted to the Building Department for approval as that will ensure that building is designed in accordance with prescribed legislation. That all prescripts of the fire department be complied with to ensure that the subject building does not become a fire risk to the occupant as well as clients; • That commercial rates and service tariffs be paid as prescribed in the annual budget. This will ensure that the operations in the subject building are a financial asset to the OM; • That all land uses on the subject premises not interfere with the peace, comfort or become an unbearable nuisance to surrounding property owners; and • That all other relevant legislation be complied with. 	Positive

Aspects which impact on quality of life (including views, sunlight, privacy, visual impact, character)	The buildings on the subject property already exist and are of a low-key nature and cannot be regarded as visually intrusive/offensive to the character of the area. The aesthetic appeal of the subject restaurant and guest rooms is a positive visual contribution to the streetscape of Van Dyksbaai.	Positive
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12. SPATIAL PLANNING DOCUMENTS

Spatial planning documents

This proposal was assessed in terms of the existing spatial planning documents and the compliance of this proposal with the applicable spatial planning policies can will be motivated:

PSDF

The aim of the PSDF is to give spatial expression to the national and provincial development agendas and serves as a basis for coordinating, integrating, and aligning ground delivery of national and provincial departmental programmes. The framework also aims to communicate the government's spatial development intentions to the private sector and civil society.

Policy proposals which are pertinent this application was assessed, and the outcome is as follows:

- **The PSDF promotes the protection and enhancement of the prevailing sense of place and settlement patterns.**

The prevailing sense of place in Van Dyksbaai is the residential ambiance which is characterised by tourists who visit the area to go on boats trips and go shark cage diving. There are also some restaurants in the area which cater to these tourists. The subject property which has a restaurant and guest rooms is in harmony with this prevailing sense of place in Van Dyksbaai.

- **Accessibility at all scales is promoted.**

The subject property is accessible from Perlemoen- and Geelbek Street. The subject establishment is also promoted on the website of the subject property which can be accessed by people from around the world to make online bookings. This makes the services which are provided on the premises highly accessible to all and is aligned with the PSDF policy proposal of the promotion of accessibility for all.

- **The promotion of an appropriate land use mix in a settlement is highlighted as integral.**

This proposal entails a land use mix of tourism land uses on the subject property which is a restaurant and guest rooms. This land use mix is appropriate within the subject settlement and is of a small scale and is integral toward promoting vitality in Van Dyksbaai.



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SDF

The objective of the SDF is to formulate strategic spatially based policy guidelines and proposals where the needs, changes and growth in the area can be managed to benefit the inhabitants and the environment in the Overstrand Municipality. The SDF is guided by a set of objectives and the consistency of this proposal was assessed in terms of these core objectives.

Policy proposals which are pertinent this application was assessed, and the outcome is as follows:

- **Promote a balanced land use mix, making adequate provision for commercial as well as service industrial growth related to fishing and mari-culture.**

This proposal promotes a balanced mixture of land uses which are all related to the mari-culture industry in Van Dyksbaai as promoted in the SDF.

- **Promote tourism development which is based on the ecological and heritage value of the region.**

This tourism business which is on the subject property is heavily reliant on the marine ecological value which exists in Van Dyksbaai;

- **Promote Van Dyksbaai as a coastal village, holiday resorts and retirement village.**

Van Dyksbaai is a coastal village and the guest rooms applied for are in harmony with the short-term rental as proposed in the SDF.

- **Restrict urban development within the demarcated urban edge.**

The subject property is located within the urban edge.

- **Maintain the unique prevailing village character.**

The tourism business on the subject property already exists and is in harmony with the prevailing unique village character of Van Dyksbaai.

Spatial proposal plan

The subject property is designated for community facility purposes. Considering that the OMGMS 2010 and Kleinbaai Nodol Development Framework are approved as part of the SDF earmarks the subject property as economic opportunity and tourism business purposes, a deviation from the document will not be necessary.

OMGMS

The purpose of the Growth Management Strategy is to improve the Overstrand Municipalities' overall environmental sustainability by enhancing the quality and efficiency of the built environment.

Policy proposals which are pertinent this application was assessed, and the outcome is as follows:

- **The built environment of Hermanus should be enhanced and well managed.**

The subject property is in an aesthetically appealing condition and well managed. The approval and implementation of this proposal will provide the property owner with the



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Erven 107, 109 and 110 Van Dyksbaai

December 2018

Amended January and February 2019

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appropriate land use rights as well as sufficient bulk which will accommodate the current land uses on the property and any future expansions which may be undertaken by the property owners. These future expansions which will happen on the consolidated erf will also contribute to the enhancement of the built environment in Van Dyksbaai as prescribed by the OMGMS.

- **Promote the optimal land use planning and efficient use of services.**

The proposal entails allocating land use rights as well as bulk to the proposed consolidated erf which will allow the optimal use of the subject property. The services on the subject property will also be used by a greater number of people who are tourists which promotes efficiency.

- **Ensure that the scale and character (in terms of bulk, height and architectural styling) of the higher density areas are appropriate to the immediate context.**

The proposed departure from the prescribed height from 8,5m to 10,5m is minimal as it will not be visually intrusive or obstructive to the neighbouring property owners and is relatively in harmony with the scale and character of the area. The proposed bulk sought in terms of the consent uses and departures are to ensure alignment with historic approvals which have lapsed and is therefore aligned with a historic character of the area. This proposal is therefore in harmony with the immediate context.

Spatial proposal plan.

The spatial proposal plan designates the subject property as a regional economic opportunity. This proposal which entails the entire property being zoned for commercial purposes is aligned with this designation.

KLEINBAAI DEVELOPMENT STUDY 2016

The study acknowledges Kleinbaai as the shark viewing capital of the world and that the area is located conveniently close to Dyer Island which has a small boat harbour suited for the launch of sizeable vessels. The document also proposes interventions and improvements required to establish a functional commercial and tourism trade centre in Kleinbaai.

Policy proposals which are pertinent to this application were assessed, and the outcome is as follows:

- **Geelbek Street has become a high commercial street of Kleinbaai with a number of shark viewing businesses which operate in the area.**

Access to the restaurant/tourism business on the proposed consolidated erf can be gained from Geelbek Street which makes the subject property aligned with the high commercial street character which is prevalent in the area.

- **From a planning perspective, it makes sense that commercial properties should be located near the town entrance and close to the harbour which is the town focal point.**

The proposed consolidated erf is located near the town entrance and close to the harbour. This proposal is intended to ensure that all the land uses on the subject property are in harmony with the with the above prescripts.



Spatial proposal plan

The subject property is located within the Kleinbaai Node which is proposed for local commercial development which is aligned with the tourism industry. The proposed consolidated erf is designated as a tourism business node, restaurant and parking. This planning proposal is therefore intended to be in harmony with the land use designation prescripts of the document.

Consistency with the various planning principles

The analysis of the spatial planning policies illustrates the consistency of the proposal with the PSDF, SDF, Kleinbaai Development Study 2016 and OMGMS.

13. COMMON LAW

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

The test applied is one of reasonableness. In other words, would a reasonable man who is the neighbour or public be of the opinion that a low-key tourism business on a property zoned B3 which is contextually appropriate tolerate the subject land uses. In other words, would this proposal affect the wellbeing of the neighbours or the public in the occupation of land? Considering the merits of this proposal, a reasonable person would not be deprived of his right of occupation and wellbeing should this application be approved.

14. PLANNING PRINCIPLES

The proposal was analysed for consistency with the planning principles to provide a recommendation to the OM for the application in terms of Section 42 of SPLUMA and Chapter VI of LUPA and the outcome is the following:

Spatial Justice

Spatial justice in the context of spatial and land use planning refers to development proposals which redress the past apartheid spatial development imbalances. This entails development proposals which aim for equity in the provision of access to opportunities, facilities, services and land. The approval and implementation of this proposal will maintain the employment opportunities on the subject property particularly to the historically economically marginalised. This will ensure that the employees maintain the current income which is earned which enables access to opportunities, enable the employees to afford facilities, services and land. The approval and implementation of this proposal will therefore contribute to addressing the historic spatial development imbalances cause by apartheid land use and spatial planning.





Spatial Sustainability

Spatial sustainability refers to the need of promoting compaction, mixed use urban environments which allow for a functional space economy to flourish. The proposal promotes a complementary land use mix. The existing buildings do not detract from the prevailing character of Van Dyksbaai. The restaurant promotes a functional space economy on the subject property. All these proposed elements contribute to the enhancement of spatial sustainability on the subject property.

Efficiency

Efficiency in the context of land use planning refers to the need to create settlement that optimally make use of space, infrastructure, energy, land and resources. This proposal entails optimally making use of the proposed consolidated property within the services, infrastructure and energy limits which are available.

Spatial Resilience

Spatial resilience in the context of land use planning refers to spatial plans, policies and land use management systems that should enable the communities to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner. The subject proposal is aligned with the spatial resilience principles promoted in the PSDF, SDF, OMGMS and Kleinbaai Development Study 2016. This will enable the subject property to be resilient in times of economic and environmental shock.

Good Administration

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





15. EVALUATION

Application

1. **Removal** of the following restrictive title deed conditions from the following title deeds:
Erf 107 Van Dyksbaai T53947/2005
 C.6, 7.(a), 7.(b), 7.(c), 8, 8.(a), 8.(b), 8.(c), 9 and 10.
Erf 109 Van Dyksbaai T44460/2013
 D, D.1, D.2, D.3, D4 and D.5
2. **Rezoning** Erf 109 Van Dyksbaai from Authority Zone: Authority Usage to Business Zone 3: Local Business.
3. **Consolidation** of Erven 107, 109 and 110 Van Dyksbaai to create a consolidated erf measuring 5790m².
4. **Consent use** for business premises.
5. **Consent use** for a residential building.
6. **Departure** from the 3m southern side building line to 0m to accommodate an existing store room.
7. **Departure** from the 3m north eastern side building line to 1,9m to accommodate guest room 2; and
8. **Departure** from the 3m south western side building line to 0,3m to accommodate a guest room 3.
9. **Departure** from the 3m south eastern side building line to 2m to accommodate an office in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015; and
10. **Departure** from the 8,5m height restriction to 10,5m.

Urban form and urban fabric

The approval of this proposal would lead to the shape and size of the subject property being in harmony with the prevailing urban form in the area.

Title deed

- The restrictive title deed conditions prohibit this proposal which justify the removal thereof;
- The restrictive title deed conditions are outdated and do not respond to the current urban development trends;
- There are many social benefits which will be derived from the removal of these restrictive title deed conditions;
- There is no social benefit in these restrictive title deed conditions remaining in place; and
- There are many social benefits which will be derived from the removal of these restrictive title deed conditions.

Zoning

- There are shops and offices on the subject property which is a primary right;
- A restaurant is a consent use;
- The permissible coverage is 75% and the existing coverage on the property is 23%;
- The permeable height is 8,5m and the proposed height is 10,5m for which a departure is applied for;



- An application for a departure from the 3m north eastern side building line to 1,9m to accommodate guest room 2 is applied for;
- An application for a departure from the 3m south western side building line to 0,3m to accommodate a guest room 3 is applied for; and
- An application for a departure from the 3m side southern building line to 0m to accommodate an existing store room is applied for;
- A departure for tourist accommodation is applied for;
- There are 39 parking bays required and 39 are provided; and
- There are 2 loading bays required and 2 loading bays are provided.

Availability of services

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

Desirability

Element for consideration	Motivation	Impact Positive or Negative
Economic impact	The approval of this proposal will be a positive enabler for the positive economic impact that the subject property has in the economy of Van Dyksbaai.	Positive
Social impact	The knowledge dissemination regarding marine life which occurs on the subject property is a positive social impact.	Positive
Scale of the capital investment	The millions which will be invested in the built environment illustrate the tangible commitment of the property owner towards this project.	Positive
Impact on safety, health and wellbeing of the surrounding community;	The buildings on the subject property are visually appealing and are a positive contribution to the visual appeal of Van Dyksbaai.	Positive
Impact on heritage	The buildings on the subject property have no heritage value.	Positive
Whether the imposition of conditions can mitigate an adverse	There are several conditions of approval which are proposed to ensure that the land uses on the subject property do not become a nuisance.	Positive

impact of the proposed land use		
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Spatial planning policies

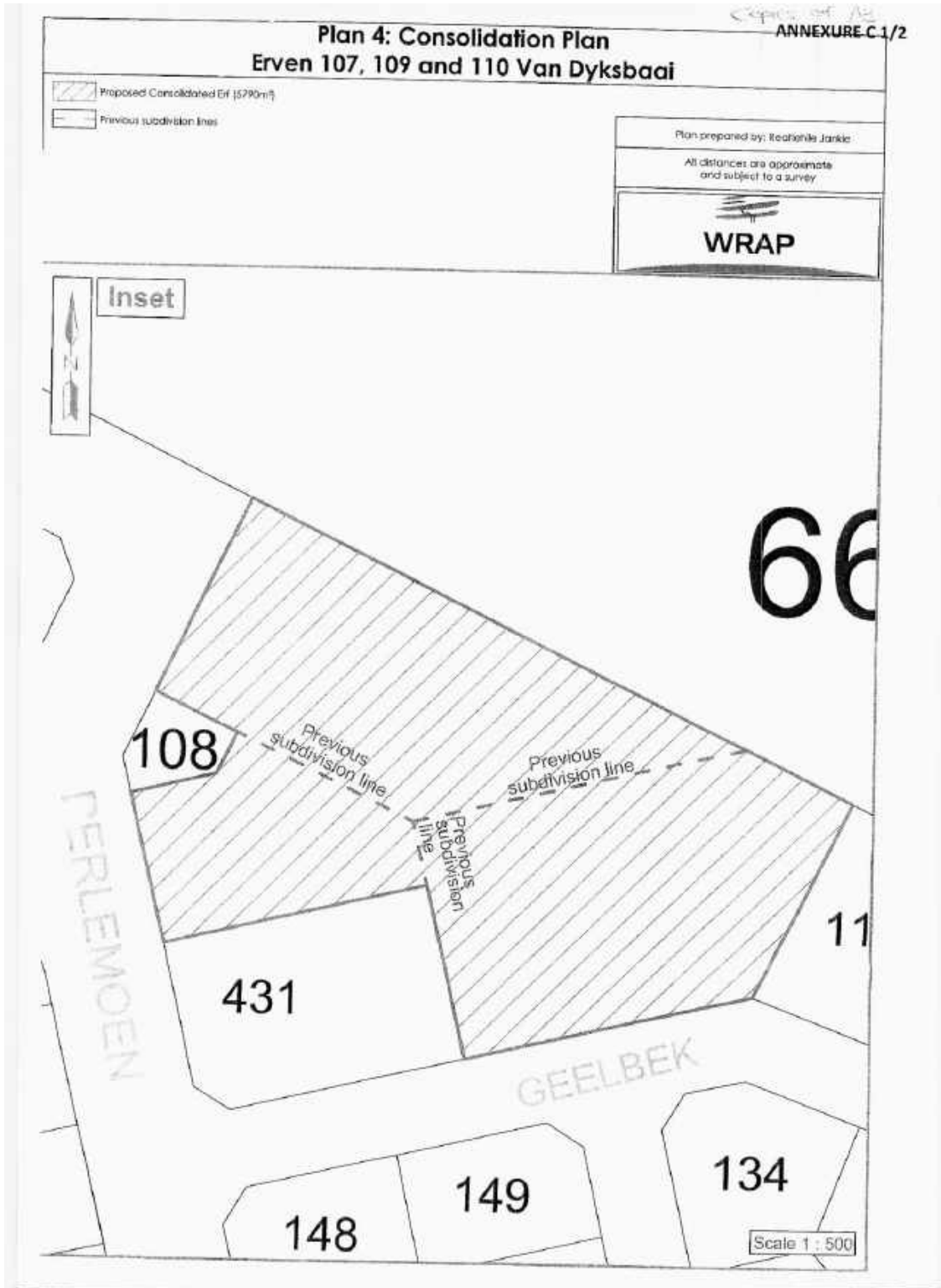
Applicable spatial planning policy	Motivation	Compliance or deviation
PSDF	The approval and implementation of this proposal can be motivated as follow: <ul style="list-style-type: none"> • The protection of the prevailing valued sense of place and settlement pattern; • Accessibility is promoted at all scales which is on the site as well as on the website; and • This proposal promotes a contextually appropriate land use mix on the subject property. 	Comply
SDF	The approval and implementation of this proposal can be motivated as follow: <ul style="list-style-type: none"> • Promotes a balanced land use mix on the subject property; • Is aligned with the character of Van Dyksbaai as a coastal village and holiday destination; • The proposal is located within the urban edge; and • The existing land uses and buildings on the subject property are in harmony with the prevailing village character of Van Dyksbaai. 	Comply
OMGMS	The approval and implementation of this proposal can be motivated as follow: <ul style="list-style-type: none"> • Contribute to an enhanced and well managed built environment; • Promote optimal and efficient land use planning; • Be in harmony with the prevailing character and bulk scale of the surrounding environment; and • Is in harmony with the designation of the subject property as a regional economic node. 	Comply
KLEINBAAI DEVELOPMENT STUDY	The approval and implementation of this proposal can be motivated as follow: <ul style="list-style-type: none"> • Will maintain the alignment of the subject property with the commercial character of Van Dyksbaai; and • Aligned spatial proposal plan of the document. 	Comply

Common law

The approval and implementation of this proposal will not interfere with the health, wellbeing and comfort in the occupation of the land of neighbours.

Planning principles

Applicable spatial planning policy	Motivation	Impact Negative or Positive
Spatial justice	The approval of this proposal will maintain the contribution of the subject property towards addressing spatial development imbalances caused by apartheid planning.	Positive
Spatial Sustainability	The approval of this proposal would enable the operations on the subject property to continue to contribute to a more spatially resilient landscape.	Positive
Efficiency	The approval of this proposal will enable the efficiency on the subject property to continue.	Positive
Spatial resilience	The subject tourism business is aligned with the principles of spatial resilience which are a common thread in the PSDP, SDF, OMGMS and Kleinbaai Development Study.	Positive
Good administration	The OM has an inclusive and efficient public participation process where the comments from the public will be taken into consideration and ensure a joint planning approach between WRAP, Municipal Officials and the public.	Positive



Vorster & Steyn
Christo Centre 3
Main Road
Gansbaai
7220

Prepared by me

[Signature]
CONVEYANCER
STEYN L.C.

HENNIE
301 OOSTHUIZEN

FEE
R. 650,00

VERBIND MORTGAGED
VR FOR R 2 195 400,00
0071780/2005
06 JUL 2005
REGISTRATEUR REGISTRAR

T 000053947/2005

FOR ENDORSEMENTS KYK BEADST
FOR ENDORSEMENTS SEE PAGE 1

DEED OF TRANSFER

DATA / CAPTURE
21 JUL 2005

BE IT HEREBY MADE KNOWN THAT
HENDRIK MALHERBE OOSTHUIZEN

appeared before me, REGISTRAR OF DEEDS, at CAPE TOWN, the said
appearer being duly authorised thereto by a Power of Attorney which said Power
of Attorney was signed at GANSBAAI on 25 APRIL 2005 granted to him by

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No. 2000/071121/23

DATA / CAPTURE
15 JUL 2005
OLIVIER

7

VERBIND MORTGAGED	
VIA FOR	1260 000,00
B 000029062 / 2013	<i>[Signature]</i>
2013-00-27	

And the appearer declared that his said principal had, on 3 December 2004, truly and legally sold by Private Treaty, and that he, the said Appearer, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

EXACTAFRICA PROJECT MANAGEMENT (PROPRIETY) LIMITED
No. 2001/007231/07

or its Successors in Title or assigns, in full and free property

1. ERF 107 VAN DYKSBAAI Overstrand Municipality, Division of Caledon, Western Cape Province;

IN EXTENT 1009 (ONE THOUSAND AND NINE) SQUARE METRES

FIRST TRANSFERRED by Deed of Transfer No. T 48993/1984 with General Plan No. TP 8401 relating thereto and held by Deed of Transfer T033447/2001

- A. SUBJECT to the conditions referred to in Deed of Transfer No T5132/1935.

- B. SUBJECT FURTHER to the provisions of the following Endorsement dated the 25th April 1972 on Deed of Transfer No T29858/1970, which Endorsement reads as follows:

"Kragtens Not. Akte Nr 158/1972 ged 13/3/1972 is die Restant van Gedeelte 22 van die plaas "Klip Fonteyn" groot 93, 2915 ha, hieronder gehou, onderhewig aan waterskema serwitute met betrekking tot:

- (a) die hoeveelheid van water per erf per dag;
- (b) die opgaring van water en opvangwerke;
- (c) die watertoevoer deur pype en waterleiding; en
- (d) bykomende regte-die water synde afkomstig van boorgate op die binnegemeelde eiendom ten gunste van die Administrateur van die Kaapprovinsie in Trust van sodanige plaaslike owerheid benoem te word.

Soos meer ten volle sal blyk uit gesegde NotAkte"

- C. SUBJECT FURTHER to the following conditions, contained in Deed of Transfer No T48993/84, imposed by the Administrator of the Province of the Cape of Good Hope when approving the Van Dyksbaai Township Exention No 2 in terms of Ordinance No 33 of 1934, which conditions read as follows:

1. Alle woorde en uitdrukkings wat in die volgende voorwaardes gebesig word, het dieselfde betekenis as wat daarvan geheg word by die regulasies afgekondig by Provinsiale Kennisgewing Nr 263 aan 14 Augustus 1970.
2. Ingeval 'n dorpsaanlegskema of enige gedeelte daarvan op hierdie erf van toepassing is of daarop van toepassing gemaak word, sal

enige bepalings daarvan wat meer beperkend is as enige voorwaardes van eiendomsreg wat op hierdie erf van toepassing is voorkeur geniet. Enige bepalings van hierdie voorwaardes moet nie opgevat word as sou dit die bepalings van Artikel 146 van Ordonnansie Nr 15 van 1952, soos gewysig, vervang nie.

3. Die eienaar van hierdie erf is verplig om sonder betaling van vergoeding, toe te laat dat elektrisiteitskabels of- drade en hoof- en/of ander waterpype en die rioolvuil en dreinerings, insluitende stormwater van enige ander erf of erwe, binne of buite hierdie dorp oor hierdie erf gevoer word, en wel op die wyse en plek wat van tyd tot tyd redelikerwys vereis word. Dit sluit die reg op toegang te alle redelike tye tot die eiendom in met die doel om enige werke met betrekking tot bogemelde aan te lê, te wysig, te verwyder of te inspekteer.
4. Die eienaar van hierdie erf is verplig om sonder vergoeding op die erf die materiaal te ontvang of uitgrawings op die erf toe te laat al na vereis word, sodat die volle breedte van die straat soos finaal aangelê en die erf tensy hy verkies om steunmure te bou tot genoë van en binne 'n tydperk wat die plaaslike owerheid bepaal.
5. Geen gebou op hierdie erf mag gebruik word of van gebruik verander word vir 'n ander doel as wat volgens hierdie voorwaardes toegelaat word nie.
6. Hierdie erf mag alleenlik gebruik word om 'n gebou bestaande uit winkels en sakepersele, met di ereg om bo die grondverdieping voorsiening te maak vir woonakkommodasie, of enige ander geboue wat die Administrateurs van tyd tot tyd na oorleg met die Dorpekommissee en die plaaslike owerheid goedkeur, daarop op te rig, met dien verstande dat indien die erf in die gebied van 'n dorpsaanlegskema ingesluit is die plaaslike owerheid enige ander gebruike wat deur die skema toegelaat word kan toelaat onderworpe aan die voorwaardes en beperkings wat in die skema bepaal word.
7. Behalwe met die voorafverkreë toestemming van die Administrateur:
 - (a) Mag geen gebou of struktuur of enige gedeelte daarvan bo die grondverdieping nader as vyf meter of helfte van die hoogte van 'n gebou, watter ookal die meeste is, van die sy- of agtergrens van die erf opgerig word nie, met dien verstande dat daardie deel van die sygrens wat binne 'n afstand van dertien meter gemeet vanaf 'n straatgrens geleë is, van hierdie voorskrif uitgesluit is.
 - (b) Mag nie meer as 80% van die oppervlakte van hierdie erf bebou word nie, met dien verstande dat enige verdieping wat geheel en al of gedeeltelik vir woondoeleindes gebruik word nie 'n totale vloeroppervlakte van meer as die helfte van die oppervlakte van die erf mag hê nie.
 - (c) Moet die ontwerp en uiterlike voorkoms van die fasade van enige gebou wta op hierdie erf opgerig word, in ooreenstemming wees met die veranderskap en kroonlisyne wat die plaaslike owerheid voorskryf endie



materiaal wat die voorkant daarvan gebruik word, moet voldoen aan die standaarde wat die plaaslike owerheid voorskryf.

8. Geen woonakkommodasie mag op hierdie erf voorsien word nie, tensy voorsiening tot genoë van die plaaslike owerheid gelyktydig gemaak word vir 'n parkeergebied om minstens een motorkar vir elke woonstel of in die geval van ander woonakkommodasie vir elke twee slaapkamers in die gebou, te huisves met dien verstande dat:
- (a) Indien genoemde parkeergebied onder die gebou geleë is hoogstens 50% van die omtrek daarvan afgetrek mag word.
 - (b) Genoemde parkeergebied en die ingang en uitgang daarvan geleë is, hardgemaak en van 'n oppervlak voorsien moet wees tot genoë van die plaaslike owerheid.
 - (c) Indien die eienaar wanneer hy sy gebou opgerig, op die erf voorsiening maak vir motorhuise wat gesluit kan word die vereiste parkeergebied met een parkeerruimte verminder mag word vir elke motorhuis tot op 'n maksimum van 75% van die oorspronklike gebied wat ingevolge die voorafgaande vereis word.
9. By konsolidasie van hierdie erf of enige gedeelte daarvan met enige aangrensende erf wat onderworpe is aan dieselfde voorwaardes as die wat hierin uiteengesit word, is hierdie voorwaardes op die gekonsolideerde erf van toepassing asof dit een erf is.
10. Ingeval hierdie erf onderverdeel word is elke onderverdeelde gedeelte, uitgesonderd enige gedeelte afgesny vir pad- of dergelyke doeleindes onderworpe aan die voorwaardes hierin uiteengesit asof dit die oorspronklike erf is.

2. REMAINDER OF ERF 110 VAN DYKSBAAI Overstrand Municipality, Division of Caledon, Western Cape Province;

IN EXTENT 2384 (TWO THOUSAND THREE HUNDRED AND EIGHTY FOUR) SQUARE METRES

FIRST REGISTERED by Certificate of Registered Title No 48989/1984 with Diagram SG No. 9989/83 relating thereto and held by Deed of Transfer No T033447/2001

- A. SUBJECT to the conditions referred to in Deed of Transfer No T5132/1935.
- B. SUBJECT FURTHER to the provisions of the following Endorsement dated 25th April 1972 on Deed of Transfer No T29858/1070, which Endorsement reads as follows:

"Kragtens Not. Akte Nr 158/1972 ged 13/3/1972 is die Restant van Gedeelte 22 van die plaas "Klip Fonteyn" groot 93,2915 ha, hieronder gehou, onderhewig aan waterskema serwitute met betrekking tot:

- (a) die hoeveelheid van water per erf per dag;
- (b) die opgaring van water en opvangwerke;
- (c) die watertoevoer deur pype en waterleiding; en
- (d) bykomende regte-die water synde afkomstig van boorgate op die binnegemelde eiendom ten gunste van die Administrateur van die Kaapprovinsie in Trust van sodanige plaaslike owerheid benoem te word.

Soos meer ten volle sal blyk uit gesegde Not.Akte"

C. SUBJECT FURTHER to the conditions, contained in in Certificate of Registered Title Not T48989/84, imposed by the Administrator of the Province of the Cape of Good Hope when approving the Van Dyksbaai Township Extension No2 in terms of Ordinance No 33 of 1934, which conditions are the same as those set out in paragraph 1.C above.

D. SUBJECT FURTHER to the provisions of the Endorsement on Certificate of Registered Title No T48989/84, which Endorsement reads as follows, namely:

"Restant: Kragtens Akte van Transport Nr. T48990/1984 is die Restant van Erf 110 groot 2384 m² gehou hieronder, onderhewig aan die volgende voorwaardes opgelê deur die Administrateur in terme van Artikel 9 van Ord. 33 van 1934 tydens die goedkeuring van die onderverdeling."

1. Die eienaar van hierdie erf is verplig om sonder betaling van vergoeding, toe te laat dat hoofgasleidings, elektrisiteits-telefoon- en televisiekabels en/of drade, hoof- en ander waterpype en die rioolvuil en dreinerings, insluitende stormwater van enige ander erf of erwe, oor hierdie erf gevoer word en dit bopgrondsse installasies soos minisubstasies, meter kiosks en dienspale daarop geïnstalleer word, en wel op die wyse en plek wat van tyd tot tyd redelikerwys vereis word. Dit sluit die reg op toegang te alle redelike tye tot die eiendom in met die doel om enige werke met betrekking tot bogenoemde aan te lê, te verwyder of te inspekteer.

WHEREFORE the said Appearer, renouncing all right and title which the said

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No. 2000/071121/23

heretofore had to the premises, did in consequence also acknowledge it to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

EXACTAFRICA PROJECT MANAGEMENT (PROPRIETY) LIMITED
No. 2001/007231/07

or its Successors in Title or assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R2 560 000,00 (TWO MILLION FIVE HUNDRED AND SIXTY THOUSAND RAND).

IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE and EXECUTED at the Office of the Registrar of Deeds at Cape Town on

6th July

2005

[Signature]

d.d.

In my presence

[Signature]

REGISTRAR OF DEEDS

[Handwritten mark]

A. VIR AKTEBESORGER SE GEBRUIK / FOR CONVEYANCER'S USE:

(a) Gelyktydiges met ander registrasiekantore / deeltitels: Simult with other registries / sectional titles:

Kode / Code	Firma / Firm	Eiendom / Property	Kantoor / Office
1			
2			
3			
4			

(b) Kliënt atokopie van aktes permanent in Aktekanthuis geblaas: Client copies of deed filed permanently in Deeds Office

Aard en nommer van akte Nature and number of deed	Kode Code	Parawe van ondersoekers Initials of examiners
	T.R.	

(c) Notas / notes:

B. VIR AKTEKANTOOR GEBRUIK / FOR DEEDS OFFICE USE:

		Opmerkings Remarks	Paraal Initials
<p>BLACKBOOK 26 AUG 2013 Interdikte nagesien deur MAGDO TAMARA</p> <p>Datum Date:</p> <p>Interdikte nagesien deur Interdicts checked by</p> <p>Datum Date:</p> <p>Kantoor instruksies / Office instructions:</p> <p>Seksie / Section:</p>	(1) Dorp goedgekeur (geproklameer) Township approved (proclaimed)		
	(2) Begiftigingserwe Endowment erven		
	(3) Begiftiging Endowment		
	(4) Voorwaardes Conditions		
	(5) Mikro Micro		
	(6) Algemene plan General plan		
	(7) Titel akte Title deed		
	(8) Verbands teen dorpslief Bonds against township title		
	(9) Datum nagesien Date checked		

M25
SYMINGTON & DE KOK
 KAAPSTAD
1082
 TEL: 913 3137

UITVOERING - EXECUTION

A. VIR AKTEKANTOOR GEBRUIK / FOR DEEDS OFFICE USE:
 (a) Datum van indiening / Date of lodgement: 26 AUG 2013

LODGED
 8 7 AUG 2013

(b)

INGEDIEN
 8 8 AUG 2013

Onsnoekers / Examiners	Kamers Rooms	Skakeling / Linking	Verwerp / Reject	Passer / Pass
1 L. van der BERG 1120		32		Jme
2 M.E. MJEKULA 11.				
3				

A. VIR AKTEBESORGER SE GEBRUIK / FOR CONVEYANCER S USE:
 Aard van Akte byv. Transport, Verband, ens. Nature of Deed e.g.: Transfer, Bond, etc.

T000044460/2013

Verw. No/ Ref. No. MGO 1725	Skakeling / linking 3 . 2
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GELYKTYDIGE / SIMULS

Kode Code	Name van Partye / Names of Parties	Firma No. Firm No.	No. in slof/batch	Titelaktes ens. binne Titles etc. within
1 T	Overstrand Mun / Esactofrica	1082	2	T60930/94
2 B	Esactofrica / Business Partners	12	3	
3 T	Art 16: Overstrand Mun	1082	1	
4	HANDED IN FOR EXECUTION			
5	2 6 Aug 2013			
6	CARE TOWN			
7	HANDED IN FOR EXECUTION			
8				
9				
10				
11				



Registrasie versoek deur: _____ Date: _____
 Registration requested by: _____

Kort beskrywing van eiendom (algem para. 1 in Akte) / (Brief description of property (only para. 1 in Deed))

Erf 109 Van Dykebaai

Fee endorsement		
	Amount	Office fee
Purchase price/Value	R. 1 168 000,00	R. 900,00
Mortgage capital amount	R.	R.
Reason for exemption	Exempt i.e. <input checked="" type="checkbox"/> Cat. section Act.	

Prepared by me


CONVEYANCER
JANINE FOUCHE

DATA / VERIFY
12 SEP 2013
NCAPAI LINDA

T 000044460 / 2013

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

JANINE FOUCHÉ

appeared before me, REGISTRAR OF DEEDS at Cape Town, the said appearer being duly authorised thereto by a Power of Attorney granted to him by

OVERSTRAND MUNICIPALITY

which said Power of Attorney was signed at HERMANUS on 24 JUNE 2013.


DATA / CAPTURE
03 SEP 2013
LEEUID

Page 2

And the said appearer declared that his principal had, on 25 May 2013 truly and legally sold by Private Treaty, and that he, the said Appearer, in his capacity aforesaid, did, by these presents, cede and transfer to and on behalf of:

EXACTAFRICA PROJECT MANAGEMENT PROPRIETARY LIMITED
Registration Number 2001/007231/07

its Successors in Title or Assigns, in full and free property

ERF 109 VAN DYKSBAAI
 IN THE OVERSTRAND MUNICIPALITY
 DIVISION CALEDON, WESTERN CAPE PROVINCE

IN EXTENT 2397 (TWO THOUSAND THREE HUNDRED AND NINETY SEVEN) SQUARE METRES

FIRST TRANSFERRED by Deed of Transfer Number T10512/1974 with General Plan No. TP8401 relating thereto and held by Deed of Transfer Number T40938/1994.

- A. SUBJECT to the conditions referred to in Deed of Transfer No. T5132/1935.
- B. SUBJECT FURTHER to the terms of the endorsement dated 25 April 1972 on Deed of Transfer No. T29858/1970 which reads as follows:

"Kragtens Not. Akte Nr. 158/1972 ged. 13-3-1972 is die restant van gedeelte 22 van die Plaas "Klipfonteyn", 93,2915 ha hieronder gehou, ONDERHEWIG aan waterskema servitude met betrekking tot:

- (a) die hoeveelheid van water per erf per dag;
- (b) die opgaring van water en opvangwerke;
- (c) die watertoevoer deur pype en waterleiding; en
- (d) bykomende regte – die water synde afkomstig van boorgate op die binnegemelde eiendom ten gunste van die Administrateur van die Kaapprovinsie in trust van sodanige plaaslike owerheid bencem te word. Soos meer ten volle sal blyk uit gesegde Not. Akte."

- C. SUBJECT FURTHER to the conditions contained in Deed of Transfer No. T10512/1974 imposed by the Administrator of the Province of the Cape of Good Hope by virtue of Ordinance 33 of 1934 with the approval of Van Dyksbaai Township Extension No. 2, namely:
- (a) Alle woorde en uitdrukkings wat in die volgende voorwaardes gebesig word, het dieselfde betekenis as wat daaraan geheg word by die regulasies afgekondig by Provinsiale Kennisgewing Nr. 623 van 14 Augustus 1970.
 - (b) Ingeval 'n dorpsaanlegskema of enige gedeelte daarvan op hierdie erf van toepassing is of daarop van toepassing gemaak word, sal enige bepalinge daarvan wat meer beperkend is as enige voorwaardes van eiendomsreg wat op hierdie erf van toepassing is voorkeur geniet. Enige bepalinge van hierdie voorwaardes moet nie opgevat word as sou dit die bepalinge van artikel 146 van Ordonnansie No. 15 van 1952, soos gewysig, vervang nie.
 - (c) Die eienaar van hierdie erf is verplig om sonder betaling van vergoeding, toe te laat dat elektrisiteitskabels of -draade en hoof en/of ander waterpype en die rioolvuil en dreinerings, insluitende stormwater van enige ander erf of erwe, binne of buite hierdie dorp, oor hierdie erf gevoer word indien dit deur die plaaslike owerheid nodig geag word, en wel op die wyse en plek van tyd tot tyd redelikerwys vereis word. Dit sluit die reg op toegang te alle redelike tye tot die eiendom in met die doel om enige werke met betrekking tot bogenoemde aan te lê, te wysig, te verwyder of te inspekteer.
 - (d) Die eienaar van hierdie erf is verplig om sonder vergoeding op die erf die materiaal te ontvang of uitgrawings op die erf toe te laat al na vereis word, sodat die volle breedte van die straat gebruik kan word omrede van die verskil tussen die hoogte van die straat soos finaal aangelê en die erf tensy hy verkies om steunmure te bou tot genoeg van en binne 'n tydperk wat die plaaslike owerheid bepaal.
 - (e) Geen gebou op hierdie erf mag gebruik word of van gebruik verander word vir 'n ander doel as wat volgens hierdie voorwaardes toegelaat word nie.
- D. SUBJECT FURTHER to the following conditions imposed by the Overstrand Municipality:
1. The property may only be used for General Business Zone II;
 2. The development on the property must comply with the provisions of the Van Dyksbaai Zoning Scheme Regulations for Local Business Zone as promulgated in terms of the Land Use Planning Ordinance, No. 15 of 1985;
 3. Access to the property shall be from Parlemon Street;
 4. The height of the buildings is limited to two storeys as defined in the applicable Scheme Regulations at the time of the start of the development;
 5. All the required parking must be provided as stipulated by the applicable Scheme Regulations as from date of start of the development.

WHEREFORE the said Appearer, renouncing all right and title which the said

OVERSTRAND MUNICIPALITY

heretofore had to the premises, did in consequence also acknowledge it to be entirely dispossessed of, and disentitled to the same, and that by these presents, the said

EXACTAFRICA PROJECT MANAGEMENT PROPRIETARY LIMITED
Registration Number 2001/007231/07

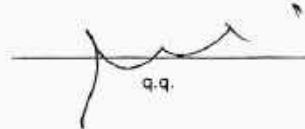
its Successors in Title or Assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R1 168 500,00 (ONE MILLION ONE HUNDRED AND SIXTY EIGHT THOUSAND FIVE HUNDRED RAND).

IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents and have caused the Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the REGISTRAR OF DEEDS at

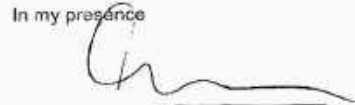
27 AUG 2013

Cape Town on



q.q.

In my presence



REGISTRAR OF DEEDS

ANNEXURE E 1/3

TR A Theart
(S. v. d. Merwe)

Alida Conradie - Rezoning, consolidation, consent use and departures Erven 107, 109 & 110 van Dyksbaai

From: a vEllewee <a.v.ellewee@gmail.com>
To: <aconradie@overstrand.gov.za>
Date: 2019/04/11 10:58 PM
Subject: Rezoning, consolidation, consent use and departures Erven 107, 109 & 110 van Dyksbaai



Dear Sir/Madam,

In connection with the application for the above-mentioned rezoning, I would like to voice my serious concerns to point 10.3 on p.28 of the application - SEWAGE: The way in which sewage is disposed of leaves much to be desired! At present sewage at the Great White House is pumped out about every other day! If the Overstrand Municipality grants this application, it is of utmost importance that serious attention is being given to the way in which this is happening!

The smell is unbearable! For a town which prides itself in its concerns for the environment and the 'Mecca' for overseas visitors that is being created, it is high time that urgent attention is given to the way in which sewage is being removed!

We have to close every door and window every time this practice takes place! Even then, the stench is everywhere! With further development of this magnitude, this practice will take place even more frequently!

The following is an extract from the **2016 Kleinbaai Nodal Development Study (page 17):** Meeting with Mr. Wilfred Chivell, 14 March 2014 • Mr. Chivell explains how the shark cage diving business works: o Majority is overseas visitors; o Interested in ecology and nature. Not just there to do shark dive, but to learn; o **Tourists stay in Cape Town and come to Kleinbaai for one day only. Need has not been expressed for accommodation in Kleinbaai, as other "must see" tourist destinations are in and around Cape Town.**

Thus, as stated by this study, is there really a demand for a development such as this?

Regards

Mrs A M van Ellewee
 ERF 112 - 11 Geelbek Street, Kleinbaai

FILE NO:	Erven 107, 109 & 110 Kleinbaai
SCAN NO:	12
COLLABORATOR NO:	1277507

11 APR 2019



BOSMAN SMIT PRETORIUS INC.

Reg no. 2009/018872/21
 Prokureurs - Attorneys
 Caledon

TO
 MR R JANKIE

*TR A Theat
 (Suid Merwe)*

Ons Verw/Our Ref:

U Verw/Your Ref

Datum/Date:

HJS

19 MAAHT 2019

Dear Sir

**RE: ERVEN 107,109,110 VAN DYKSBAAI FOR REMOVEVAL OF RESTRICTIVE TITLE
 DEED CONDITIONS, REZONING, CONSOLIDATION CONSENT USE DEPARTURES**

Your reference: 18/38

Mun reference 107, 109, 110 GKB

Kindly take note that we act on behalf of the Otto family trust erf 111

Except for the following MR AHJ DU TOIT on behalf of the DU TOIT family trust has no objection.

FILE NO: Erven 107, 109, 110 Kleinbruit ✓
SCAN NO: GKB 107
COLLABORATOR NO: 1268905

Reg no. 2009/018872/21
 BTW no. 4930254943
 Bank rek besonderheids:
 Bosman Smit Pretorius
 Absa Bank, Breederivier
 Rekening no. 4075025122
 Tak kode: 634456
 (NB: Haal asb. ons verw. hierbo aan by enige inbetalings)

Tel: (028) 2121108
 Faks / Fax (028) 214 1136
 E-mail: p.o.a: ontfangs@bosmansmit.co.za
 Postbus / PO Box 8 Caledon 7230
 Kerkstraat 1 / 1 Church Street Caledon 7230
 Wes-Kaap / Western Cape
 DOCEX 2.

H J Smit B.Proc - M Pretorius N.d.Pol.Admin, B.Prok

25 MAR 2019

- 1) That a high wall be built of at least 2½ m high between erf 111 and erf 110 "white shark" for both party's privacy.
- 2) That the roof water from rain for erf 110 be canalized so that the roofwater does not fall directly on erf 11 (as it is happening now)
- 3) That stricter rules be implemented regarding parking of restaurant guests parking in front of the family trust's house on the red lines

Attached hereto find you letter dated 7 March 2019 for your convenience.

Die uwe / Yours faithfully
BOSMAN SMIT PRETORIUS ING./INC.

Per;

H.J.SMIT

0823326167

Reg no. 2009/018872/21
BTW no. 4930254943
Bank rek besonderhede:
Bosman Smit Pretorius
Absa Bank, Breederivier
Rek no. 4075025122
Tak kode : 634456
(NB : Haal nsb. ons verw. hierbo aan by enige inbetalings)

Tel. (028) 2121108
Faks / Fax (028) 214 1136
E-mail/E-pos: anne@bosmansmit.co.za
Posbus / PO Box 6 Caledon 7230
Kerkstraat 1 / 1 Church Street Caledon 7230
Wes-Kaap / Western Cape
DOCEX 2

H J Smit B Proc - M Pretorius N.d.Pot.Admin, B.Prok

ANNEXURE F 1/4



TR A Theart
(Sold Mewe)

ESTABLISHED
2002

Town
Planning

Project
Management

Liquor
licensing

35 Duiker Street
P O Box 1247
Hermanus
7200

Tel: +27 (0)28 313 1411

Fax: +27 0865083248

Email:
admin@wrapgroup.co.za

Web:
www.wrapgroup.co.za

Wright Approach
Investments 136 CC

Reg No
CK 2002/960746/23

Our reference: 18/138
Your reference: 107, 109 & 110 GKB

21 May 2019

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Attention: SW van der Merwe

ERVEN 107, 109 AND 110 VAN DYKSBAAI: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, CONSOLIDATION, CONSENT USE AND DEPARTURE

An objection was received from Mrs A M van Ellewee to which we would like to respond as follows:

Objection	Response
<p>In connection with the application for the above-mentioned rezoning, I would like to voice my serious concerns to point 10.3 on p.28 of the application - SEWAGE: The way in which sewage is disposed of leaves much to be desired! At present sewage at the Great White House is pumped out about every other day! If the Overstrand Municipality grants this application, it is of utmost importance that serious attention is being given to the way in which this is happening!</p> <p>The smell is unbearable! For a town which prides itself in its concerns for the environment and the 'Mecca' for overseas visitors that is being created, it is high time that urgent attention is given to the way in which sewage is being removed!</p> <p>We have to close every door and window event time this practice takes place! Even then, the stench is everywhere! With further development of this magnitude, this practice will take place even more frequently!</p>	<p>The property owner is committed to ensure that the size of the tank on the subject property complies with the prescripts of the Overstrand Municipality (OM). The sewage is collected and disposed of by the OM and the OM is accountable for all smells which emanate from the subject property in this process. It is therefore proposed that the OM provide input on measures which can be taken to address the grievance of the objector.</p> <p>The owner of the subject property will comply with the regulations applicable to the volume of conservancy tanks required when building plans for extensions are submitted.</p>

FILE NO: Erven 107, 109 & 110 Van Dyksbaai
SCAN NO: GKB 107
COLLABORATOR NO: 1236874

22 MAY 2019 TP

ANNEXURE F 2/4

<p>The following is an extract from the 2016 Kleinbaai Nodal Development Study (page 17): Meeting with Mr. Wilfred Chivell, 14 March 2014</p> <p>Mr. Chivell explains how the shark cage diving business works:</p> <ul style="list-style-type: none"> Majority is overseas visitors interested in ecology and nature. Not just there to do shark dive, but to learn. Tourists stay in Cape Town and come to Kleinbaai for one day only. Need has not been expressed for accommodation in Kleinbaai, as other "must see" tourist destinations are in and around Cape Town. <p>Thus, as stated by this study, is there really a demand for a development such as this?</p>	<p>The consent use for residential buildings which is applied for is not intended to exclusively target the visitors who use shark cage diving facilities on the subject property but also tourists who visit Kleinbaai and not necessarily for shark cage diving.</p> <p>It should also be noted that business owners normally decrease or expand an element of a tourism business in response to changing market conditions. The fact that the owner of the subject property is proposing a residential building to accommodate tourists indicates that there is a definite need for the facility.</p>
---	--

Kind regards



REA JANKIE
TOWN PLANNER (B/8392/2017)



TP N. Shabane
(S. J. M. M.)
ANNEXURE F 3/4

Project Office

Town Planning & Project Management

Our Reference: 18/138
Your reference: 107,109 & 110 GKB (2828/2018)

18 October 2019

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

FILE NO:	Even 107 & 109 and 110 of Jonkbaai
SCAN NO:	GKB 107 ✓
COLLABORATOR NO:	133 9656

Attention: Mr SW van der Merwe

ERVEN 107,109 AND 110 VAN DYKSBAAI: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING, CONSOLIDATION, CONSENT USE AND DEPARTURES

A comment was received from Bosman Smit Pretorius Inc. Attorneys, on behalf of the Otto Family Trust, owner of Erf 111 Van Dyksbaai. No objection is submitted to the submitted planning application, but requested the following conditions of approval:

Condition of approval sought	Response
That a high wall be built of at least 2,5m high between Erf 111 and Erf 110 "white shark" for both party's privacy.	This request has no bearing on the application and is a matter that can be discussed by the two neighbours to find an amicable solution.
That the roof water from rain for erf 110 be canalised so that the roof water does not fall directly on Erf 111 (as is happening now).	This request is a requirement in terms of Section 16.1(b)(vi) of the OMZS and the owner of the subject property will comply with the requirement.
That stricter rules be implemented regarding parking of restaurant guests parking in front of the family trust's house on the red lines.	The site development plan which was submitted with the town planning application indicates additional parking bays which are not currently present on the subject property. The additional parking bays which will be created should this application be approved and implemented will address the parking concern which is highlighted by the objector.

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

Wright Approach Investments
136 CC
(Reg No. 2002/060745/23)

35 Duiker Street,
P O Box 1247
Hermanus, 7200

Tel: +27 (0)28 313 1411
Fax: +27 0865083248

Email: admin@wrapgroup.co.za
Web: www.wrapgroup.co.za

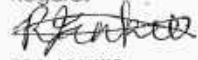
TP 18 OCT 2019

Established 2002

Conclusion

As no real objection to the planning application was submitted and only certain conditions of approval are sought, it was adequately addressed in the abovementioned response.

Regards



REA JANKIE
TOWN PLANNER (B/8392/2017)

REGISTERED POST

Our Ref: HW/ OVERBERG/ OVERSTRAND/ ERVEN 107, 109 & 110
 Case No.: 19020505L80208E
 Enquiries: Lwazi Bhequni
 E-mail: Lwazi.Bhequni@westerncape.gov.za
 Tel: 021 483 9689
 Date: 19 February 2019

Exact Africa Project Management (Pty) Ltd
 P.O. Box 78
 Goanabadi
 7230



RESPONSE TO NOTIFICATION OF INTENT TO DEVELOP: FINAL
In terms of Section 38(4) of the National Heritage Resources Act (Act 25 of 1999) and the Western Cape
Provincial Gazette 4061, Notice 298 of 2003

NOTIFICATION OF INTENT TO DEVELOP: REZONING AND CONSOLIDATION OF THREE ERVEN 107, 109 & 110, SUBMITTED IN TERMS OF SECTION 38(4) OF THE NATIONAL HERITAGE RESOURCES ACT (ACT 25 OF 1999)

CASE NUMBER: 19020505L80208E

The matter above has reference.

Heritage Western Cape is in receipt of your application for the above matter received on 11 February 2019. This matter was discussed at the Heritage Officers meeting held on 18 February 2019.

You are hereby notified that, since there is no reason to believe that the proposed rezoning and consolidation of three Erven 107, 109 & 110, will not impact on heritage resources, no further action under Section 38 of the National Heritage Resources Act (Act 25 of 1999) is required.

However, should any heritage resources, including evidence of graves and human burials, archaeological material and palaeontological material be discovered during the execution of the activities above, all works must be stopped immediately and Heritage Western Cape must be notified without delay.

This letter does not exonerate the applicant from obtaining any necessary approval from any other applicable statutory authority.

HWC reserves the right to request additional information as required.

Should you have any further queries, please contact the official above and quote the case number.

Yours faithfully


 Mxolisi Dlamuka
 Chief Executive Officer, Heritage Western Cape

www.westerncape.gov.za/cas

Street Address	Postal Address
Heritage Western Cape 1000 Main Road, Cape Town, 8001	Heritage Western Cape P.O. Box 1000, Cape Town, 8001
Heritage Western Cape 1000 Main Road, Cape Town, 8001	Heritage Western Cape P.O. Box 1000, Cape Town, 8001

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED,
REZONING, CONSOLIDATION, CONSENT USE & DEPARTURE: ERVEN
107, 109 & 110, VAN DYKSBAAI (2828/2018)**

Water	:	In order
Sewer	:	In order
Roads and traffic	:	In order
Stormwater (SW)	:	Refer to condition 12 & 13
Electricity	:	Refer to condition 17

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 (2018/2019) is as follows:

Freehold erven:

Water	R 21 688.60 x 1.86743 =	R 40 501.94
Sewerage	R 14 823.16 x 1.29925 =	R 18 999.14
Road	R 6 557.01 x 1.95361 =	R 12 809.84
TOTAL (inclusive of VAT)		= R 72 310.92

Note:

- 1.2.1 The above figures are estimates
1.2.2 The above figure exclude investigation and connection fees

2. that the developer at his cost constructs the internal municipal civil and electrical services for the development as well as any link or bulk municipal services that need to be provided;
 - 2.1 the Director: Infrastructure and Planning may require the developer to construct internal, link, and/or bulk municipal services to a higher capacity than warranted by the development for purposes of allowing other existing or future developments to also utilise such services, provided;
 - 2.2 the rates and prices of such work be established in terms of a system which is fair, equitable, transparent and cost effective;
 - 2.3 if link municipal services have already been provided, the developer to contribute towards the cost thereof, the Director: Infrastructure and Planning to determine the amount of such contribution in terms of a system which is fair and equitable;
3. that servitudes for municipal services be registered in favour of the Council at the developer's cost in respect of all main services to be taken over by the Council and all existing municipal services concerned crossing private property;
4. that the developer indemnifies and keep the Council indemnified against all actions, proceedings, claims and demands, costs, damages and expenses arising out of the establishment of the township, the provision of services to the township or the use of servitude areas or municipal property:
 - 4.1 for a period which shall commence on the date that the installation of the services to the township are commenced with and shall expire after completion of the maintenance period;
 - 4.2 the developer to submit an acceptable public liability insurance policy to the Council and to pay the premium in advance for the period as set out above before any work concerned may commence;
 - 4.3 the insurance to be to an amount which shall not be less than that required by the SAACE;
 - 4.4 such indemnification against loss, claims or damages, to include claims pertaining to consequential damages by third parties and whether as a result of the damage to or interruption of or interference with the Council's services or apparatus or otherwise;
5. that a plan of all existing services be submitted to the Director: Infrastructure and Planning, by the developer and that any of the

services that need to be relocated, be done by the developer at his cost to the satisfaction of the Director: Infrastructure and Planning:

- 5.1 way-leaves must be obtained from the Operational Manager;
- 5.2 such way-leaves to be obtained prior to any excavation on public property or property where existing services are located;
6. that the developer may enter into an agreement with the Council to install or upgrade bulk and/or link municipal services and amenities at an agreed cost, subject to the following:
 - 6.1 such costs to be established in accordance with a system which is fair, equitable, transparent, competitive and cost effective;
 - 6.2 such costs shall be set-off against (part or full) development contributions payable in respect of engineering services;
 - 6.3 to the extent that such costs exceed the development contributions payable, the Council will refund the developer the difference with interest calculated at the prime rate, when funds are available;
7. that plans of all the internal municipal civil and electrical (high and low voltage supply) services and such link services as required by the Director: Infrastructure and Planning, prepared by an ECSA registered professional engineer/technologist, be submitted to the Director: Infrastructure and Planning for his prior approval;
8. the "Guidelines for the Provision of Engineering Services in Residential Townships" (Blue Book), SABS 1200 specifications and the Design and Construction Standards for civil and electrical services of the Council to be used as the standard design and construction criteria with which such plans must comply;
9. the Director: Infrastructure and Planning to be notified in writing of all deviations from the Standard Design and Construction Criteria when plans are submitted for his approval and such deviations to be separately approved in writing by the Director: Infrastructure and Planning;
10. the successful completion of such works to be supervised and certified by an independent professional civil engineer/technologist i.e. a professional civil engineer/technologist who has no direct financial interest in the development, other than payment as standard professional fees for the work concerned; and

11. such independent professional civil engineer/technologist to furnish the Director: Infrastructure and Planning with satisfactory proof of his professional indemnity insurance to an amount which shall not be less than that required by the SAACE and which insurance shall be valid for the relevant contract and maintenance period;
12. that a stormwater management plan, which may include attenuation facilities to ensure that the pre-development run-off is not exceeded and that erosion and pollution is minimised, be submitted to the Director: Infrastructure and Planning for approval and that the approved management plan be implemented by the developer at his cost to the satisfaction of the Director: Infrastructure and Planning;
13. that the above stormwater management plan include the following:
 - 14.1 pre-development run-off from the catchment area;
 - 14.2 post-development run-off from catchment area;
 - 14.3 existing stormwater reticulation system and the capacity thereof;
 - 14.4 connection of internal stormwater reticulation system;
 - 14.5 overland escape routes
14. that all municipal civil and electrical services installed or constructed by the developer, be maintained after completion thereof for a maintenance period, as described in the General Condition of Contract for works of Civil Engineering Construction – 2004, of 12 months, and
15. that a Certificate of Completion together with as-built services plans be provided by the independent professional engineer/technologist to the Overstrand Municipality. As-built plans to be on quality paper, together with a DXF file thereof;
16. that the refuse generated by the consolidated erf will be removed by the municipality from the central waste transfer station as per municipal arrangement.
17. that only one electricity connection will be available to the consolidated erf. Should any additional capacity be required, the standard application procedures, tariffs and fees will apply. All costs will be for the applicant's account.
18. that the existing water connection to Erf 110 shall be used to serve the proposed consolidated erf. The existing water connection to Erf 107 shall be discontinued and be blanked off.
19. that the existing sewer conservancy tank on Erf 110 shall be used to service the proposed consolidated erf.
20. that any commercial food preparation facilities (eg. restaurant/ guest house etc.) must be provided with a grease trap, which must comply

with the standards and specification of the Department: Operational Service.

21. that the that the developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 140400 – P: 2010: Drainage;
22. that any additional and / or extended vehicle entrances will be for the developer's account
23. that on-site parking facilities be provided as per Planning Schedule and to the satisfaction of the Department: Operational Services.



DENNIS HENDRIKS
SENIOR MANAGER:ENGINEERING SERVICES



DATE