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ERF 146, 2 MARK STREET, GANSBAAI: APPLICATION FOR CONSENT USE, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: J STEENKAMP ON BEHALF OF J & MM STEENKAMP

146 GGB (3745/2021)

SW van der Merwe
19 September 2023

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Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 02 September 2021 from J Steenkamp on behalf of J & MM Steenkamp in terms of the Overstrand Municipality Amendment By-law on Municipal Land Use Planning, 2020 for the following:

- ❖ **consent use** in terms of Section 16(2)(o) of the By-law, to accommodate a place of entertainment (five slotmachines);
- ❖ **departure** in terms of Section 16(2)(b) of the By-law from 3m to 0m to accommodate the existing caretakers dwelling and storeroom 1 and 2, and
- ❖ **determination of an administrative penalty** in terms of Section 16(2)(q) of the By-law, to accommodate the existing caretakers dwelling and storeroom 1 and 2.

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The application property is situated within the Gansbaai CBD, Bulk Zone 1 area and zoned Business Zone 2: General Business, limited to the operation of a restaurant. The property measures 991m² in extent and is developed with the main restaurant building, three flats and associated outbuildings as per the Site Development Plan (SDP). The property is situated in the Heritage Protection Overlay Zone (HPOZ), Local Area.

The property affords views over the Gansbaai Harbour to the north and west towards Walker Bay and is bordered by commercial properties, i.e. the Gansbaai Coffee Company to the north, Gansbaai Boarding Lodge to the east, a pet supply shop to the south east and Saxon Lodge at the rear (zoned for General Residential Zone 3 purposes). The western erf boundary is bordered by a single residential property, owned by the applicant. The surrounding area also contains several Local Heritage Sites (grade 3 A, B & C).

Rezoning approval was granted on 28 February 2007 from Residential Zone 1: Single Residential to Business Zone 2: General Business (rezoning approval attached as Annexure D) limited to a restaurant of 180m² only, subject to compliance with conditions imposed by engineering services and the provision of on-site parking at a ratio of one parking bay for every four seats. The restaurant has been operating since the rezoning approval, without adherence of the approval conditions. The applicable contraventions are:

- Non-payment of bulk development contribution levies.
- On-site parking provision not implemented in accordance with approval conditions.
- Unauthorised renovations to a heritage building (i.e. open stoep, aluminium sliding windows to the restaurant) without approval in terms of the National Building Regulations and Heritage Western Cape.
- Converted outbuildings on the rear property boundary into three dwelling units without approval in terms of the National Building Regulations.

Following registration of transfer in 2019 into the name of the applicant renovations were carried out comprising the enclosure of the unauthorised stoep with sliding aluminium windows and a roof, internal alterations comprising a new enlarged kitchen, in / outdoor smoking sections and a larger bar area. The aforesaid renovations had been conducted by the current owner without formal approval in terms of the Land Use Scheme with reference to the HPOZ, the National Building Regulations and the Heritage Resources Act.

The SDP indicates further unauthorised building work, i.e. store extension onto the eastern- and southern rear property boundaries and a covered patio on the rear boundary not addressed as part of the building line departures.

The application submitted relates to a proposed consent use to accommodate a place of entertainment (5 slot machines), departure to accommodate the existing unauthorised caretakers dwelling as well as conversion of the unauthorised flats into an outbuilding (storeroom 1 and 2) situated on the property boundaries as well as the determination of administrative penalty to accommodate the aforesaid.

Initially the application for place of entertainment included an application to conduct live music, which application, following receipt of objections, was withdrawn by the applicant and will not form part of the evaluation of the application.

4. SUMMARY OF APPLICANT'S MOTIVATION

The applicant's motivation is summarised as follows:

- ❖ Property is zoned General Business Zone 2: General Business that permits under primary rights a restaurant, caretakers' dwellings, and outbuildings as per the Site Development Plan.
- ❖ It is not sure when the structures (caretakers dwelling and outbuildings) had been constructed.
- ❖ According to the owner all buildings existed when the transfer took place.
- ❖ The only changes made by the owner were the replacement of dilapidated windows.

- ❖ The main building (restaurant) is listed in terms of the Heritage Register, being older than 60 years.
- ❖ Place of entertainment definition includes gambling.
- ❖ Departure is required as a 3m building line exist along the lateral- and rear property boundaries.
- ❖ Title deed does not contain any restrictions.
- ❖ Primary use is business premises that include a restaurant.
- ❖ No new buildings will be erected.
- ❖ Need relates to owners wish to upgrade the existing restaurant.
- ❖ Another upper-class restaurant has an existing in Gansbaai.
- ❖ Property does not have any biophysical features that will impact redevelopment.
- ❖ The position of the existing business is not regarded un-desirable.
- ❖ Character of the area will not be affected.
- ❖ It will not be necessary to consider heritage value as the existing building will not be affected.
- ❖ The area is characterized by various business uses forming a prominent part of the character of the area.
- ❖ The existing position of the restaurant and caretakers dwelling will not have a detrimental impact on vested rights of the area.
- ❖ The proposed gambling machines will not lead to a change in the aesthetic value of the built environment.
- ❖ Restaurant and tourism industry is a large employer.
- ❖ The entire development will provide employment opportunities for 11 people and contributes to the local economy.
- ❖ Proposal will enhance the future character of the area.
- ❖ Proposal is an example of the promotion of spatial and socio-economic integration.
- ❖ Low traffic generation not considered to have a significant impact of the road network and will not impact traffic flow patterns.
- ❖ The GLA (restaurant and storeroom) amounts to 239m² requiring 11 on-site parking bays in accordance with the Overstrand Land Use Scheme (restaurant 9,5 bays and 1,5 bays for the caretakers' unit).
- ❖ All services exist and are sufficient to accommodate the existing buildings, including existing and proposed uses.
- ❖ Application is consistent with the PSDF, SDF and Overstrand Municipal Growth Management Strategy.
- ❖ The proposal will not have a negative impact on the heritage value of the subject property.
- ❖ Proposal does not trigger listed activities in terms of NEMA.
- ❖ Proposal is consistent with the planning principles in terms of LUPA and SPLUMA.

Administrative penalty is motivated as follows:

(a) *nature, duration, gravity and extent of the contravention*

The property owner does not violate any regulation.

(b) the conduct of the person (allegedly) involved in the contravention

Application and submission of as-built plans proves the owner is not deliberately involved in any contravention. Plans had been drawn up to legalise the flats on the property. The structures were shown on the 1993 and 1997 building plans as a garage, wendy house and storeroom. The current owner only converted the interior into dwelling units.

(c) a report by a quantity surveyor in matters of unauthorised building/construction

Report not submitted.

(d) whether the unlawful conduct was stopped

There is no unlawful conduct. The use is primarily for restaurant purposes and ground floor flats.

(e) whether the person allegedly involved in the contravention has previously contravened this By-law or a previous planning law

The registered owner never deliberately contravened the By-law or a previous law.

- ❖ The proposal complies with the Overstrand Land Use Scheme.
- ❖ Building plans will be submitted to municipal satisfaction.
- ❖ The proposal by the applicant is an attempt by the property owner to bring development that will add value to the area.
- ❖ There is a need for the proposed business in the area and Overstrand.
- ❖ Demand and economic viability determine the need for development.
- ❖ Local economic conditions, townships far from the opportunities offered by the applicant and unprecedented growth of Gansbaai makes the proposal viable and favourable on the application property.
- ❖ Proposal adheres to the land use scheme.
- ❖ Proposal will positively contribute the local economy, including Overstrand as a whole.
- ❖ Proposal will have no negative impacts in general.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local newspaper	N/A	15 April 2022	20 May 2022
Notices	Yes	20 April 2022	20 May 2022
Internal Departments	Yes	14 April 2022	20 May 2022
Ward Committee	Yes	30 August 2022	07 October 2022
Total comments	Two (2) valid letters of comment/objection Three (3) late letters of comment/objection		
Total letters of support	NONE		

Was public participation undertaken in accordance with section 46- 50 of the By-law on Municipal Land Use Planning?	Yes
Was the application processed correctly (if no, elaborate below):	Yes
Is the proposal consistent with the principles referred to in chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)	Yes

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

Name	Date received	Summary of comments
Building Control	19/04/2022	No objection in terms of NBR and it's act. The building plan application must comply with all applicable law.
Heritage Western Cape	22/04/2022	Attached as Annexure G.
Fire Services	25/04/2022	No objection, subject to compliance with the provision of SANS 10400-A:2016, 10400-T:2020 and the By-law relating to community fire safety.
Traffic Department	01/05/2022	Take note.
Waste Management	17/05/2022	No objection
Health	20/05/2022	Applicant to apply for health certificate to operate as accommodation establishment under the MHS By-law.
Engineering Services	2023/01/25	Attached as Annexure H.
Local Heritage	31/08/2023	Supporting the town planning application. Enclosing of stoep not supported.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Two letters of objection were received from Interactive Town and Regional Planners on behalf of JM Badenhorst Elektries, the owner of Erf 140, Gansbaai and AJ Smit, the owner of Mustang Sally situated on Erf 642 Gansbaai. Three late objections were received from, A Badenhorst, the owner of Erf 140, Gansbaai, and D Sawtelle, on behalf of Saxon Lodge CC, the owner of Erf 145, Gansbaai and A De Waal, on behalf of Gansbaai Boarding Lodge, the owner of Erf 139, Gansbaai. The objections are attached as Annexure D and the applicant's response thereto as Annexure E.

The late objections will be evaluated; however, these objectors will be notified of the outcome only.

The main grounds of objections are summarised as follows:

Objection 1: The issue of live music, place of entertainment and noiseResponse from applicants

The application for place of entertainment is to obtain permission for limited payout machines and do not require live music or any other sort of entertainment. The application for live entertainment / music had been withdrawn.

Response from town planner

The application to conduct live entertainment had been withdrawn and forms no longer part of the evaluation of the application. The application for place of entertainment relates to the installation of 5 limited payout machines, which is not considered to impact upon vested rights in terms of noise and disturbance being situated within the restaurant building. The objectors also failed to put a valid case forward in this regard and are deemed to be a generalisation.

Objection 2: Inadequate parkingResponse from applicant

The applicant states parking is sufficient from 2006 with the restaurant approval and is brought up to date with the newly drafted plans for the alterations submitted to the Building Department. Entrance and exist will not be affected and was in place before the application was submitted.

Response from town planner

The applicant's comment is not agreed with. In accordance with the rezoning approval of 2007 on-site parking provision is to be made at a ratio of one bay per four seats, whilst the restaurant is limited to 180m² (including a 60m² kitchen). The SDP now indicates a restaurant with 63 seats, whilst the proposed place of entertainment will have five seats as well as additional Gross Leasable Area (outbuildings) amounting to 91m² requiring 23 on-site parking bays. The proposed SDP indicates 11 on-site parking bays. The proposal is therefore not compliant with the applicable parking ratio. The parking layout submitted is also not a true reflection of the current limitations of the site that will impact negatively on vehicle manoeuvring. Refer to the evaluation for further discussion of the parking layout as per the SDP.

Objection 3: Limited payout machines can cause traffic problemsResponse from applicant

The restaurant loses 15m² of floor space because it is taking away three tables, i.e. 12 people implying decreased deliveries for the restaurant.

Response from town planner

In terms of the approval conditions parking is calculated at one bay per four seats. The approved restaurant had 30 seats. The proposed SDP indicates 63 seats and 5 for the proposed place of entertainment. Thus, the applicants comment that there will be a reduction in on-site parking is not agreed with.

Objection 4: Locality and zoningResponse from applicant

The proposal will not change the scale and character of the area and complies with the Land Use Scheme. The current business exists, with improvements made and continue to be made as per the draft building plans and will not impact the coastline, nor will the additional five limited payout machines be noticeable and will not impact the site.

Response from town planner

The proposed place of entertainment will be situated inside the building and is not considered to negatively impact the character of the area, sense of place or vested rights of the adjoining properties. The objectors in this regard did not put forward a substantive case and merely speculates; therefore the objection should be dismissed.

Objection 5: Character of the area and lifestyle on adjacent propertiesResponse from applicant

Different and competing interest groups with their own beliefs, social and cultural and religious practices are a normal feature of a developed society. One of the core elements of the constitution is all citizens are entitled to freedom of belief, religion, or opinion and that a single group cannot be permitted to dominate others. Licensed gambling is a legitimate leisure activity.

Response from town planner

According to the objectors the character of the area is residential and relaxed, and the proposal will adversely impact vested rights in terms of noise and disturbance and property value.

The statement with reference to area character is not agreed with. The application property is located within the CBD of Gansbaai, Bulk Zone 1. Surrounding land uses predominantly consist of commercial uses, including the harbour to the west that includes harbour related industrial activities. The applicant's holiday home (residential) abuts the western property boundary, whilst Saxon Lodge is situated to the rear and Gansbaai boarding lodge adjacent to the east. The latter two properties do not have a single residential zoning but provides overnight accommodation for tourists. From the aforesaid it is clear that the area has a mixed character.

The objector further states that limited payout machines do not attract upper class individuals. This statement is speculative and cannot be entertained.

Given the location of the application property, the mixed character of the surrounding area and that the application to conduct live entertainment has been withdrawn the opinion is held that five limited payout machines situated inside an existing building will not negatively impact the area character or vested rights of adjoining properties by reason of noise and disturbance.

Objection 6: Attack on the municipalityResponse from applicant

No comment is offered on the municipal administrative processes.

The applicant is of the view that it is common practice to address personal frustration with the municipality, but that these comments have no reference to the application in hand.

Response from town planner

Public participation occurred in accordance with the provisions of the By-law entailing advertisement in the local paper, serving of registered notices including the Ward Committee where several interested groups are represented as well as the Ward Councillor. In terms of the By-law there is no legal requirement to forward the full application to interested and affected parties. The advertisement and registered notices clearly indicated where further information regarding the application could be obtained from.

Objection 7: Heritage, building lines and zoningResponse from applicant

All these issues were sorted out before the application was submitted.

Response from town planner

The applicant submitted an application for building line departure to accommodate some encroachments, whilst with zoning the applicants refer to the proposed consent use. The aforesaid applications are evaluated under desirability in paragraph 12 below.

With reference to heritage, OHAC supports the proposed place of entertainment but not the enclosure of the stoep. The latter is not part of the application and will be dealt with in terms of the HPOZ and National Building Regulations.

Objection 8: Emotional objections of a personal viewResponse from applicant

The applicant is of the view that the objectors did not demonstrate the undesirability of the proposed limited payout machines within the specific geographical environment with reference to social, religious, educational, cultural, economic, environmental, transport and land use aspects. A mere objection upon moral or religious grounds is not sufficient to render the application undesirable. The applicant is of opinion that the objection is based on moral and religious grounds.

Response from town planner

None of the objectors clearly states that it is based on religious or moral grounds. Objections was based on noise, disturbance impact on vested rights of adjoining property owners and a biased description of the area character to residential not acknowledge the location of the property in the CBD and adjacent predominant commercial uses.

Objection 9: There are already five establishments with approval for limited payout machines and the market is already saturatedResponse from applicant

No comment provided.

Response from town planner

The application cannot be refused based on business competition and will be evaluated upon merit. In this regard the onus remains on the applicant to motivate the desirability of the proposal and demonstrate compliance with the By-law, including the Land Use Scheme and Overlay Zone.

Objection 10: The application is vague, lacks motivation and reason, whilst neither need or desirability are provedResponse from applicant

The applicant did not comment on this point of objection.

Response from town planner

The objectors' comment is agreed with. The application did not include all required applications (refer to paragraph 12 for detailed discussion), whilst the scale and impact of the proposal is not considered in terms of vested rights of adjoining property owners. The applicant's motivation for need and desirability is based on generalisations and cannot be supported.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

N/A

9. MUNICIPAL ASSESSMENT OF COMMENTS

N/A

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)**10.1 Background**

N/A

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

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

The objectives relating to:

Spatial Justice

The property comprises an existing erf in the CBD of Gansbaai. The proposal will not impact negatively in terms of historic spatial imbalances. The property is centrally located and provide access to opportunities.

Spatial Sustainability

The proposal is in line with the existing overhead planning documents that adhere to the principle of spatial sustainability and will not impact upon agricultural or conservation worthy land.

Efficiency

The development will facilitate the optimal use of the property being conveniently located in the CBD.

Spatial Resilience

The proposal is in line with the overhead planning documents that adhere to the principle of spatial sustainability.

Good Administration

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

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

Same as Point 10.2 above.

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

The property is situated within the CBD of Gansbaai. The existing and proposed land uses is therefore consistent with the SDF.

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

N/A

10.6 Impact on Municipal Engineering Services

The existing services are available and have been viewed positively by the Engineering Services Department, subject to conditions (see attached Annexure H), including payment of a bulk service contribution.

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

The proposal does not trigger the provisions of NEMA.

Alterations made to the existing building, older than 60 years, requires approval of Heritage Western Cape in terms of the National Heritage Resources Act.

The property is situated within the Heritage Protection Overlay Zone. The application was referred to OHAC for comment who did not object to the proposed consent use but states that the stoep enclosure is not supported.

10.8 Existing and proposed zoning comparisons and considerations

The application is in line with the Overstrand Zoning Scheme that provides for a place of entertainment as a consent use, the use changes applicable to buildings on the rear boundary and application for determination of an administrative penalty to be addressed through an application process.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12.THE DESIRABILITY OF THE PROPOSAL

The application property is situated within the CBD of Gansbaai and Heritage Protection Overlay Zone (HPOZ) and surrounded by various heritage properties. The relationship between the property, the Gansbaai Harbour and surrounding area should be carefully considered.

Proposed consent use to accommodate 5 limited payout machines

The proposed limited payout machines will be situated inside the existing restaurant, thus no adverse impact to the area character or the HPOZ would occur. Further, the objectors did not provide any substantive motivation as to the undesirability of the proposed limited payout machines, only generalisations with regards to noise and disturbance, impact on the character of the area, including the HPOZ.

The applicant's motivation on the other hand is full of general statements and the opinion is held that the proposal had not been properly motivated in terms of need, desirability, impact upon vested rights of adjoining property owners.

The 2007 rezoning approval limits the use of the property to a restaurant only. The application for consent use (place of entertainment) did not address the amendment of the aforesaid condition. The consent use application cannot be considered in isolation and cannot be supported.

The proposed parking layout is misleading and not a true reflection of the site-specific limitations. The SDP indicates the parking area to extend onto the western lateral property boundary with Erf 631. The SDP did not indicate that the parking area is defined by a retaining structure situated ± 1 m from the western property boundary, leaving a distance of 10,3m between the retaining structure and the stoep. The resulting manoeuvring space is therefore insufficient.

The applicant motivates that on-site parking provision complies with the scheme regulations. The rezoning approval in 2007 stipulated a parking ratio of one parking bay per four seats for the restaurant. The parking ratio for the proposed place of entertainment and storage facilities must comply with the current land use scheme. Based on a maximum of 30 seats, only 8 on-site parking bays were required at the time.

Currently the restaurant, bar and smoking section has 63 seats whilst an additional five seats are proposed for the place of entertainment. Together with the unauthorised caretakers dwelling and storage buildings 23 onsite parking bays are required calculated as follows:

	Parking ratio	Number of seats	Parking required
Existing restaurant & bar	1 bay per four seats	63	15,75
Caretakers dwelling	2 bays	N/a	2
Outbuildings (91m ²)	4 bays per 100m ² GLA		3,64
Proposed place of entertainment	1 bay per four seats	5 seats	1,25
TOTAL			23

The existing restaurant on its own triggers 16 on-site parking bays whilst the SDP only provides for 11 on-site parking bays. The proposal is therefore likely to contribute to on-street parking, which is not desirable and cannot be supported. The applicant did not address alternative parking options provided for in the land use scheme as part of the application.

The parking layout cannot be fully evaluated as it is lacking key dimensions and does not reflect existing site limitations (i.e. position of retaining wall being set back from the lateral boundary reducing the manoeuvring area).

The opinion is therefore held that the proposed place of entertainment cannot be supported for the following reasons:

- The use of the property is limited to a restaurant. The application for place of entertainment did not incorporate an application for amendment of conditions of approval.
- The applicants' motivation is based on generalizations and did not properly assess need and desirability of the proposal.
- Insufficient on-site parking provision, resulting in on-street parking which has not been addressed as part of the application.
- Misleading parking layout extending onto the lateral property boundary, whilst on-site constraints with reference to the retaining being set almost 1m from the lateral boundary resulting in-adequate manoeuvring space on-site.
- Parking layout lacks key dimensions and therefore cannot be properly evaluated.

Having had regard to the reasons above, the application for a place of entertainment is not considered desirable and cannot be supported.

Proposed departure of the rear building line from 3m to 0

Historic building plans indicate a double garage and a single outbuilding used as a packing shed on the rear property boundary. The double garage has been converted into two dwelling units and the former packing shed in a caretakers dwelling. It is proposed to retain the caretakers dwelling but to convert the remaining two dwelling units to storage purposes (indicated as store 1 and 2 on the SDP), hence the proposed departure from 3m to 0m to accommodate the aforesaid structures. The application did not include the store on the western side of the caretakers flat, nor the covered patio situated between store 1 and 2.

The caretakers dwelling and store 1 and 2 as per the SDP is contained in existing buildings dating back to the early 90's. Given the alterations inside the building line, the encroachments need to be considered by means of a departure application. The structure exist for a number of years without any former complaints, contains no window / door openings on the property boundary (or within 1m) and is not considered to detract from the character of the area or vested rights of the adjoining property owners by means of noise and disturbance. The rezoning approval however limits the use of the property to restaurant purposes only, therefore only the departure pertaining to storeroom 1 & 2 (former garage) is supported as an outbuilding and is considered a primary right. The use change pertaining to the caretakers dwelling cannot be considered in isolation as an application for amendment of the conditions of approval in terms of the By-law is required. Contrary to the applications motivation a caretakers dwelling is not a primary right (refer to the Zoning Certificate attached as Annexure I).

The store building on the lateral- and rear property boundary as well as the covered patio on the rear property boundary between the caretakers dwelling and store 1 and 2 did not form part of the application and can therefore not be evaluated. As part of the conditions of approval, the applicant will be required to submit the required application within 30 days of the final approval of the application.

Determination of an Administrative Penalty

In terms of the By-law the applicant must provide the following in terms of Section 90(3) of the By-law, namely:

(a) nature, duration, gravity and extent of the contravention

The unauthorised conversion of the double garage into a dwelling unit has been noted during a site inspection of the building inspector on 15 December 2009. The applicant states that the outbuildings are indicated on building plans dated 1993 and 1997 and existed on the property when transfer occurred during 2019. It is not clear when the conversion of the packing shed into a caretaker's dwelling occurred. The applicant states in the motivation that the dwelling units existed in 2019 when the property was bought. No mention is made pertaining to the existing unauthorised outbuildings and covered patio.

(b) the conduct of the person (allegedly) involved in the contravention

The property owner submitted as built building plans proofing that he is not deliberately involved in any contravention.

The applicant's statement is not agreed with. The applicant contrary to the above made external alterations to a building older than 60 years in contravention of the By-law with reference to the HPOZ, the National Building Regulations as well as the National Heritage Resources Act, although these alterations does not form part of the application under consideration, the statement the he is not deliberately involved in any contravention is not correct.

(c) a report by a quantity surveyor in matters of unauthorised building/construction

No report provided.

(d) whether the unlawful conduct was stopped

There is no sign of unlawful conduct according to the applicant.

This statement is not true, since the application entails departure and an administrative penalty to legalise existing structures that encroach the building lines. Further, renovations by the applicant had been conducted without the necessary approvals in terms of the applicable legislation, although not forming part of the application.

(e) whether the person allegedly involved in the contravention has previously contravened this By-law or a previous planning law.

The applicant has not deliberately contravened the By-law or previous planning law.

The aforementioned is not correct. The applicant used to own a similar establishment in Gansbaai and is familiar with the land use scheme and municipal requirements.

Considering the above-mentioned, the following is recommended:

The application for departure of the rear building line from 3m to 0m to accommodate the caretakers dwelling cannot be supported for the reasons stipulated above. The proposed departure to accommodate storerooms 1 and 2 in the former double garage is supported for the reasons stipulated above. This specific contravention was not due to the applicant's wrong-doing; accordingly, it is recommended that an administrative penalty should not be imposed.

The remaining unauthorised structures (i.e. caretakers dwelling, storage building on the rear- and lateral building lines and covered patio will be dealt with separately as an application for departure, amendment of conditions of approval, administrative penalty is triggered together with an application to address the parking issues.

Conclusion

Having had regard to the evaluation above, the application for consent use (place of entertainment) and departure pertaining to the caretakers dwelling is not desirable and recommended for refusal. The application for departure to convert the flats in the former garage back to storage (i.e. an outbuilding) is supported as it will not impact upon the character of the area or vested rights of adjoining property owners. The

remaining unauthorised uses / structures on the premises will be dealt with in terms of a formal compliance notice should discussions with the property owner not be successful.

13. RECOMMENDATION

1. that the application for consent use (place of entertainment) in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-law on Municipal Land Use Planning, 2020 applicable to Erf 146, Gansbaai to accommodate five limited payout machines, **not be approved** in terms of the provisions of Section 61 of the By-law;
2. that the application for departure in terms of Section 16(2)(b) of the By-law to accommodate the caretakers dwelling, **not be approved** in terms of the provisions of Section 61 of the By-law;
3. that the application for departure in terms of Section 16(2)(b) of the By-law to accommodate the conversion of the flats into an outbuilding (store 1 and 2), **be approved** in terms of the provisions of Section 61 of the By-law;
4. that the applicant **be exempted** from the payment of an administrative penalty in terms of Section 90(4) of the By-law;
5. that the decisions in paragraph 3. above be subject to the following conditions:
 - (a) that this approval is only conversion of the flats into a storeroom as indicated on Drawing no. *KS/0/02* dated *2018/10/18*;
 - (b) that building plans be submitted to the Building Department to accommodate the proposed store room within 30 days of the final approval and that all conditions of the Building – and the Fire Department be complied with at that stage;
 - (c) that the property owner within 30 days from the decision date submit an application to address the unauthorised development on the property namely, but not limited to an application for departure, amendment of conditions of approval and administrative penalty in accordance with the provisions of the By-law;
 - (d) that the conversion of the two flats into store room 1 and 2 be completed within 90 days of decision date;
 - (e) that the shower and toilet facilities within store room 1 and 2 be omitted the area may only be utilised for storage purposes;
 - (f) that this approval does not absolve the applicant from compliance with any other relevant legislation, and
 - (g) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;

6. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-law on Land Use Planning, 2020 with regard to the above conditions of approval.

14. REASONS FOR RECOMMENDATION

Reasons for departure approval

- ❖ The proposed store 1 and 2 is situated within an approved structure (double garage).
- ❖ The current unauthorised flat will be converted to store 1 and 2 (i.e an outbuilding).
- ❖ The converted building will not impact upon the character of the area, the HPOZ or vested rights of adjoining properties.

Reasons for non-approval

- ❖ The applicant's motivation for the place of entertainment is based on generalizations and did not properly assess the need and desirability and impact of the proposal.
- ❖ The use of the property is limited to a restaurant only. The application did not address the amendment of the condition to accommodate the proposed place of entertainment and caretakers dwelling in accordance with the provisions of Section 16(h) of the By-law.
- ❖ In-sufficient on-site parking provision.
- ❖ Parking layout submitted is misleading and not a true reflection of the site specific constraints resulting in substandard manoeuvring space;
- ❖ Parking layout lack critical dimensions to enable full evaluation thereof and is likely to give rise to on-street parking;
- ❖ The application did not address the shortfall of on-site parking provision by means of the relevant applications (i.e. departure for offsite parking or an application to buy out parking in lieu of onsite provision).
- ❖ The primary rights do not permit a caretakers dwelling.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Rezoning approval dated 28 February 2007
Annexure E:	Objections received
Annexure F:	Comment on objections
Annexure G:	Comment: Heritage Western Cape
Annexure H:	Services Report
Annexure I:	Zoning Certificate

SIGNATURES

AUTHOR

Name: **SW VAN DER MERWE**

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

Signature: _____

Date: _____



ERF 146, 2 MARK STREET, GANSBAAI

Date: 2021/09/07



**APPLICATIONS FOR CONSENT USE; DEPARTURE AND AN APPLICATION FOR
THE DETERMINATION OF AN ADMINISTRATIVE PENALTY FOR ERF 146;
GANSBAAI; OVERSTRAND MUNICIPALITY; DIVISION CALEDON; WESTERN CAPE
PROVINCE**

INTRODUCTORY REMARKS

1. INTRODUCTION:

This introduction serves as a short summary of the application before the necessary proposals and motivations are presented.

- 1.1 Applicant: ME Planners Town and Regional Planner
P.O. Box 757
Heilbron
9650
- 1.2 Power of Attorney: Power of Attorney has been rendered to ME Planners Town and Regional Planners to lodge this Application for Consent Use in terms of Chapter IV, Section 16(2) (o); Application for a departure in terms of Chapter IV, Section 16(2) (b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020; and an Application for the determination of an Administrative Penalty in terms of Section 16(2) (q) of the Overstrand Amendment Bylaw on Municipal Land Use Planning, 2020; read with Section 20(1) of the Overstrand Municipality By-law on Municipal Land Use Planning.
- 1.3 Property: Erf 146 Gansbaai, (here after referred to as "the site of application" or "the property")
- 1.4 Street address: 2 Mark Street, Gansbaai.
- 1.5 Locality: Erf 146 Gansbaai forms very much part of the established business and industrial area of the Greater Gansbaai and is located adjacent to the harbour area with its various businesses and industries.
- Erf 146, Gansbaai, is abutted by existing developed properties namely erf 631 zoned Residential Zone 1 (with a private residence) on the western side, erf

145 zoned General Residential Zone 3 (with a guest lodge) on the southern side, erf 139 zoned Business Zone 3 (with a guest lodge and back-packers concern) on the eastern side and erf 140 zoned Business Zone 3 (with a private residence) on the south-eastern corner.

The access to the subject property is off Mark Street.

Existing land uses of surrounding properties in the neighbourhood include established residential areas, restaurants, guest houses, a church and a crèche.

(The surrounding area will be discussed in more detail in Paragraph 2 of this report.)

2. BACKGROUND:

- 2.1 Gansbaai is a coastal township within the Greater Gansbaai area with breath-taking views across Walker Bay and is a very popular holiday destination. Tourist attractions include, amongst others, the nearby Kleinbaai Harbour area where Great White Shark Cage Diving and Whale watching tours are hosted. It also includes various accommodation establishments for tourists. Beautiful hiking trails along the coastline and sand beaches at Franskraal further contribute to the popularity of the greater Gansbaai area.
- 2.2 Gansbaai originally developed during the 1900 to 1939 period and started with only 222 erven where after rapid development took place up to and until 1999.
- 2.3 The property, which is situated in Planning Unit 12 of the "Greater Gansbaai Spatial Plan 2000" is zoned: Business Zone 2: General Business (B2) with a primary use of "Business premises" which includes a restaurant, and is developed into a Restaurant as the primary use, a caretaker's dwelling (also a primary right in terms of the zoning) situated in the south eastern corner of the property; a wooden tool shed, plus 2 structures next to each other, indicated on the SDP as Store Room 1 and Store Room 2. Both these Store Rooms and the caretaker's dwelling border on the southern boundary of the property.

The owner is committed to develop the property in terms of the mentioned spatial plan.

- 2.4 No records could be found that indicate when these structures were developed on the property. It can be presumed that they were not developed in recent times (see photos). Some of the existing "building plans" indicate that some plans had been approved by the municipality in 1993 and a wendy house in 1997.

According to the registered owner all the buildings on the property were in existence when he took over as new owner. The only changes made by him were the replacement of the existing dilapidated windows in the buildings by new ones.

- 2.5 **An important fact** is that in terms of the Overstrand Heritage Survey, the structures on the property are listed as older than 60 years and have a suggested grading of 3C in terms of the South African Heritage Resources Act.

The heritage implication is discussed in paragraph 9.1 of this report.

3. OVERVIEW OF APPLICATIONS:

- 3.1 **Chapter IV, Section 16(2) (b) of the Overstrand Municipality By-Law on Municipal Land Use Planning is applicable.**

- 3.1.1 In order to better explain the legal requirements, the following information is important:

In terms of the attached 'Zoning Certificate', consent uses as given in the Overstrand Town Planning Scheme, pertaining to Erf 146, are as follows:

Adult entertainment business, bottle store, crematorium, dwelling unit, flats (on the ground floor), funeral parlour, informal trading, institution, motor repair garage, place of entertainment, recreational facilities, residential building, second dwelling unit, service station, transmission tower, transport use, utility services, warehouse.

Note that although the zoning certificate was issued in 2019, the appropriate 'consent use' practices remained the same.

- 3.1.2 **Application for Consent Uses:**
- to allow for the conduct of live music;
 - and 5 gambling machines.

- 3.1.3 **Application for "Place of Entertainment"**

According to the Overstrand Municipality Land Use Scheme (2020), the definition of "place of entertainment" is "a place used

for commercial entertainment which may attract large numbers of people, operate outside normal business hours or generate noise from music or revelry on a regular basis, and includes a cinema, theatre, amusement park, dance hall, night club, gambling and live music".

In the case of Erf 146, Gansbaai, it is envisaged to put "cabaret entertainment" on the menu for the restaurant and install a number (5) of gambling machines.

3.2 Chapter IV, Section 16(2) (b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020:

3.2.1 In terms of The Overstrand Municipality Land Use Scheme, 2020, Erf 146, Gansbaai is zoned "Business Zone 2" and therefore the building line is 0,0m, but subject to the following conditions:

- the building or portion erected on the property boundary may have no windows, doors, ventilation or other openings in any wall on such boundary; and
- where a property zoned Business Zone 1 and 2 abuts a residential or community zone, the building line is 3,0m.

3.2.2 In the case of Erf 146, the site of application abuts Erf 145 which is zoned 'General Residential Zone 3: Flats (Bulk Zone 2), and therefore a 3,0m building line is applicable.

3.2.3 Due to the afore said an application is made for a departure of the building line on the southern side of the property, from 3,0m to 0m.

3.2.4 The structures affected by the 3.0m building line are the 2 storage rooms as well as the Caretakers Dwelling as shown on the building plans.

3.3 Chapter IV, Section 16(2) (q) of the Overstrand Municipality By-Law on Municipal Land Use Planning is applicable.

Application for Administrative Penalty in terms of Section 16(2) (q) of the Overstrand Municipality read together with Section 90 of the Bylaw Municipal Land Use Planning (November 2020), is discussed in full in paragraph 10 of this report.

4. GENERAL APPLICATION INFORMATION:**4.1 Title deed:**

- 4.1.1 Erf 146, Gansbaai in the Overstrand Municipality, Division of Caledon, Province of the Western Cape, is registered in the names of:

Jacobus Steenkamp
Identity Number 570422 5021 08 0
Married out of community of property

And
Martha Maria Steenkamp
Identity Number 581031 0055 08 9

Married out of community of property
their Heirs, Executors, Administrators or Assigns, in full and free property.

- 4.1.2 According to the Title Deed T000051779/2018, the size of Erf 146 is 991 Square metres in extent.
- 4.1.3 The enclosed Title Deed does not contain any Title Deed Restrictions that have to be addressed with the proposed use in mind.
- 4.1.4 Bond/s

The property is not encumbered by a bond.

4.2 Zoning of the erf:

In terms of the Overstrand Municipality Zoning Scheme Regulations the erf is zoned Business Zone 2: General Business (B2) with the following use restrictions applicable to it:

Primary uses: Business premises which includes a Restaurant.

Consent uses: Adult entertainment business, bottle store, crematorium, dwelling unit, flats (on ground floor), funeral parlour, informal trading, institution, motor repair garage, place of entertainment, recreational facilities, residential building, second dwelling unit, service station, transmission tower, transport use utility services, warehouse.

- ***A zoning Certificate is attached to this memorandum as 'Attachment A'***

No change in zoning is required.

Definition of "Restaurant"

"Restaurant" means a licensed business, in which mainly meals and beverages are primarily sold to seated patrons, and includes the on-site consumption of liquor but does not include premises used exclusively as a bar, a pub or tavern.

- a) All parking shall be provided on the property;
- b) A ratio of 4 parking bays per 100m² GLA as is proposed in the new Zoning Scheme Regulations;
 - **Parking requirements for the entire development on the erf, is discussed in full in Paragraph 6.3.**
- c) Building lines: No new buildings will be erected.
- d) Vehicle entrances and exits:
 - Entrance to and exit from the property will not be affected.
 - **A set of Proposed Building Plans forms part of the application.**
 - **Locality- and Zoning plans are attached as 'Attachment B' to this Memorandum.**

4.3 Land use:

The property is currently developed with a Restaurant, a Caretaker's Dwelling, 2 Store Rooms housed in two separate buildings next to each other and a Tool Shed.

5. NEED AND DESIRABILITY:

When considering the application for consent uses for Erf No. 146, Gansbaai, it is evident that the need and desirability should both fall within the broad parameters and principles necessary for orderly planning.

5.1 Need:

- 5.1.1 The **need** in this instance centres mainly on the fact that the tenant wishes to upgrade the Restaurant in line with related business concerns.
- 5.1.2 Taking into account that the proposed development can form part of the upgrading of the Tourist Industry in Overstrand, it is envisaged that another upper-class Restaurant does have the right of existence in a very competitive business market in Gansbaai.

5.1.3 Because of the size of the property, namely 991m², and the existing placing of the buildings, the applicant observed the potential to apply for the extension of the proposed business uses where space for parking is also one of the determining factors for the successful running of the business. In order to do this, an application for consent uses for Erf146, Gansbaai is made.

5.2 **Desirability:**
Geo-Physical implications

5.2.1 The application property does not contain any mentionable biophysical characteristics that would impact on any redevelopment to provide for the necessary parking requirements.

5.2.2 The application property has no mentionable slopes, and hence bares no confines for the proposed development.

5.2.3 Being located close to the coastline, it is likely that the existing underlying materials of the property are that of the typical known coastal material of the broader area. Since no erosion previously occurred on the developed property, no erosion is thus foreseen with the redevelopment of the property.

Social implications

5.2.4 The existing position of the business is not regarded as being undesirable and will not have any detrimental impact on the rights of surrounding property owners nor the existing built environment in future.

5.2.5 From the foregoing it is clear that the character of the area will not be disturbed should this application be approved, and although Gansbaai is one of the oldest established townships in the Overstrand area, it will not be necessary to also consider the possibility of the heritage value being affected and disturbed by the application as the existing buildings will not be affected by the application.

5.2.6 In the case of this application it can be stated categorically that very few better or more desirable developments can be envisaged for the area, as many people living or visiting in the vicinity will now be accommodated by the services of this kind of business.

5.2.7 The area, in which the site is located, is characterized by various business uses interspersed with a number of residential uses and a Suburban business centre situated in the near vicinity which means that

business concerns form a prominent part of the character of the area. The proposed extension of the business rights is merely an extension of and/or similar to the existing character of the area.

- 5.2.8 The existing position of the restaurant and caretaker's dwelling will not have any detrimental impact on the rights of surrounding property owners nor the existing built environment in future.
- 5.2.9 The application to allow live music will not disturb the local built form or character as it aims to only bring a new kind of "service" within easier reach of the inhabitants and holiday makers of Gansbaai and the areas surrounding it.
- 5.2.10 The proposed addition of another form of entertainment - referring here to the gambling machines - will not lead to a change in the aesthetical quality of the built environment. The slot machines will in any case be inside the building where proper supervision can be. In actual fact, the proposal will not change anything in the existing cultural landscape and the character and form of the existing settlement pattern.

Economic implications

- 5.2.11 It is a common mistake to regard labour as just any other generic production input. The restaurant and entertainment industry is one of the largest employers. This entire development on erf 146 also provides employment for 11 people. The reality in South Africa is the fact that every person who does have a job is also responsible and able to put food on the table for about 6-8 family members.
- 5.2.12 It also plays a great role in fostering the economy in that a large amount of tax is collected from the industry.

Spatial Implications

- 5.2.13 From the foregoing information as well as the development envisaged, it is clear that the planned future character of the area should thus be enhanced should this application be approved.
- 5.2.14 The proposal is an excellent example of the promotion of spatial and socio-economic integration.

6. TRAFFIC IMPACT, PARKING AND ACCESS:

6.1 Traffic:

The low level of traffic generated by this planned kind of development will have no significant effect on the existing and surrounding street network and the traffic flow patterns around the site will not be affected at all.

Because of the foregoing, no traffic impact assessment or environmental impact assessment is necessary with this application.

6.2 Access:

The present access to the property is from Mark Street, and will also provide safe access to and exit from the proposed development.

6.3 In terms of Schedule 2 of the Overstrand Municipality Land Use Scheme, 2020, the required number of parking bays for the restaurant will be 4 bays per 100m² GLA and 1,5 bays per Caretaker's unit.

According to the attached site development plan:

- a) The Restaurant- and store Room Floor area is 239m², which triggers 9,5 parking bays;
- b) The Caretaker's Dwelling requires 1,5 parking bays.
 - o A total of 11 parking bays is required-
 - o A total of 11 parking bays is provided.
- c) Please note that the GLA is measured according to the definition contained in Schedule 2 of the Overstrand Municipality Land Use Scheme 2020.
- d) In terms of the definition the toilets are also excluded.
- e) The manoeuvring space for vehicles on the property is clearly indicated on the SDP.

7. IMPACT ON EXTERNAL ENGINEERING SERVICES

7.1 The site is located in an existing township.

7.2 All services on the property already exist and are sufficient to accommodate the existing buildings and uses, and for that matter also the proposed use.

7.3 The approved Growth Management Strategy indeed confirms that for future opportunities there will be sufficient water source capacity, sufficient treatment works, sufficient solid waste capacity as well as sufficient sewerage treatment works.

8. FORWARD PLANNING & OTHER LAND USE DOCUMENTS

Land uses in the area and on the site of application are being regulated and controlled by the Overstrand Municipality Land Use Scheme 2020.

The said Town Planning Scheme together with the proposals in the Provincial Spatial Development Framework 2014 (PSDF), the Overstrand Spatial Development Framework (2020) and the Overstrand Municipality: Growth Management Strategy, 2010 makes provision for rezoning, consent uses and departures such as applied for in this application.

The aims and objectives of the foregoing frameworks and strategy can be summarised as follows:

8.1 WESTERN CAPE PROVINCIAL SPATIAL DEVELOPMENT FRAMEWORK (March 2014)

The purpose of the PSDF is to give expression to the national and provincial development agendas for land development and serves as a basis for coordinating, integrating and aligning national and provincial programs. It also aims to communicate the spatial development intentions of the government to the private sector.

The following aims underpin the PSDF, together with explanations of how the proposed development will be in line therewith.

- ***"Capitalise and preserve unique local built form and natural typologies, character and heritage."***

The application will not disturb the local built form much as it aims to only upgrade a much-needed service within easier reach of the inhabitants of the area.

- ***"Promote urban rather than suburban model: avoid further fragmentation of townships."***

The proposed development will not lead to a fragmentation of the area.

- ***"Focus on creating connections to economic and social opportunity to promote spatial and socio-economic integration."***

The proposed development is an excellent example of the promotion of spatial and socio-economic integration.

- ***"Cluster all social facilities and complementary activities."***

As a business concern with a basic social background, this development will be a complementary addition to the nearby cluster of various business activities.

8.2 OVERSTRAND SPATIAL DEVELOPMENT FRAMEWORK (2020)

The objective of the SDF is to formulate strategic policy guidelines and proposals which are spatially based, through which the needs, changes and growth in the area can be managed to the benefit of the inhabitants and the environment of the Overstrand Municipality.

The Overstrand Spatial Development Framework (May 2020) earmarks the area where Erf 146 Gansbaai is situated, for mixed residential and low key business premises. The current access will also remain as-is. The proposal will, therefore, be in line with spatial planning guidelines for the area.

The following objectives are used to test whether the proposed development will be in line with the aims of the SDF:

- ***"To provide an environmentally and economically sustainable bulk service infrastructure and road transport network."***

The proposed development is already connected to all services and no extra services will be required.

- ***"To ensure that on-going pressure and its spatial implications are managed in a sustainable way that protects the unique character of the existing cultural landscapes and the place-specific character and form of the existing settlement pattern."***

The proposal will not change anything in the existing cultural landscape and the character and form of the existing settlement pattern.

- ***"Restrict development within the carrying capacity limitation of the natural resources."***

The proposal will not change anything in the carrying capacity limitation of the natural resources.

- ***"To improve the aesthetic quality of the built environment."***

The proposed development will definitely lead to the improvement of the aesthetical quality of the built environment.

8.3 GROWTH MANAGEMENT STRATEGY

- a) The purpose of the GMS (May 2020) is to improve the Overstrand Municipality's overall environmental sustainability by enhancing the quality and efficiency of the built environment.
- b) In terms of the said Strategy, the property falls within the bigger Planning Area as well as Area C12 and the Contextual overview for Gansbaai in Area C 1.
- c) With reference to the Overstrand Growth Management Strategy the Contextual Overview for the subject erf falls within Planning Unit B2 which is next to C1 the main commercial hub for the region, which indicates the fact that it falls in an area indicated for economic opportunities.
- d) The following core objectives of the strategy will be used to test the suitability of the proposed development.
 - ***"Ensure optimal land use planning and the efficient use of infrastructure, services, facilities and land."***

The proposal seeks to make optimal use of the erf and will result in more efficient use of the infrastructure.

- ***"Contribute to place making and the development of attractive and safe urban environments."***

The proposed development will contribute to place making and a more attractive property and environment.

- ***"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 development will change nothing in the scale and character of the area.

- e) The proposed development will be done in compliance with the guidelines of Schedule 2 of the Overstrand Municipality Land Use Scheme, 2020.

8.4 OVERSTRAND INTEGRATED DEVELOPMENT FRAMEWORK

The IDF makes provision for the long-term spatial development and planning towards 2050. This study proposes inter alia, that Erf 146, Gansbaai, falls in an area which will be included in the CBD. (Refer to Plan 23 of the said study.)

9. RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

9.1 HERITAGE VALUE AND IMPACT

Erf 146 Gansbaai is situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The existing building situated on Erf 146 Gansbaai is earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

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

In the light of the above-mentioned it is evident that the proposed development will not have a negative impact on the heritage value of the subject property or the Greater area of Gansbaai.

An application was brought before the Overstrand Heritage Committee, and initially turned down. A second application was then done and submitted to the same Heritage Committee whereby they were asked to reconsider the previous outcome. The outcome was disappointing, but the Committee suggest that an application must be lodged to 'Heritage Western Cape'

The Overstrand Heritage Committee had a concern that the gable of the western façade impacts negatively on the development. On the building plans, however, it can be seen that this is not the case.

➤ *All Heritage information is attached to this memorandum as 'Attachment C'*

9.2 ENVIRONMENTAL IMPACT

The proposed departures for Erf 146 Gansbaai do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

9.3 COASTAL ZONE POLICY FOR THE WESTERN CAPE

The aim of the Policy is to give guidance regarding the sustainable development and management of the Western Cape coastline with specific reference to the

creation of environments for investment opportunities, which would lead to economic development and consequent sustainability of the economic growth of its coastal towns.

According to the Policy the area falls within its specific Spatial Planning Category, in that tourist related enterprises within coastal towns must be encouraged.

It is therefore a given that the proposed development is consistent with the principles of the Policy.

9.4 PLANNING PRINCIPLES

The application has also been analysed for consistency with the planning principles prescribed by the Spatial Planning and Land Use Management Act, 2014 (SPLUMA) and also the Western Cape Land Use Planning Act, 2014 (LUPA) and the following conclusions were made:

(a) Spatial Justice which refers to the need for redressing the past apartheid spatial development imbalances and aim for equity in the provision of access opportunities, facilities, services and land.

Possible results of the development

The proposed consent uses will not in any way contribute to the perpetuation of past apartheid spatial development imbalances as the development of the proposed business will open up the provision of all the above to all persons in the Republic. The right of owners to develop land in accordance with current use rights must be recognized as is the case with this application.

(b) Spatial Sustainability which refers to the fact that a spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.

Possible results of the development

The proposed development will take place within the urban edge and will therefore have no impact on agricultural land, environmentally sensitive areas and biodiversity rich areas. The application can thus be deemed to be spatially sustainable.

(c) Efficiency which refers to the manner in which settlements themselves are designed to function in such a way that there will be a minimum need to travel long distances to access services, facilities and opportunities.

Possible results of the development

The proposed development is not intended as a new settlement development and caters specifically for users from far and near.

(d) Spatial Resilience which, in the context of land use planning, refers to spatial plans, policies and land use management systems which should enable communities to be able to resist, absorb and accommodate any economic and environmental shocks which might occur in a timely and efficient manner.

Possible results of the development

The proposed development will not lead to any economical and/or environmental shocks as the business to be conducted will not differ much from the existing use on the erf and in the area.

(e) Good Administration which, in the context of land uses planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure that a joint planning approach is pursued.

Possible results of the development

The applicant is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient and will ensure that timeframes are adhered to.

10. ADMINISTRATIVE PENALTY

Application for Administrative Penalty in terms of Section 16(2) (q) of the Overstrand Municipality read together with Section 90 of the Bylaw Municipal Land Use Planning (November 2020).

It is stated in Section 90 (1) of the said Bylaw that the applicant may rectify any contravention on a property by applying to the Municipality to pay an Administrative Penalty. In this case, no formal application is made for the payment of such an administrative penalty.

The reasons are dealt with by discussing them in accordance with Section 90 (3) of the same Bylaw.

a) Section 90 (3) (a) refers to the nature, duration, gravity and extent of the contravention. In order to address this, it is important to motivate that the owner does not violate any regulation.

b) The nature of the development on the erf does not impose on the privacy of any of the surrounding owners and has no negative effect on the surrounding built environment. There has never been any complaint about the existence of the buildings (Section 67 of the Amendment Bylaw on Municipal Land Use Planning, 2020)

c) Section 90 (3) (b): The application and the submission of the 'as built' plans, proves that the owner is not deliberately involved in any contravention. The owner has plans drawn up in order to legalise the flats on the property.

The approved plans (1993 and 1997) show that the structures - at the time a garage, Wendy house and storeroom - were approved. However, the new owners have transformed the structures into habitable dwelling units. In other words, only the interior spaces have been changed.

It is then for these reasons that 'as built' plans have been drawn up for submission to the Municipality.

d) Section 90 (3) (d): There is no sign of any unlawful conduct. The use of the erf is primarily for restaurant purposes and flats on the ground floor, as is the case with this application. The purpose of the application then, the legalisation of the two flats at the back of the building.

e) Section 90 (3) (e): The registered owner has never deliberately contravened this By-Law or any previous planning law.

11. RECOMMENDATION

- 11.1 The proposed development will be done in compliance with the guidelines of the Overstrand Municipality Land Use Scheme, 2020. Building plans will be submitted to the satisfaction of the Overstrand Local Municipality, as the controlling authority.
- 11.2 Land uses in the area and on the site of application are being regulated and controlled by the Overstrand Municipality Land Use Scheme, 2020.
- 11.3 The application is made for the purpose of helping to ensure that orderly planning as far as the Town Planning and building regulations are concerned will be in place for future reference.
- 11.4 The proposed development, apart from monetary reasons, is an attempt by the client to bring about a development that will add value to the area.

- 11.5 There is also a definite need for this kind of business in this area of the Overstrand. In this regard it can be stated that the demand and economic viability of any development determines the need for it. Local economic conditions, the presence of townships far from the kind of amenities to be offered by the applicants plus the unprecedented growth of Gansbaai and its surrounds make the proposed development viable and favourable on the site of application.
- 11.6 Finally, the application adheres to the criteria of the Overstrand Municipality Land Use Scheme, 2020. The proposed developments will contribute positively to the economy and character of the area in which it is situated as well as the Overstrand as a whole.
- 11.7 From the contents of this report it is apparent that the proposed development of Erf 146, Gansbaai will have no negative impacts in general, and it is thus requested that the Municipality favour the application as set out in this motivation report.
12. A photo Collage is attached to the Memorandum to show the Restaurant area, the parking as well as the caretaker's dwelling the back. There are also photos to show the inside of the restaurant. The high standard of development is clearly evident.

➤ *(Refer to 'Attachment 'D' of this memorandum)*

END OF MOTIVATION REPORT:

11 FEBRUARY 2022

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GENERAL:

- 1. ALL WORK TO COMPLY WITH NATIONAL BUILDING REGULATIONS.
- 2. Suitable houses to have min. 1.0% floor area covered with floor.
- 3. Ventilation to be provided for all areas in floor level.
- 4. The drawing and notes to be interpreted as indicating any work to be carried out.
- 5. All work to be carried out to standards with local authority requirements.
- 6. All work to be carried out to standards with local authority requirements.
- 7. Finished floor levels are to be such. (Unless otherwise noted).
- 8. Any discrepancies are to be reported to the effect of the Architect.
- 9. All drawings to be supplied with part 11 of the Architect.

LEGEND:

- New Brickwork
- New Timberwork
- New Steel
- New Foundation/Concrete
- New Soil Pipe
- New Waste Pipe
- New Stormwater Line

No.	Date	Description	By

PROJECT: Erf 146 - Garsbaai (Mr K Steenkamp)

DESCRIPTION: Ground Floor Layout

SCALE: 1 : 100

DRAWING #: KS/0/02

DRAWING DATE: 2018/10/18

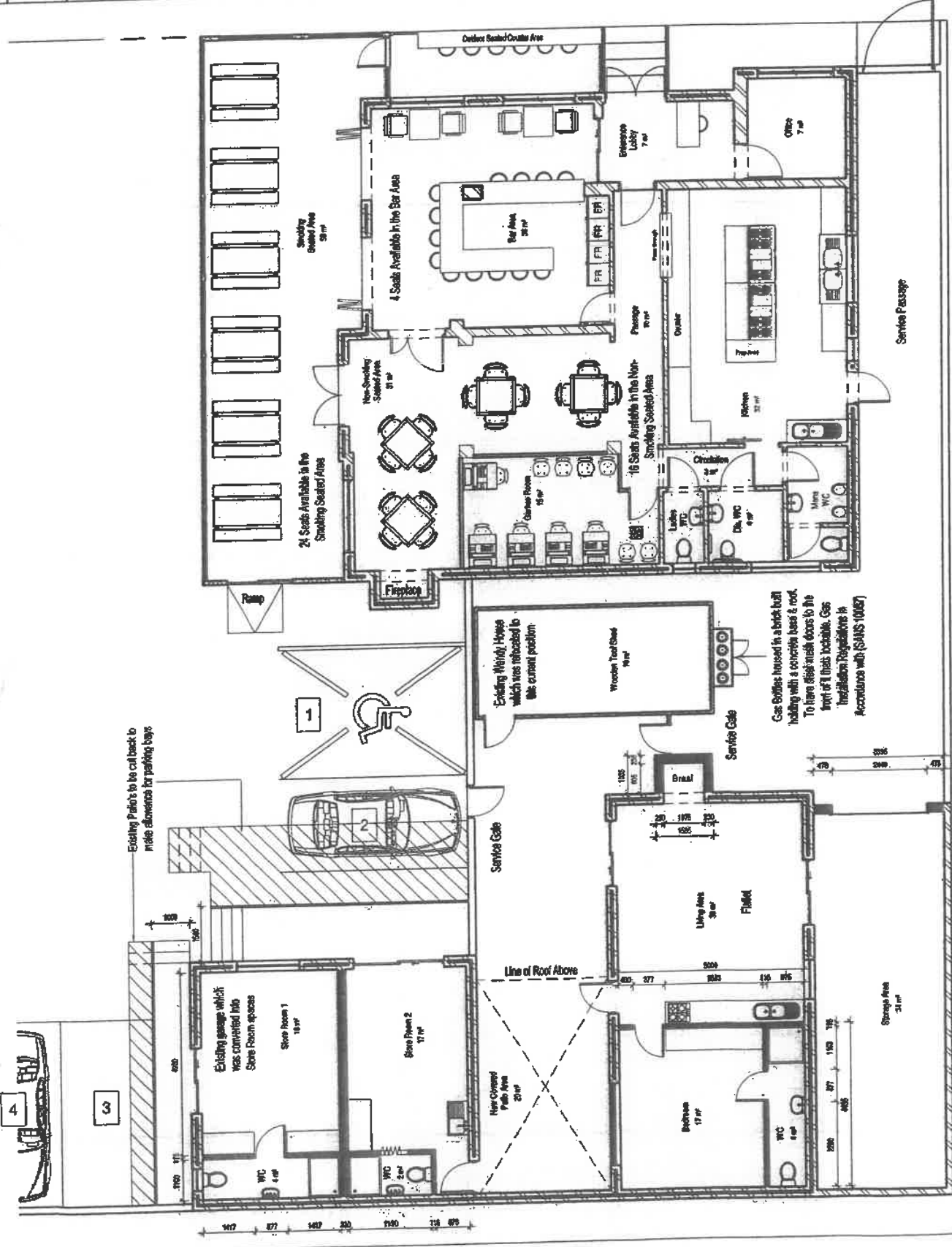
DRAWN: AK

REVISION #:

CHECKED: JG

Company: Gerrie Olenete

Contact: Tel: 082 453 8554, Email: info@gerrieolenete.co.za, Lic: Van SAIT : S07023



Ground Floor Plan
1 : 100

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GENERAL:

1. ALL WORK TO COMPLY WITH NATIONAL BUILDING REGULATIONS.
2. Flatbeds to be used for all materials.
3. All work to be done in accordance with the relevant standards.
4. This drawing is to be used only for the project and site specifically indicated and is not to be used for any other project or site without the written permission of the architect.
5. All work to be done in accordance with the relevant standards.
6. All work to be done in accordance with the relevant standards.
7. All work to be done in accordance with the relevant standards.
8. All work to be done in accordance with the relevant standards.

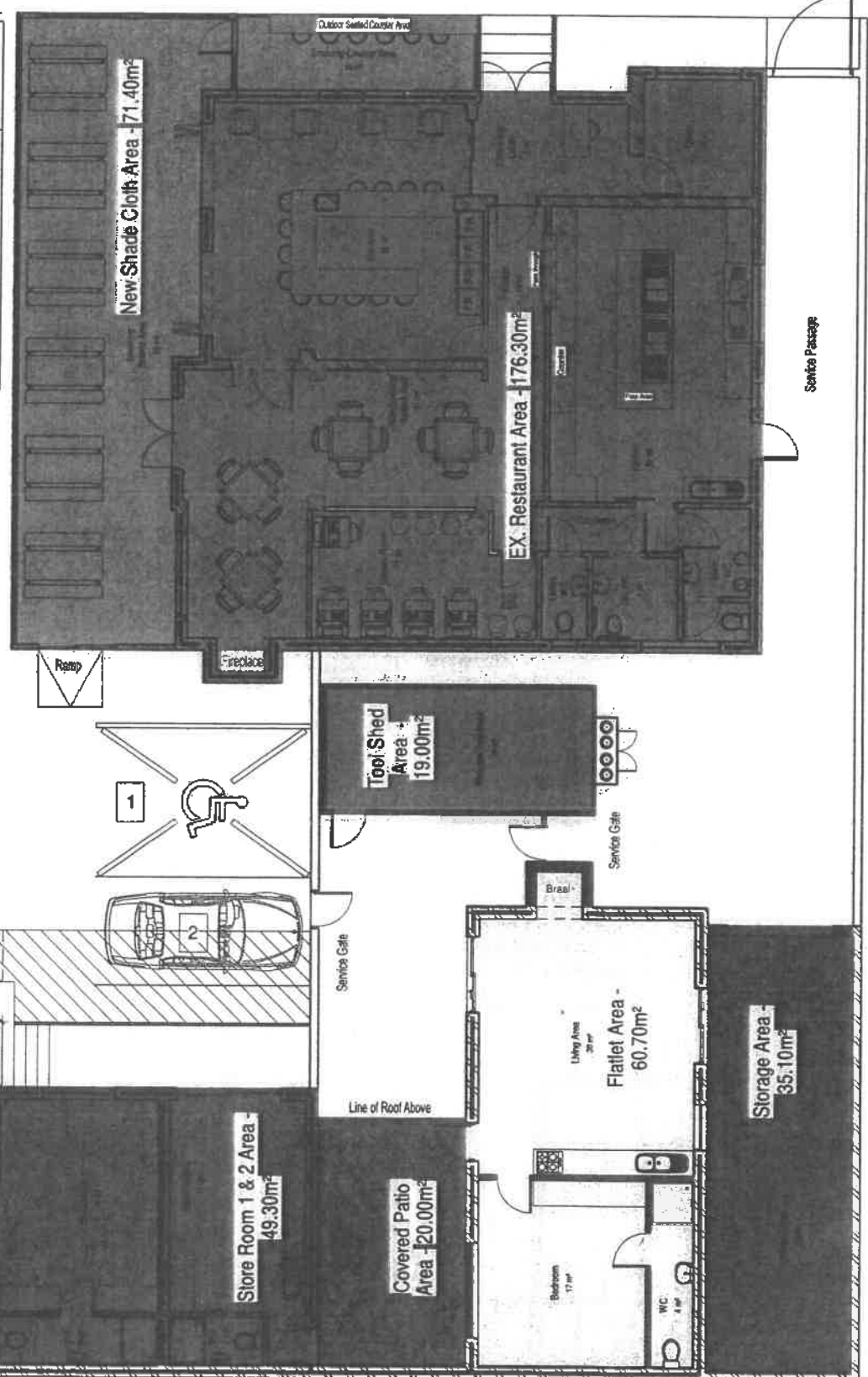
LEGEND:

	New Brickwork
	New Timberwork
	New Steel
	New Foundation/Concrete
	New Soil pipe
	New Waste Pipe
	New Stormwater Line

No.	Date	Description	By

SCHEDULE OF RIGHTS

Eri Number:	146
Stand Area:	981.00m ²
Restaurant Floor Area:	176.30m ²
Flatlet Floor Area:	60.70m ²
Wooden Tool Shed Area:	19.00m ²
Open Slope Shade Cloth Area:	71.40m ²
Covered Patio Area:	20.00m ²
Store Room 1/2 & Storage Area:	84.40m ²
TOTAL AREA:	431.80m²
Coverage:	43.57%



Ground Floor Plan - Area Breakdown

1 : 100

Gerco Oienste
 Tel: 082 453 8554
 Email: info@gerco.co.za
 Lidvan SAIT : S07023

PROJECT: Eri 146 - Gansbaai (Mr K Steenkamp)
 DESCRIPTION: Area Breakdown
 SCALE: As Indicated
 DRAWING DATE: 2018/10/18
 DRAWN: AK
 CHECKED: JG
 DRAWING #: KS/0/03
 REVISION #:

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GENERAL:

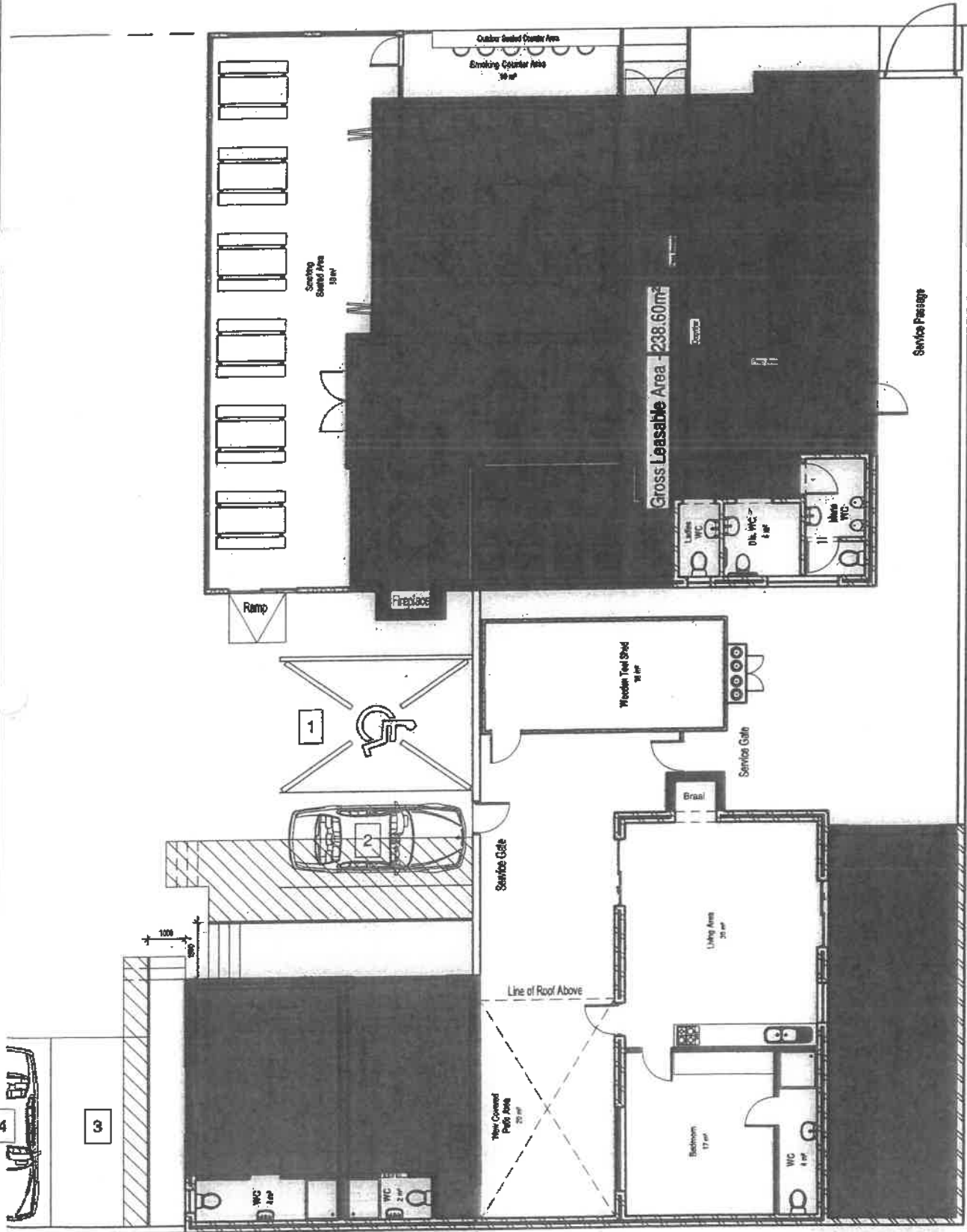
1. ALL WORK TO COMPLY WITH NATIONAL BUILDING REGULATIONS.
2. Habitable rooms to have min. 1.9% floor area cross ventilation.
3. Ventilated P.V.C. for all bathrooms in floor levels.
4. All dimensions are to be in millimeters unless otherwise stated.
5. This drawing is not to be used for any other purpose without the written consent of the architect.
6. All work to be carried out in accordance with local authority requirements.
7. All work to be carried out in accordance with the relevant floor levels.
8. All work to be carried out in accordance with the relevant floor levels.
9. Any dimensions are to be given to the center line of the work.
10. Applying to the assembly with part of the work.

LEGEND:

-  New Brickwork
-  New Timberwork
-  New Steel
-  New Foundation/Concrete
-  New Soil pipe
-  New Waste Pipe
-  New Stormwater Line

No.	Date	Description	By

PROJECT: Eri 146 - Gansbaai (Mr K Steenkamp)	
DESCRIPTION: Gross Leasable Area	
SCALE: 1 : 100	DRAWING #: KS/0/04
DRAWING DATE: 2018/10/18	REVISION #:
DRAWN: AK	CHECKED: Checker



Ground Floor Plan - GLA
1 : 100








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GENERAL:

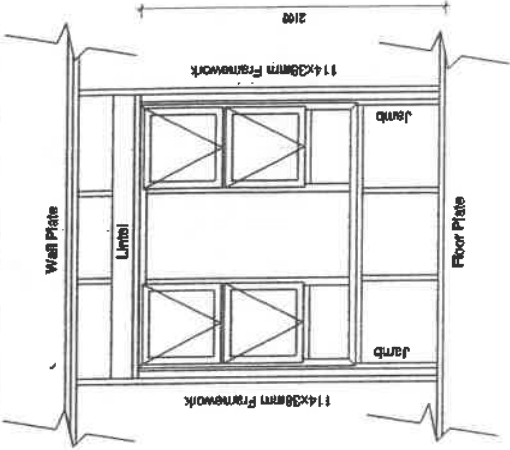
- ALL WORK TO COMPLY WITH NATIONAL BUILDING REGULATIONS.
1. Vertical rebar in beam min. 1.5% from area even voidless.
 2. Vertical D.P.C. to all changes in floor level.
 3. All dimensions and levels to be checked on site before any work commences.
 4. The drawing is not to be scaled and only figured dimensions are to be used.
 5. All work to be carried out in accordance with local authority regulations.
 6. All work to be carried out in accordance with the relevant building codes.
 7. All work to be carried out in accordance with the relevant building codes.
 8. Any dimensions are to be checked to the surface of the work.
 9. All items to be completed per 14 of the 100.

LEGEND:

-  New Brickwork
-  New Timberwork
-  New Steel
-  New Foundation/Concrete
-  New Soil Pipe
-  New Waste Pipe
-  New Stormwater Line

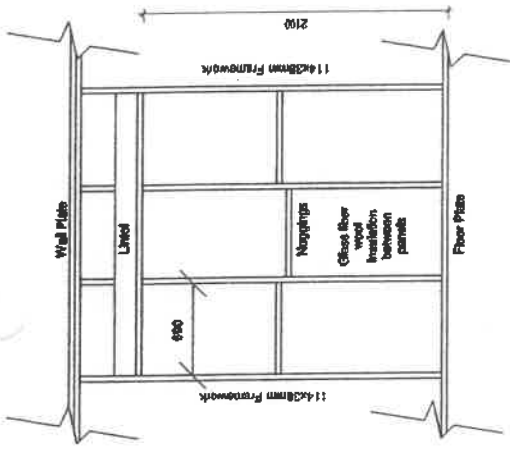
No.	Date	Description	By

PROJECT: Erf 146 - Gansbaal (Mr K Steenkamp)	
DESCRIPTION: Construction Details	
SCALE: As Indicated	DRAWING #: KS/0/08
DRAWING DATE: 2018/10/18	REVISION #:
DRAWN: Author	CHECKED: Checker
 Tel/Fax : 082 453 8854 Gertie Jonste (Pty) Ltd Lefthand SAIT : 507023	



Window Detail

1 : 35



Wall Detail

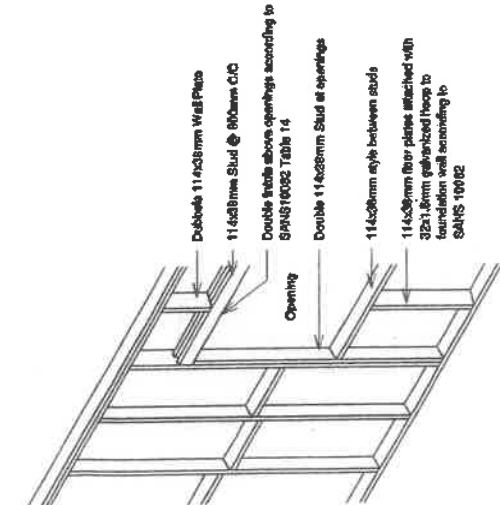
1 : 35

Wall R - Value

- | | |
|----------------------------------|-------------|
| 1. Outdoor air, 12km/h wind | 0.044 |
| 2. 150x38mm Nutec Vermont Boards | 0.047 |
| 3. 75mm Isotherm Isolation | 1.65 |
| 4. 12.7mm Rhinoboard | 0.071 |
| 5. Indoor air (Still) | 0.12 |
| TOTAL | 1.93 |
| Required for Zone 4 | 1.90 |

Wall R - Value

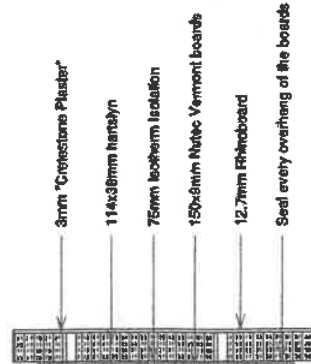
1 : 100



Frame Detail

1 : 50

30min Fire resistant According to SANS10400 Part 1 tabel 14



Wall Isolation Detail

1 : 20








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GENERAL:

- ALL WORK TO COMPLY WITH NATIONAL BUILDING REGULATIONS.
- Materials to be used shall be as specified in the Bill of Materials.
- All drawings and details to be checked on site before any work commences.
- All materials to be used shall be of the best quality and conform to the specifications of the relevant standards.
- All work to be carried out in accordance with best industry practices.
- All materials to be used shall be of the best quality and conform to the specifications of the relevant standards.
- Prohibit the use of any materials that are not specified in the Bill of Materials.
- Any discrepancies are to be reported to the Architect immediately.
- All drawings to be completed with full details of the work.

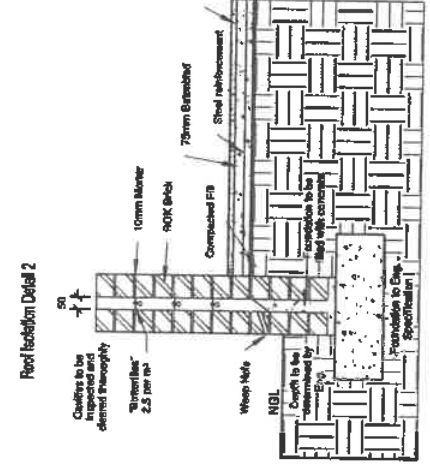
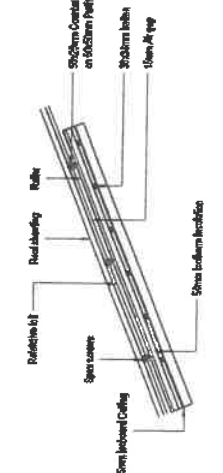
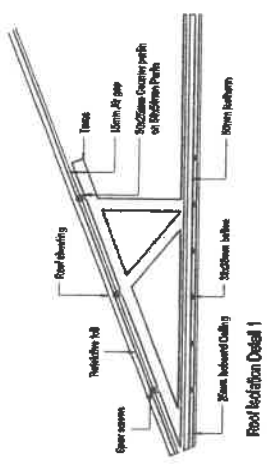
LEGEND:

-  New Brickwork
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-  New Foundational/Concrete
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-  New Waste Pipe
-  New Stormwater Line

No.	Date	Description	By



TYPICAL EXTERNAL WINDOW SILL DETAILS



Foundation Detail

1 : 25

BUILT-UP TURBO CONYL TURBO CONYL'S CAN BE ORDERED AS A SLIP-ON (TO FIT ONTO A FLUE) OR AS BOLT-ON (BOLT ONTO BRICK CHIMNEY)

SMOKE CHAMBER

SMOKE CHAMBER

THE CHIMNEY OR FLUE OF AN OPEN SOLID-FUEL BURNING APPLIANCE SHALL BE PROVIDED WITH A DAMPER OR FLAP THAT CAN BE CLOSED TO SEAL THE CHIMNEY OR FLUE.

INTERNAL BRAIN AREA

OPEN VOID BELOW BRAIN FOR STORAGE OR TO BE CLOSED UP WITH A B.C.

EXISTING FINISHED FLOOR LEVEL

Roof Insulation:

Roof 22° with horizontal ceiling and Mass building	0.03
Roof 22° with horizontal ceiling and Mass building	0.90
Roof 22° with horizontal ceiling and Mass building	0.15
Roof 22° with horizontal ceiling and Mass building	0.19
Roof 22° with horizontal ceiling and Mass building	0.19
Roof 22° with horizontal ceiling and Mass building	1.10
Total R-value	1.10

Direction of flow of heat for Zone 4 : Up
 Min R-Value Needed : 3.7
 R-Value above R-Value = 1.19
 R-Value below R-Value = 1.16 (Insulation Needed)
 R-Value of insulation = 1.16 x 0.0409/m²K (SANS 564 Table 10)
 Therefore : Insulation required.

CHIMNEY DETAIL



GERIC DIENSTE

Tel/Fax: 082 453 8554
 Lid-van SAIT : S07023

Bylae A

MINUTES: ORDINARY MAYORAL COMMITTEE MEETING**28 FEBRUARY 2007****5.****ERF 146, GANSBAAI: OVERSTRAND MUNICIPAL AREA: REMOVAL OF RESTRICTIONS ACT, 1967 (ACT 84 OF 1967) AND PROPOSED REZONING****Erf 146, Gansbaai****MG van Vuuren****(028) 384 0111****Gansbaai Administration****EXECUTIVE SUMMARY**

An application has been received for the rezoning of erf 146, Gansbaai, from Single Residential Zone to Central Business Zone in order to operate a restaurant on the property, as indicated on the proposed Site Development Plan attached to the agenda.

An application has further been received for the removal of the Restrictive Conditions of Title in order to allow the proposed rezoning.

RESOLVED (UNANIMOUSLY)

1. that in terms of Section 16 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) application for the rezoning of erf 146, Gansbaai, from Single Residential Zone to Central Business Zone in order to operate a restaurant on the property as indicated on Plan No. GANS146.DRW dated April 2006, be approved, subject to the following conditions:
 - (a) that the proposed restaurant (of 180m²) only be permitted;
 - (b) that a maximum height of 8, 5 m above natural ground level be maintained;
 - (c) that one parking be provided for every four seats of the restaurant;
 - (d) that all other development restrictions as prescribed in the relevant Scheme Regulations, be complied with;
 - (e) that this approval does not absolve the applicant from compliance with any other relevant legislation (including "noise regulations", health requirements; etc);
 - (f) that the removal of the restrictive conditions of Title be approved by the Provincial Administration, and
 - (g) that all the conditions in the Services Report (Annexure I, pages 111 – 112 of the agenda) be complied with.

MINUTES: ORDINARY MAYORAL COMMITTEE MEETING 28 FEBRUARY 2007

2. that it be recommended to the Provincial Administration that the Removal of Restrictive Conditions of Title in order to allow the proposed rezoning on erf 146, Gansbaai, be approved.

Bylae B

ERF 146
GANSBAAI

TERREIN-
ONTWIKKELINGSPLAN



Street
Scale 1:300

NOTAS:

Bestaande Erfgrens
Bestaande Strukture

Dekking:

Woonhuys (Restaurant): ±180m²

Motorhuys: ±50m²

Stoor: ±59m²

TOTAAL: ±289m² (29%)

Parkeerplekke voorsien @

1 Parkeerplek / 25m²

Plan
active
Town and Regional Planning
Blaik- en Streeklaplaats

NOTES:
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ALL DISTANCES APPROXIMATE
AND SUBJECT TO SURVEY

DRAWN PLAN NR./NO.

P.A. (GANS) (4-6-02). DRW

DATE: APRIL 2007

MARKSTRAAT

±120m² om gebruik te word
om 30 stpiekke te voorsien.
±60m² sal gebruik word vir
infrastruktuur (kombuis,
toiletgeriewe etc.)

Bestaande Woning
om omskep te word in
'n restaurant
±180m²

Bestaande
Stoor
±59m²

(10) Bestaande
Motorhuys
±50m²

(11)

Ingang
Uitgang



139

146

140

145

631



InterActive Town & Regional Planning

Postal Address: P.O. Box 980, Hermanus, 7200
Tel: 028 312 1668
Cell Phone: 082 466 0490
E-Mail: wiehahn.a@gmail.com

Date: 20 May 2022

Reference: Erf 146 Gansbaai



The Municipal Manager, Overstrand Municipality

ERF 146 GANSBAAI: OBJECTION TO THE PROPOSED USE OF LAND FOR THE PURPOSES OF A PLACE OF ENTERTAINMENT (LIVE MUSIC AND GAMBLING MACHINES)

The notice to affected persons, 145 GGB, Application ID 3745/2022 dated 14 April 2022 refer.

On behalf of Messrs JM Badenhorst Elektries; InterActive Town and Regional Planning (André Wiehahn Pr Pln A927/96) was appointed to submit an objection to the application with specific reference to the Place of Entertainment to accommodate live music and gambling machines.

In general, the application is considered vague, lacks motivation and reason. Neither the need nor desirability in the application is considered to be proved. Furthermore, the implications of the proposal are not dealt with adequately.

As a starting point, the Overstrand Municipality Spatial Development Framework, May 2020 (OMSDF) in Paragraph 5.10.2.2 under the heading of Growth Management Strategy states that "The old Gansbaai harbour and its environs have enormous development potential given the feature of this area. In order to exploit this opportunity it is proposed that the councillors emphasise the importance of this assets and secure that it be developed with the necessary responsibility and reactivity to augment the value of the heritage and character of the areas. Such an approach will contribute substantially to a sustainable future of this settlement. The aforementioned can only practically be achieved if the provisions of the Overstrand Overlay Zone regulations are adhered to."

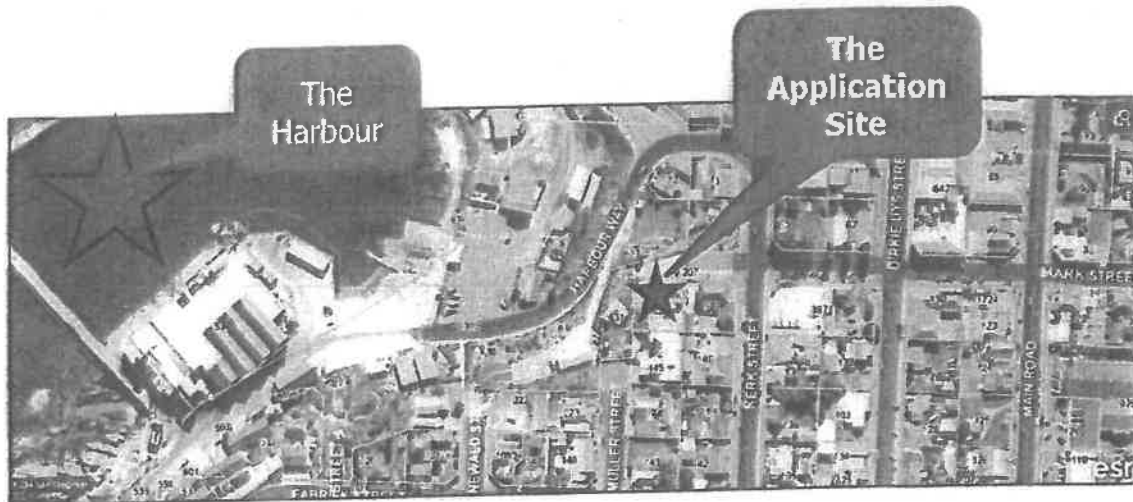
It cannot be emphasised more as stated in the OMSDF that "In order to exploit this opportunity it is proposed that the councillors emphasise the importance of this asset and secure that it be developed with the necessary responsibility and reactivity to augment the value of the heritage and character of the area."

The Gansbaai harbour is a real asset for the town, region and province. Much needed positive catalytic land-uses will contribute to the above vision as set out in the OMSDF.

The application site is prominently located in terms of the old Gansbaai harbour and its influence area being located between the harbour and the existing central business area.

24 MAY 2022

FILE NO.	EF 146 ✓
	Gansbaai
SCAN NO.	
	GGB 146
COLLABORATOR NO.	
	1687692



The land-use being applied for is for a Place of Entertainment with live entertainment as well as gambling machines.

When considering the above application, as stated in the OMSDF these uses should be considered with "necessary responsibility and reactivity to augment the value of the heritage and character of the areas".

Although it might be common knowledge, it is considered necessary to clearly understand what is being applied for and what the impact of this application will be on the direct urban environment and the future of the area.

Our client's concern is the impact of the proposed land-use (the live entertainment and gambling machines) on:

1. The household / lifestyle on their property
2. Character of the area with specific reference on the future development of the area in terms of tourism.

To summarize and clarify from the proposal, application is made for a "place of entertainment" meaning in terms of the Overstrand Municipal Planning By-Law Zoning Scheme, 2020:

"a place used for commercial entertainment which may attract large numbers of people, operates outside normal business hours or generate noise from music or revelry on a regular basis and includes a cinema theatre, an amusement park, a dance hall or a night club and gambling and live music;"

The applicant as part of the application also indicated the following:

1. The owner is committed to develop the property in terms of the following mentioned spatial plan:

3. "Because of the size of the property, namely 991m² the existing placing of the buildings, the applicant observed the potential to apply for the extension of the proposed business uses where space for parking is also one of the determining factors for the successful running of the business. In order to do this, an application for content uses for Erf 146 Gansbaai is made.

In response to the above, the need of what the owner wants is explained and not expressing necessity or obligation in terms of spatial development.

The desirability is dealt with under the following subheadings by the client:

1. Geo-Physical implications
2. Social Implications
3. Economic Implications and
4. Spatial Implications

In addition to the above, the applicant also described the traffic, parking and access and external engineering services impact

These descriptions of the implications are found to be mostly generalizations, vague and non-specific and lacks content. The applicant does not even give a clear description of the functioning / operation of the proposed land-use (restaurant) with specific reference to the cabaret entertainment.

Based on the headings used by the applicant of the implications under the respective subheadings, our objectors comments is submitted:

Heading	Applicants' described implication summary	Objectors Comments
Geo-physical	The application property does not contain any mentionable biophysical characteristics that would impact on any redevelopment to provide for the necessary parking requirements	The comment is noted, however the relevance of this non-impact is questioned to host live entertainment and accommodate 5 gambling machines.
	The application property has no mentionable slopes, and hence bares no confines for the proposed development.	
	Being located close to the coastline, it is likely that the existing underlying materials of the property are that of a typical known coastal material of the broader area. Since no erosion previously occurred on the development property, no erosion is thus foreseen with the redevelopment of the property	

<p>Social Implications</p>	<p>The existing position of the business is not regarded as being undesirable and will not have any detrimental impact on the rights of surrounding property owners nor the built environment in future.</p>	<p>The applicant does not mention any reason for this statement but as is evident merely states the land-use proposal will not have "any detrimental impact on the surrounding rights of the surrounding property owners nor the built environment in future"</p> <p>As objector we differ with the applicant as the impact can potentially be substantial and material on the current as well as the future of the area.</p> <p>The decision authority must take cognizance that the applicant does not provide any indication on the type, description or extent of live entertainment intended (apart from "cabaret entertainment" or provide any parameters nor mitigation in this regard.</p> <p>As per the definition of "as place of entertainment" the impact can be substantial in terms of live entertainment meaning and iterating that as a commercial entity it may attract large numbers of people and operates outside normal business hours and / or generate noise from music or partying / partying on a regular basis.</p> <p><u>Given the above, cognizance by the deciding authority must be taken that the application site is not in an area surrounded by only business uses only but also residential uses.</u></p> <p>Furthermore, the decision-makers must take into consideration the spatial vision of the area where the OMSDF specifically mentions that <i>"The old Gansbaai harbour and its environs have enormous development potential given the feature of this area. In order to exploit this opportunity it is proposed that the councillors emphasise the importance of this assets and secure that it be developed with the necessary responsibility and reactivity to augment the value of the heritage and character of the areas. Such an approach will contribute substantially to a sustainable future of this settlement. The aforementioned can only practically be achieved if the provisions of the Overstrand Overlay Zone regulations are adhered to."</i></p>
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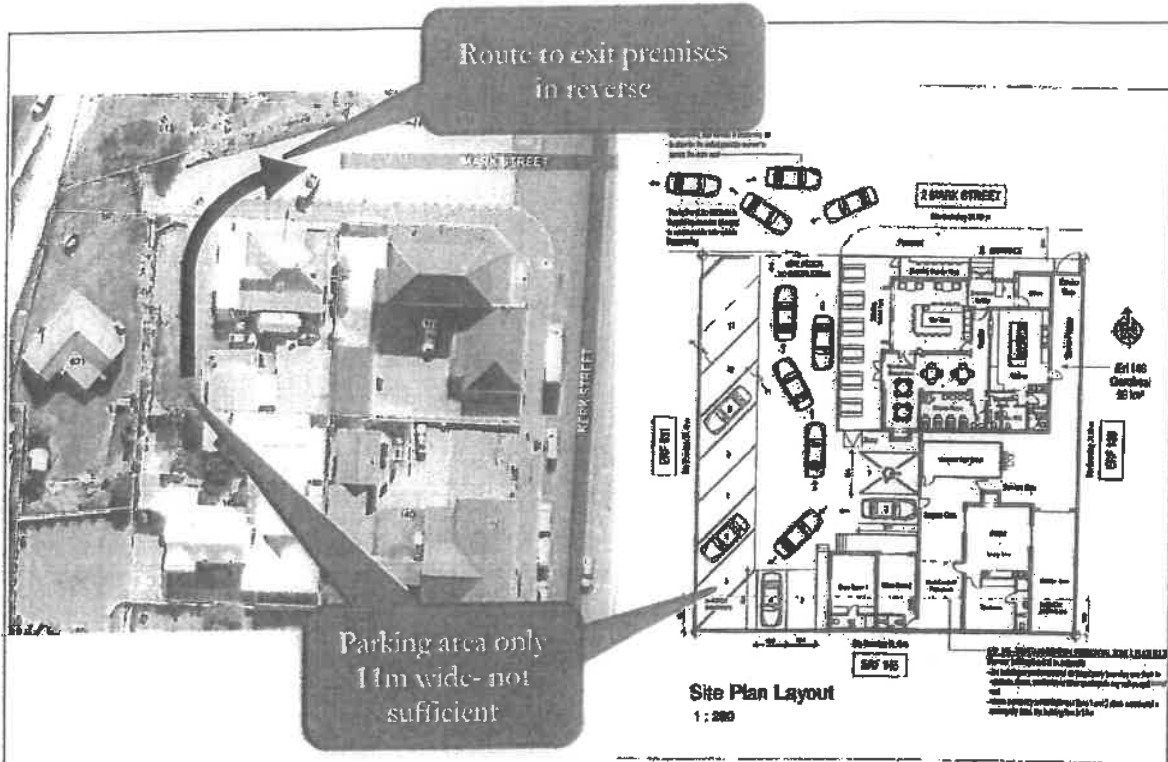
		<p>A wrong decision by the Council will deprive the opportunity and potential the area offers to Gansbaai, the Overstrand Municipality and District to develop in accordance with the vision of the area.</p> <p>We are of the opinion that "a place of entertainment" on this property specifically for live entertainment with gambling facilities is not compatible with the existing surrounding residential uses nor providing for positive catalytic land-use leading the area towards the vision of the Overstrand Municipality as a safe and pleasant tourist attraction for all.</p> <p>By merely stating that "The existing position of the business is not regarded as being undesirable and will not have any detrimental impact on the rights of surrounding property owners nor the built environment in future." is not considered an acceptable reason / motivation for being desirable or consenting to this application.</p>
	<p>The second Social implication the applicant states under the desirability heading is that "From the foregoing it is clear that the character of the area will not be disturbed should this application be approved, and although Gansbaai is one of the oldest established townships in the Overstrand area, it will not be necessary to also consider the possibility of the heritage value being affected and disturbed by the application as the existing buildings will not be affected by the application."</p>	<p>The argument by the applicant is incoherent and confusing.</p> <p>In this argument the applicant refers to the previous paragraph as reference but argues on completely a different topic by addressing the heritage character of the area under the heading of social impact for an application for "a place of entertainment" for a consent for live entertainment and gambling machines.</p> <p>This point of motivation has no merit at all.</p>
	<p>The applicant further motivates under the heading of desirability and social implications that "In the case of this application it can be stated categorically that very few better or more desirable developments can be envisaged for the area, as many people living or visiting in the vicinity will now be accommodated by the service of this kind of business."</p>	<p>The applicant voices assertively that the restaurant with live music and gambling machines is almost the best land-use for the area.</p> <p>The applicant provides no reason for this strong assertive opinion. Very little information on the proposal / activity is provided.</p> <p>Furthermore, this statement is considered merely an opinion by the applicant as <u>it is not supported with any market or professional supporting study.</u></p>

		<p>The land use will only be considered desirable for people that want to gamble or want live music, but it is not desirable for the objector and most probably also for the surrounding property owners.</p> <p>Live entertainment commonly is known for causing a noise nuisance to surrounding landowners, especially within or close to residential areas. The application does not include a noise impact assessment, nor has provided details regarding management of the live entertainment and has also not provided mitigation measures or substantiated the effectiveness of mitigation measures.</p> <p>Gambling is a controversial land use with well-known potential negative financial, psychological and social risks for people that gamble. Studies in Great Britain and the USA has shown that gambling has been shown to be strongly associated with comorbid mental health issues. (People with multiple mental health issues) These studies have also shown that gambling has the highest suicide rate among all addictions. Even if the scale of the gambling is limited, it enables and enforces habits and lifestyles with the risks stated above.</p> <p>Almost any business providing services to the community without the negative impacts stated above will be a more desirable land use for the area as a whole. The proposed land uses are therefore considered undesirable.</p>
	<p>The area in which the site is located is characterized by various business uses interspersed with a number of residential users and suburban business centres situated in the near facility, which means that business concerns form a prominent part of the character of the area. The proposed extension of the business rights is merely an extension of and / or similar to the existing character of the area.</p>	<p>This social implication of the applicant is a generalization and factually incorrect.</p> <p>The application site is not prominent part of the character of the area with several non-business (residential) uses surrounding the application site.</p> <p>The proposed land-use is also not an extension of the existing character of the area.</p> <p>The area is a mixed use area consisting of business and residential uses. Additional land uses should only be allowed if they are compatible with the existing land uses of the area. The live entertainment as proposed by the applicant is not compatible with the existing residential and tourism land uses and activities of the area in terms of noise.</p>

		<p>The proposed uses are not "similar to the existing character of the area." A place of entertainment has additional impacts, most notably a noise impact.</p>
	<p>The existing position of the restaurant and caretakers dwelling will not have any detrimental impact on their rights of the surrounding property owners, nor the existing built environment in future.</p>	<p>This is another generalized statement without any motivation or reason for the statement is provided</p> <p>The reality is that approval of a land-use where live music and revelling / partying with gambling without any clear mitigation or management will impact on this area where several conventional residential and good quality guest houses are located.</p> <p>It can be derived that if late night music and gambling will take place, it can be expected the residential function will diminish over time and the influence of the application site will "infect" the area accordingly.</p> <p>This is not what is foreseen to be the tourist potential for the Gansbaai Harbour area and completely in contradiction with the vision of the OMSDF.</p> <p>In summary, this proposed land-use for a place of entertainment to accommodate live music and gambling is not compatible with the existing mixed land-uses in the area.</p> <p>The existing buildings and existing rights are acknowledged, however it is not a valid argument for additional land uses.</p>
	<p>The application to allow live music will not disturb the local build form or character as it aims to only bring a new kind of service within easy reach of the inhabitants and holidaymakers of Gansbaai and the areas surrounding it.</p>	<p>The applicant provides no evidence, motivation, or reason for this statement.</p> <p>As per the previous point of response, the opinion is that a place of entertainment where live music without any control or mitigation measures and gambling is proposed within an area where a strong residential component exist, is not conducive for a harmonious, safe and family sort-after tourism area.</p> <p>The character of an area is not only determined by built form, but also land uses. The proposed land uses is likely to have a detrimental effect on the character of the area.</p> <p>One of the main reasons people tend to move to smaller towns or go to smaller towns on holiday is for peace and quiet and tranquillity.</p>

	<p>The proposed addition of another form of entertainment - referring here to the gambling machines- will not lead to a change in the aesthetical quality of the built environment. The gambling machines will in any case be inside the building where proper supervision can be. In actual fact, the proposal will not change anything in the existing cultural landscape and character and form of the existing settlement pattern.</p>	<p>The applicant merely makes a statement without providing a motivation and reason for the statement.</p> <p>Businesses of such nature have proved in many towns and areas to contribute towards the decay of urban areas with resulting social decay and problems. Due to the lack of information to prove the opposite, this proposal is considered detrimental and likely to affect the Gansbaai area with specific reference to the harbour area negatively.</p> <p>As mentioned above, character of an area is not only affected by the external appearance of a building, but also by land uses.</p>
Economic Implications	<p>It is a common mistake to regard labor as just any other generic production input. The restaurant and entertainment industry is one of the largest employers. The entire development on Erf 146 also provides employment for 11 people. The reality in South Africa is the fact that every person does have a job and also responsible and able to put food on the table for about 6 to 8 family members.</p> <p>It also plays a great role in fostering the economy, in that a large amount of taxes collected from the industry.</p>	<p>The economic opportunity in principle is supported, subject thereto that the land-use which is proposed is not in conflict with the adjacent land-uses. In this proposal, however, the land-use is in conflict with several adjacent and nearby land-uses with specifically referenced to the accommodation / residential uses.</p> <p>A restaurant and the entertainment industry are not the same. You can have a restaurant without live entertainment or gambling.</p> <p>Job creation in general is positive, but the proposal will cause a nuisance and is to the detriment of the character of the area which is likely to cause a loss of income and employment to the surrounding guest houses and other businesses and have a negative impact on the quality of life of the surrounding residents.</p>
Spatial Implications	<p>From the foregoing information, as well as the development envisaged, it is clear that the planned future character of the area should thus be enhanced should this application be approved.</p>	<p>We are of the opinion of that the opposite is true.</p> <p>A land-use within an area where several existing residential and good quality tourism accommodation facilities are established will now be exposed to a place of entertainment with live music and gambling facilities, which is clearly and obvious not consistent with each other.</p>

	<p>The proposal is an excellent example of the promotion of spatial and socio-economic integration.</p>	<p>Socio and economic integration are only possible where these functions enhance each other.</p> <p>The nature of the proposed land-use of a place of entertainment together with the socio-economic activities associated with it, is not aligned with the socio-economic activities of especially residential areas and activities.</p> <p>Therefore we object to this point of motivation and implication.</p>
<p>Traffic, Parking and Access Impact</p>	<p>Traffic: The low level of traffic generated by this plant kind of development will have no significant effect on the existing and surrounding street network and the traffic flow patterns around the site will not be affected at all.</p> <p>Because of the foregoing no traffic impact assessment or environmental impact assessment is necessary with this application.</p>	<p>No proposal, simulation or information is provided in terms of the traffic expected to be generated by the proposal apart from stating that it "will have no significant effect on the existing and surrounding street network and traffic flow patterns around the site".</p> <p>Given the lack of information, it can be assumed that when live music events are held, for the host it should be financially feasible and therefore it can be derived that large numbers of spectators / patrons can be drawn to such venue.</p> <p>In the light of the above the traffic impact is a serious concern and subsequently objected to.</p>
	<p>Access. The present access to the property is from Mark St and will also provide safe access to an exit from the proposed development.</p>	<p>The access proposal from the Site Development Plan is noted.</p> <p>However, the manoeuvring of the vehicles on the property is questioned. It is derived that most of the vehicles (parking bays 5 to 11) will not be able to turn on the site and will have to reverse out of the property around a bend onto Mark Street and then turn around. This is not practical or functional. Furthermore, given that public parking exists directly in front of the application site (which is not mentioned in the application) is more likely to be used by the patrons of the proposed restaurant. The availability of these parking bays can have a substantial impact on the number of patrons to the restaurant as well as traffic patterns in the area. It is also likely that given the nature of the application, late night traffic can cause a disturbance to the residential uses in the area.</p>



<p>In terms of Schedule 2 of the Overstrand Municipality land use Scheme 2020, the required number of parking bays for the restaurant will be 4 bays 100m² GLA and 1.5 bays per caretakers unit.</p> <p>The manoeuvring space for vehicles on the property is clearly indicated on the SDP.</p>	<p>Hence, in the light of the above, we wish to object to the fact that practical and functional on-site parking as proposed by the applicant cannot be provided and is thus not consistent with the Overstrand Municipal Planning By-Law, 2020.</p>
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Other Matters

As part of the problem that the applicant does not describe the operation and functioning of the proposal, it is inter alia not clear from where deliveries and when the deliveries to the property will be made or even where the artists will perform. Such information is needed to evaluate such an application.

The proposed land-use is a controversial land-use and needs comprehensive information to make a decision. The information provided is not considered sufficient to make a decision and with the potential detrimental impact this application cannot be supported.

Conclusion:

The application lacks information to determine how it plans to function and operate as a place of entertainment to accommodate live music and gambling facilities as well. No mitigation measures are proposed, no acoustic or traffic studies are provided.

The decline of the application by the Overstrand Heritage Committee is also a concern which is most likely with good reason.

The application does not provide the need for such use in terms of general accepted town planning practice.

The description of the impact is vague as in general it is merely stated that the proposed use will not have a negative affect on the environment from different perspectives.

In conclusion to the above, we are opinion that the impact of the proposed land-use for a place of entertainment to accommodate live music and gambling machines will be detrimental to the area in terms of the proposed uses not being compatible with the existing land-uses within the vicinity of the application area, no practical and feasible on-site parking can be provided and that the proposed use is not foreseen to augment the area for future tourism growth or development aligned with the QMSDF vision for the area.

In the light of the above we request that this application be rejected.

Kind Regards,



Andre Wiehahn Pr Pln A/927/1996

Telephone: 028 312 1668

Fax: 086 602 7558

Cellphone: 082 466 0490

E-Mail: info@iatrp.co.za

SPECIAL POWER OF ATTORNEY

*I/We JM Badenhorst Elektries
the undersigned, do hereby nominate, constitute and appoint **ANDRE MARIUS WIEHAHN** of **INTERACTIVE TOWN & REGIONAL PLANNING** with power of Substitution to be *my/our lawful representative in *my/our application for:

- An objection to the Consent application for a place of entertainment to accommodate live music and gambling machines on Erf 146 Gansbaal

In addition to make other necessary objections and further to represent *me/us at any inquiry in relation to the abovementioned matters and generally do whatever may be necessary or desirable to procure the approval of the application, including the acquisition of building plans, previous applications, previous approvals or any other information from the municipality, by virtue of those present and whatever our said representative have to date done herein.

Signed at Caledon on this 19th day May 2022

Signed 

In the presence of the undersigned witnesses:

As Witnesses:

Name Jeanine

Signed Jyers

Name Gerda

Signed Gauw

*Delete whichever is not applicable.

(In case of Company / Trust / Close Corporation, please provide a resolution authorising the person signing the Power of Attorney to sign.)

19 Mei 2022

Die Overstrand Munisipaliteit

VAN: AJ SMIT

MUSTANG SALLY PUB

DIRKIE UYS STR 7

GANSBAAI

7220



TP. N. Ahoort
(S. ud mone)

FILE NO.	GF 146
	Gansbaai ✓
SCAN NO.	
	GGB 146
COLLABORATOR NO.	
	1686269

Wie dit mag aangaan

BESWARE TOV VERGUNNINGS EN ENTERTAINMENT LISENSIE TÊ DIE WIELHUIS MARKSTR 2 GANSBAAI

Hiermee dien ek my besware in teen bogenoemde saak om die volgende redes:

Voorheen die restaurant Die Taphuis (huidig, die wielhuis) het jare terug aansoek gedoen vir entertainment lisensie en is afgekeer. Die Wielhuis te Markstr 2 Gansbaai is gelee in n residensiele area in Gansbaai. Twee (2) Gastehuse is aangrensend van Die Wielhuis waar toediening van die genoemde lisensie aansoeke weens klank en geraas beslis die Gastehuse sal benadeel.

Die jaar 2013 was ek betrokke by Friends pub Gansbaai en moes deur al die red tape gaan by sonering, uiteensitting van 13 parkeerplekke om goedkeuring te kon kry.

Die Wielhuis het nie genoeg parkering nie en soos reeds gesien is dit n opeenknoping van voertuie wat reeds parkeer voor ander bestaande besighede waarvan die eienaars reeds ontstoke is.

Wat die vergunningsgebruik aansoek aanbetref staan ek dit grootliks teen weens die feit daar alreeds vyf(5) bestaande besighede n, Friends pub, Jimmys pub, Kuslans en Mustang Sally pub wat dobbelmasjiene het. Deur die lock down het soveel bestaande besighede gesukkel en agteruit gegaan weens die ekonomie en steeds sukkel om voor te kom en daarom voel ek die mark in Gansbaai wat dobbelmasjiene aanbetref is reeds versadig.

Ek voel dis onregverdig teenoor ons bestaande besighede dat goedkeuring gegee sou word vir bogenoemde lisensies en dit sal voorkom dat julle nie ons in ag neem as eienaars van hierdie tipe besighede nie.

Die Wielhuis is gesoneer en lisensies is goedgekeur vir n Restaurant waar ons, ek Mustang Sally pub nie is nie, ek kompeteer nie teen n Restaurant nie en verwag dieselfde van hierdie aansoek.

Daar is soveel punte wat nog genoem kan word tov hierdie aansoek maar ek sal dit los vir wanneer die tyd dit toelaat.

19 MAY 2022

TP.

Ek vra net dat julle asseblief dink aan ons bestaande besighede en ek glo tov reels wat vir die een geld moet so ook vir die ander geld.

Ek sluit af, ek AJ SMIT Mustang Sally pub Gansbaai staan hierdie aansoek geensins toe nie.

By voorbaat dank.

AJ SMIT

MUSTANG SALLY PUB

DIRKIE UYS STR 7

GANSBAAI

KONTAKNR: 0729289581



To whom it may concern,

RE: Proposed Development of Erf 146

TP. n. Sheart
(S. Ud n. n. n.)

I, Anna Susanna Badenhorst, owner of Erf 140 would like to note my objection to the proposed developments of Erf 146.

Firstly, I want to strongly object to these developments as a taxpayer. I currently have four residential tenants in the building on Erf 140. I have been the owner of this property for over twenty years. I have diligently paid my rates, taxes, electricity, and water. Clearly contributing to this municipality and community. With the proposed developments it goes without saying that most of my tenants will be moving out. Given the noise pollution and general distaste of living next to such an establishment. With my tenants moving out, I will be struggling to and will be unlikely to afford the rates and taxes.

Secondly, I would like to note my strong disapproval and distaste of such the proposed establishment. As mentioned, I have been contributing to this community for over twenty years. An establishment as proposed will bring down the moral standing of this community and lower our property values.

I hope that my objections to the proposed development is noted and will genuinely be considered.

Kind regards

Longstanding taxpayer and community member

Anna Badenhorst

Anna Badenhorst

FILE NO.	Erf 146 ✓
	Gonebaai
SCAN NO.	Anna
COLLABORATOR NO.	168 7701

A Conradie

From: info@saxonlodge.com
Sent: Saturday, 06 August 2022 12:40
To: S Van Der Merwe
Cc: A Conradie; 'Pam Golding'
Subject: Objection to consent use application for ERF 146
Attachments: Objection ERF 146.docx



TP. n. / heart
(S. Jd w/ name)

Good morning,

Apologies for the delay in this document, I was battling to format and have decided to send as is. I took the opportunity to address every point raised, which makes the response as repetitive as the application.

In a nutshell:

- The person/s applying for this consent use to our mind have not done proper research for the tourism trends and motivations in Gansbaai. There assumptions are unfounded and definitely not in line with our first hand and intimate conversations with our guests, both foreign and domestic, including business and government
- The natural character of this area is residential, quiet and relaxed and is the prime reason for guests selecting our lodge. Whilst there are business's most are low key and unobtrusive (with the exception of SeaView, Friends and similar pubs) which have a nasty habit of bringing trouble to our streets and disrepute to the neighbourhood)
 - A live entertainment product will certainly disturb and change the nature of this peace and quiet. We live on the premises and for sure it will take our right of quiet and peaceful evenings for rest and sleep away as well as for our guests who have paid money for this right. The Framework ..."earmarks the area where ERF 146 is situated for mixed residential and low key business premise" Live entertainment, gambling and primary bar activity is not low key.
 - Gambling machines, by the example of the other 3 spots in town, attract a type of individual who are not 'upper-class' as this application will have us believe. It is not a new or unique product in the town and only serves to enrich the owners at the expense of the community
 - The new bar area which occupies centre stage and more than 30% of the floor space of the restaurant (excluding gambling machine area) has brought the noise of revellers forward on the property and we notice the change, though at this point not disturbing that we have had to complain. Any increase with live music and gambling comes with the expectation of more people, more drinking and too much noise.
 - The 'storerooms' in the 11 years we have been here have always been rented out as accommodation and any narrative or explanation to the contrary is simply untrue. The application starts out to apply for consent for the gambling machines, live entertainment and the fact that they transgressed the building line by-law. Then toward the end of the application there is a point that the application seeks to legalise the 'flats'. Why add it right at the back where it could be missed?
 - An upper-class restaurant will be most welcome. Having recently (last week) walked through what is there, and contrary to point 12 in the application, the standard of the building and finishes (shade cloth) and the state of the bar, smoking contraventions and the smells of old alcohol, food and cigarette smoke added to the general feel is anything but "High Standard". It is yet another local less than average pub/ restaurant serving the same people as the others, offering nothing new and no improvement in the area.
 - We believe this application if approved and the when consent uses are applied there will be serious negative impact to the area and will create a platform for many complaints, disharmony and community unhappiness.

Warm Regards
Caron & Dave

10 AUG 2022

TP

FILE NO.	ERF 146
	Gansbaai
SCAN NO.	12
COLLABORATOR NO.	1728627



SAXONLODGE
- GANSBAAI - WESTERN CAPE -



4th August 2022

Dear Mr Schalk van der Merwe

Cc: S Muller; Riana de Koning, Kat Myburgh, Dave Sawtelle, Annelie Rabie

With reference to your Notice to Affected Persons; ERF 146, 2 Mark Street, Gansbaai, of the Applications for consent use, departure and determination of an administrative penalty.

Having received this notice after the closing date for comments we reserve our rights regardless of your closing date of the 22nd May 2022, to offer our comments/ objections on the process followed and the application per the notice. We also reserve our rights to appeal any approval without the Municipality, specifically Infrastructure and Planning, conferring with this business and residential community directly, who will be most heavily impacted by live entertainment and more gambling machines in our area. The application is very repetitive and so has taken some time to comment with as little emotion as possible, difficult given the huge imposition of this proposal on our business and life style.

I also apologise for the paragraphing and numbering formatting – I am not a great administrator.

Saxon Lodge has been operating as a guesthouse in the area since 2001. We, the current owners have been here for 11 years. I served on the tourism board for 6 years, 2 of which I was the chairman. We contribute to meaningful tourism marketing attracting visitors to our town to enjoy the diversity of nature and adventure in nature. We have a completely opposite view about the nature of this town and area compared to the person putting forward this application. They are not in touch with the reality of what travellers are looking for and appear to be only serving the local community who in our experience do not behave in an upper-class way. To the contrary they become drunk and disorderly, swearing and running amok in the town. We find ourselves apologising for noise from the streets in the early morning hours when the revellers leave the pubs and gambling joints to go home. It is not uncommon for screaming, shouting and revving engines and wheelies to be heard. Drunk and screaming individuals are not our idea of encouraging tourism or supporting an upper-class restaurant as this document continually refers to. We have severe misgivings about this applications integrity in its research into the needs of tourism.

We will gladly support the development of an upmarket/ wholesome restaurant, something I can safely say is needed in our peak times. Having been at the Wielhuis once, I can also say that it does NOT fit this profile right now.

We employ 4 permanent staff, a manager and support energetically and financially with marketing efforts made by our community. We refer our guests to all the restaurants and activities. We buy at least 60% of our supplies from Gansbaai retailers and suppliers. We have been active in our community for the 11 years that we have been here and through this objection, are voicing our deepest concerns for the consent use application of this proposal.

I draw your attention to some administration oversights/ errors/ omissions to the covering letter and notification documents addressed to ERF 145, "Saxton Lodge".

1. How is it that you cannot get our business name correct?

We are a well know tourism business in Gansbaai and the direct neighbour to ERF146, surely getting our business name correct is a good first base. If this is the level of attention to detail, than I am deeply concerned about the application being made here.

2. Where are the attachments as referenced in the body of the notification? How are we expected to make a non-emotional and rational commentary without these documents?

The only attachments are a series of site plan layouts and floor plans

4.1.3 – "enclosed Title Deed", **not present in the pack**

4.2 - "a zoning certificate is attached...attachment A", **not present in the pack**

4.2 d) – "Locality- and zoning plans ...attachment B...", **not present in the pack** – *this could be the floor plans and site layouts, however they are not titled or labelled as attachment B, so not sure*

9.1 – "all heritage information is attached...Attachment C" **not present in the pack**

12. "A photo collage...The high standard of development is clearly evident" (Refer to Attachment D of this memorandum" – **not present in the pack**

I do not want to hear that such attachments can be viewed at the library, the municipality or any such place as we are busy people and this proposal should come to us as a priority (all of us neighbours)

3. How important is our input to this process? Is it completely skewed to the applicant who is

looking after their own interests and paying fees? What possible reason is there to use a failed postal system to deliver such important documents, when there is a perfectly sound and direct communication method, which costs a fraction of the price of postal services, copies and mailing stationery. The municipality certainly has all email addresses and makes sure their bills are sent via this method. Surely, an important if not crucial application such as this and one which will have direct impacts to residences, businesses and the peace and quiet of our neighbourhood should have been communicated in every possible manner. Instead the postal service, albeit registered service is used. Our banks, municipal bills and letters, creditors use the technology which directly communicates with us – "electronic mail". I cannot remember when I received anything other than advertising through our post box.

It should also be noted that the some of the surrounding residential homes and businesses who will definitely be impacted by these changes should this application be approved, never received any notification or information relating to this application. **We would like to know why no effort other than that which appears in a regulations manual was made to solicit the comments from those who vote for and pay for this municipality?** Or has it become so – we have met the requirements of the regulations and that is considered enough.

4. How is it that once the closing date arrives, and you have apparently 1 returned, do you not feel it important enough to find out why there are no/ or few responses to the application? It would raise an alarm bell in my mind as I would want to know that all the neighbours are ok with such development, which would prevent later problems.

I expect that our municipal office ensures that regulations and processes are in place to protect and implement responsible amendments, changes and developments based on the total involvement of the neighbours and local community. This is the only way that all interests are considered and dealt with.

As the direct southerly neighbour of ERF 146, Die Wielhuis, we, Saxon Lodge and as residents of ERF 145, have direct and first-hand experience of this business and will be drawing on this to support our commentary. Let it also be known, **I do not, will not and certainly do not refer our guests (local or foreign) to eat, drink or visit the spot, it is a far cry from their envisaged "upper-class Restaurant" (5.1.1).** I would like to see the plans, and proposals of menus and offerings to support such a restaurant, which would be a welcome presence in our neighbourhood.

I would like to also correct the categorical statement that there have been no complaints regarding the current business. We have on a few occasions, late at night, been woken and have gone over there to ask them to quiet down and were met with inebriated barmen and staff, who essentially ignored us. We have called the police on a few occasions as well.

I would also like to add here and place on record that there was no neighbourly discussion about what they intended to do, no investigation as to how it might impact our business and peace or anyone else's. Instead an officious and direct application to regulators, who do not live here, who rarely visit here and frankly who do not have any idea about the tourism and residential dynamics of this area. The owner/ developer in their eagerness to develop their case have presented them with justifications that frankly are at best one sided and certainly not well researched or thought through.

Our commentary and objections are hereby recorded:

We refer to just those clauses that we have commentary to give, the others we accept as they are. The application proposal is a tiresome repetitive document and I have tried to have some commentary to most points. I will also provide a cover summary of our main objection points.

Locality

Erf 631, Residential zone 1 (with a private residence) is the property of the owner of ERF 146, who does not reside there permanently and so will not experience the disturbance at the same level as us who reside permanently, especially as these 'joints' trade every night.

ERF 145 on the southern side is a 4 star graded guesthouse, which attracts a range of guests at the middle to top end of the accommodation spectrum. Our guests range from foreign tourists to local travellers and weekenders as well as business and government travellers. A key guest comment is the peace and quiet we offer and the relaxation and good sleep they get as a result. AS it is we have to contend with and complain regularly about the Sea View's live music disturbance and they are 1 and a half blocks away. We have to contend occasionally with guests complaining or questioning why the noise is allowed in the neighbourhood. A question we ask ourselves and police often.

We are also aware of the building line contravention between erf 146 & erf 145 and had agreed with the previous owner to live with the history of that agreement, as it would be way to costly and inconvenient for both parties to change it at this point. This remains that case for us.

WE were driven to creating walling features to create privacy between our spaces especially as sometimes the revelry moves from the bar to the car park. The first flat also has a little balcony which looked directly into our pool and property – so Privacy is already a thing.

ERF 139 on the eastern side is a modern and classy, well supported boarding lodge attracting foreign and local travellers who also enjoy the quiet space. The staff has expressed discomfort at asking how guests have slept when there has been rowdy drinking revellers at ERF 146 and Sea view and this would be the stress that we would all be under if the consent use is approved.

The travel reviews for noise and disturbance are against the accommodation not the party joint and directly impacts our ratings and bookings.

ERF 140, the pet shop operates during the day and would not be impacted by the noise

All other ERFs south and within range of noise from ERF 146 are residential and should be included in any application for this type of development. As far as we can ascertain, this has not happened here, as they have not received anything regarding this proposal.

2. Background:

2.1 Agree with the short description and add that the reason it has become a great place to getaway, if the Municipality would ask tourism and tourist operators, is the unspoilt, quiet feel. The lack of major development especially along the coast and the relaxed quiet ambiance of the area. We are long past the Shark Capital of the world and have a much stronger attraction in the Gentle giants of the ocean, who are just that, quiet, gentle and non-invasive. I have yet to be asked over 11 years of average of 50% occupancy for a place of live entertainment or gambling. It is not perceived as such a place. A bar yes, good restaurants, yes. This nefarious justification for increasing and improving tourism with live music and gambling is without question a stretch by the applicant to ride on the back of intentional efforts by tourism businesses to drive tourism in the area.

Typically foreign visitors to the area are over the age of 35 and those who are younger are mostly green travellers who look at destinations for their environmental and human impacts and practices. Our visitors across the board sit on our deck and quietly watch the goings on in the harbour and the ocean and always comment on its beauty and serenity.

We make it our business to ask almost every visitor who comes to stay about their stay and the overwhelming responses are the same. Local travellers also love the peace and quiet, they enjoy good dining and activities such as fishing, hiking and hanging out. Business travellers want somewhere to eat and then get early to bed for a day of work and travel.

2.2 No comment

2.3 The property (Erf 146)...**the 2 storerooms** per the plans presented in this document, drawn in 2018, approved???, are used as accommodation. These are our direct, against our wall neighbours and so there are actually 3 'flats' which are currently being used as rental accommodation and in the holiday season as short term accommodation – this as I understand the regulations is not legal anyway and also as the plans describe these units as storerooms – **in my view a flagrant contravention of the by-law pertaining to accommodation establishments**. It has been this way since we have lived here – 11 years, (previous owner included).

This should also trigger parking requirements beyond that described in this document.

We have built a small wall and added a reed wall to create more privacy as one of these units looks onto our pool and garden as does the parking area. The trees and foliage that kept our space private was cut down by the current owner – without consultation with us, so that we could make another plan.

2.4 Understood. No photos for us to look at

2.5 Would like to see the attachment missing from our pack relating to this.

3. Overview of Applications

3.1 Thank you for the reference

3.1.1 No attached zoning certificate to review

3.1.2 Application for consent uses:

- To allow for conduct of live music – **Strongly object. This will create a noise nuisance for us and our guests and the neighbourhood, who enjoy the quiet, peaceful nature of this space.**
- And 5 gambling machines – **Strongly object.** We fail to understand the need for more gambling machines and how this provides/ encourages tourism and relates in anyway to the development of an upper-class restaurant. There are already 3 joints within 1 km of each other with gambling machines. Our experience with these joints, all also public bars, has been one of noise, drunken behaviour and down grading the area.

3.1.3 The regulation is understood. **The envisaged cabaret entertainment will disturb us and our guests, unless very effective sound proofing is installed. We are disturbed by 'live music' from a club more than 3 blocks away, ERF 146 is our direct neighbour. 5 gambling machines are hardly material for an upper class restaurant that the application talks about.**

3.2 This building line transgression is historic and has an unknown origin. We have lived with it until now. I would however draw attention to the accuracy of the description of the outbuildings abutted to our property.

The larger of the 3 spaces described as the caretakers dwelling is rented out to a couple, neither of whom are the caretaker or in anyway connected to the business on ERF 146. We have dealt with them in terms of their barking dogs which disturb us from time to time. We do know who they are and where they are employed.

The 2 storage rooms have, for as a long as we have been here (11 years) been used as short term and long term rental accommodation and are currently occupied.

These inaccuracies are concerning as they seem to represent a contravention of this by-law, which in a later point they claim to have never done.

4.1 Title Deed information – noted except

4.1.3 No enclosed title deed – so cannot verify

4.2 Zoning of the erf

No zoning certificate is attached for viewing and this is very important to see. Our

experience of this business property over the years has been as a restaurant with a pub and at one stage a tattoo parlour. I noticed that some internal renovations have been made which has brought the bar right forward and substantially increased in size. I am curious to see that this change was also made through application to the liquor authority and will make enquiry for this as well. Recently we have noticed that the noise level from the premises has become louder. The forward movement of the bar may explain this.

It's also worth noting that the smoking regulations are also transgressed here. Twice in the past week I have been in there to assess the 'Upper classness' and both times patrons are sitting at tables smoking and drinking. The chef and the restaurant "owner" were also sitting at the bar smoking.

The size and focus on the bar as a central feature relative to the 'restaurant' also suggests that the business is a bar first, restaurant second.

Parking as far as I can see with 3 flats and place for employees, owner and then patrons will not be enough, given the seating in the restaurant, and should be looked at carefully.

"Attachment B' is not attached

4.3 Land use

The property is currently developed with a restaurant" The only truth in this statement is that there is a Restaurant...the outbuildings are not store rooms and whilst the Caretakers Dwelling is a flat it most certainly is not the caretaker.

5. NEED and Desirability

5.1 Need

5.1.1 We feel the same way that the tenant should upgrade the Restaurant. We would like to understand what is meant by "...in line with related businesses"

5.1.2 The proposed development can form part of the upgrading of the Tourist Industry in Overstrand – this is a hefty goal and we would like to understand how this is to be done from this application. As an active marketer and host in the tourist sector we are acutely aware of tourist needs and wants – not once, ever, have we been asked about cabaret or live music or gambling spots. We host foreign and local tourists who love the peace and quiet we offer, the views of the ocean and chilled nature of the area. There is no doubt though, that we could do with another 'Upper Class restaurant". By all measures, the business in its current format and knowing the people cooking at this time – it will not meet the standards of such a restaurant (I mean no disrespect to the current chef/s). I would also want to understand how live cabaret entertainment and gambling upgrades tourism. These are words being used by people who have no clear understanding of the tourism sector. We are also unclear as to how they calculated a need for another 5 gambling machines, what research has been done? We live in a community where jobs are scarce and incomes are low and then they see a need for these same people to gamble, so the owners/ tenants can make more money. It seems to me a manipulation to buy favour for a more selfish development and income generation in gambling money which is very lucrative and a way to attract more of the bar flies in the area to their establishment. AS a proud resident of Gansbaai, I am tired of these types of spaces

which only attract locals who get into fights, are rowdy and undisciplined and totally inconsiderate of neighbours rights. This has been our experience with similar businesses in the area. I am also tired of hearing that it is ok because its just Gansbaai and feel strongly that it is time for us to change this image for our community and to promote responsible tourism and businesses. The municipality has it within their power to assist neighbourhoods by soliciting their inputs to create positive changes for everyone.

5.2 Noted

Social implications

5.2.4 The proposed consent will definitely impact on the surrounding property owners and very specifically ERF 145 Saxon Lodge. We pride ourselves on providing a peaceful quiet stay in Gansbaai and the approval of Live Entertainment and gambling will change this for the area. As it is and as mentioned before, we have many such joints within a close range and this adds another which will simply compete with what is already there. I have watched the patrons and the demographics remain the same in the area – local part goers and revellers who are noisy and inconsiderate

5.2.5 The character of the area is definitely going to be disturbed by yet another gambling/ drinking joint. The area is enjoyed for its relaxed and peaceful atmosphere. The majority of the properties south of ERF 146 are residential and guesthouses which rely on the stillness we have for peaceful evenings enjoying the ocean and much needed rest. Gambling machines again attract a different type of person, the bar already creates some noise and then live entertainment will for sure change the nature and the security of this area.

5.2.6 I state categorically the opposite. So just because they make a statement that this will be a desirable development, they have not consulted with the residents and business owners or bothered to do proper research about the area. The owner of the property is a part time resident of the area and so is not impacted as we are.

5.2.7 The residential homes including guesthouses are by far the more predominant land use around ERF 146. They are oversimplifying their case and watering down the impact. Yes business – is a characteristic of the area and this would not be an extension of such as it would be adding products that will create high levels of noise disturbance until early hours of the morning, drunk and disorderly behaviour as people leave noisily from the spot and the possibility of security issues with neighbouring properties. Drunk revellers do not have any brakes when it comes to behaviour. The experience we have had with all these bars in the town is that the bar tenders do not stop serving alcohol to clearly inebriated patrons who become loud, obnoxious and destructive, this will in all likelihood be amplified with the addition of live entertainment.

5.2.8. The existing flats already have impact on us next door – their dogs are not controlled, there is a water leak into our dining room which we have recently figured comes from the WC of the outbuilding abutted to our property (seen on the plans that have been appended). Our rights to a quiet and peaceful neighbourhood for ourselves who live here and for our guests are valid and will be compromised by this planned so-called upgrade and development.

5.2.9/ 10 The allowance of live music is the prime reason for this objection and will most definitely disturb the neighbours. They are not bring a “new kind’ of service, this service is the same as is already available...nothing new. There are already 3 venues with slot machines – tell me how there is a need for another??? Proper supervision??? The restaurant owner/ tenant sits at the bar

smoking – a contravention in the first place, who is going to supervise then??? Someone who contravenes by-laws anyway, what confidence that instil for us neighbours. No thank you. There is already live music at other venues, very loud I may add – how is this a new service??? For sure we could do with an ‘upper- class’ restaurants. What is there currently would not serve as such.

Economic implications

5.2.11 It is a more common mistake to use this thin argument for the purposes of agrandising a proposal. I would love to see how many more people they would employ with this proposal – which is an extraction economy not a building economic model. And then at what cost??? All the neighbours being impacted and miserable. In our case bad reviews, for their behaviour, which means reduced bookings and revenue? Layoffs here because we wont afford the staff – think carefully when these arguments are brought into a proposal – this one particularly is very thin.

5.2.12 ...and then to patronise us and Municipality by saying it will increase tax collection, again a very thin argument when the impact on surrounding already successful business will be compromised, what of the losses their businesses could undergo and the financial and tax implications of that. Another idea not well thought through.

Spatial implications

5.2.13 Please explain how the area will be enhanced – all my inputs above talk to the contrary. So this point is purely a unilateral view that has no basis in truth

5.2.14 This has got to be the overstatement of our time. How?? Disturbance, inner city issues and promoting drunken and disorderly behaviour, gambling, which never promotes integration and cohesion, noise and disrespect for neighbours need is hardly integrative even at the socio-economic level. The only economic benefit for this development is for the applicant at the cost of its neighbours and community.

6. Traffic – noted and no comment except:-

6.3 The current usage of the land has 3 flats, requiring parking (1.5 per each?) – the so called storerooms are NOT used as such. What of the employees, where will they park, what of the owner/ tenant where will they park. The Bar area is now at least 30% of the floor space, the restaurant? Gamblers? It strikes me that between the bar and the space for the gambling machines there is little space for an upper-class or any other type of restaurant and so perhaps it should be called a bar/ gambling place – not a restaurant.

So what of the patrons – how many parking spots and if the same by-law applies as to us, then it has to be on their ERF?? There simply is not enough parking for this application and the ability to manoeuvre the cars, especially leaving when the patrons have been drinking.

7 Noted

8 Commentary in point 6 should cover most of this.

8.2 – 8.3 Spatial development earmarks the area where ERF146 Gansbaai for “mixed residential and low key business” – this would suggest, quiet, non-intrusive business. A business that does not disturb or harass neighbours and community. The proposal suggests the development of a rowdy environment for drinking, partying and gambling, hardly a low-key business

The proposal will change everything about the area in terms of noise and disturbance, and braking with the quiet and peaceful residential area we all chose to invest and live in.

The aesthetic value of the current building is hardly an improvement of the area and right now does not comply with the attached plans. It looks cheap and nasty and the finishing on the ‘addition’ done recently are shoddy at best. The new handy plank indicated on the plan does not seal the windows, instead a canvas or such sheeting is hung from the inside to close the gaps – not very effectively??? How does this improve the aesthetic value of the place?

How does this proposal “contribute to place making and the development of attractive and safe urban environments”,

The proposed development will change nothing – IT WILL CHANGE EVERYTHING

9 Heritage value – interesting to see outcomes here, no attachment

9.2 Noted

9.3 Noted. How is gambling and noise promoting/ encouraging tourism

9.4 Noted, except the development will differ substantially from its current use and create a nuisance if not a safety issue

10 To our mind the owner has violated regulations:

- **Building line**
- **Store rooms which are actually used as short and long term rentals**
- **Caretakers flat is occupied by a tenant who does not work for or is not the caretaker**
- **The building plans attached describe specs that on our limited access and inspection fall short viz; new translucent sheeting between flats, new sheeting over storage area on the boundary wall – is old tin/zinc been there for years. New handy plank walls with windows – do not complete the wall, instead shade cloth expended from roof to cover gaps. As far as I can see no glass fibre insulation between panels, or even more than 1 panel. I am expecting that this will all be done as part of the development???**
- **Bar area has moved from the back and now covers a greater percentage of the floor space. I will be doing an enquiry with the liquor authority regarding this change**
- **Smoking in the space. On my quick inspection the other day smoking is allowed as seen with patrons smoking in the restaurant, the owner and chef smoking at the bar – “Smoking in partially enclosed public places, such as covered patios, verandas, balconies, walkways or parking areas, is illegal.” The fine for the owner of a restaurant, pub, bar and workplace that breaks the smoking law is a maximum of R50,000 and for the individual smoker R500.**
- **Imposes on our privacy when the owner chopped down barrier trees. The flat dwellers look over our pool and garden. We have built a small wall and done some work with reeds to maintain privacy**
- **Double speak calls the storerooms on the plans and then describes the plans been drawn up to legalise the flats. This is not mentioned in the proposal or the consent use until point 10 when approved plans are presented and then says that the purpose of this proposal is the legalisation of the two flats, which have been used illegally this way for the 11 years we have been the owners of ERF 145. This has been slipped in here and is not mentioned**

in the beginning under the overview of this application. It seems that this has been all but transparent in this document when these rooms have been described as storerooms all the way through till this point when they jump on an addition to the application.

11.4 It will extract value into the pockets of the owner and create a nuisance and disturbance to the area.

11.5 There is a need for another restaurant open at reliable hours presenting good food and a relaxed and chilled ambiance. Take example from Blue Goose, Country Kitchen, Benguela or Great White House. There is no need for another noisy pub/ restaurant with gambling machines, drunken behaviour and loud entertainment to disturb the neighbourhood. Tell us about the unprecedented growth of Gansbaai in terms of the kinds of people moving in and what type of restaurants and entertainment they are looking for. We have privy to this and socialise with many of such people and can assure you that this is not the type of place they are looking for.

12 there are no photographs to show inside of restaurant. We went there the other day and frankly – upper-class does not describe it. Smelt of stale cigarettes and beer and patrons (4 people over lunch time) were drinking and smoking in the space as was the owner and chef.

This gets a absolutely NO vote from us and we will do what we need to do to make sure this development does not go ahead.

A Conradie

From: Gansbaai Boarding Lodge 4 Mark Street
Sent: Tuesday, 09 August 2022 10:01
To: Saxon Lodge; S Van Der Merwe; A Conradie; david.sawtelle@pamgolding.co.za
Subject: Objection to consent use application for ERF 146



FILE NO.	ERF 146
SCAN NO.	10
COLLABORATOR NO.	1728624

Good morning,

TP. D. /thead
(S. J. d. n. b. n.)

Apologies for the delay in this document, I did however read this document composed so well by my fellow hospitality peer and my response to the points is highlighted in blue

In a nutshell:

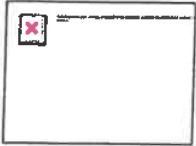
- The person/s applying for this consent use to our mind have not done proper research for the tourism trends and motivations in Gansbaai. There assumptions are unfounded and definitely not in line with our first hand and intimate conversations with our guests, both foreign and domestic, including business and government (I agree with Caron and Dave)
- The natural character of this area is residential, quiet and relaxed and is the prime reason for guests selecting our lodge. Whilst there are business's most are low key and unobtrusive (with the exception of SeaView, Friends and similar pubs) which have a nasty habit of bringing trouble to our streets and disrepute to the neighbourhood) Let alone the depreciation of the property prices
 - A live entertainment product will certainly disturb and change the nature of this peace and quiet. We live on the premises and for sure it will take our right of quiet and peaceful evenings for rest and sleep away as well as for our guests who have paid money for this right. The Framework .."earmarks the area where ERF 146 is situated for mixed residential and low key business premise" Live entertainment, gambling and primary bar activity is not low key. It also will challenge the already lack of parking since the owners park in front of the Lodge and only leave very late at night.
 - Gambling machines, by the example of the other 3 spots in town, attract a type of individual who are not 'upper-class' as this application will have us believe. It is not a new or unique product in the town and only serves to enrich the owners at the expense of the community. It is mostly retired locals that gambles and again the parking issue.
 - The new bar area which occupies centre stage and more than 30% of the floor space of the restaurant (excluding gambling machine area) has brought the noise of revellers forward on the property and we notice the change, though at this point not disturbing that we have had to complain. Any increase with live music and gambling comes with the expectation of more people, more drinking and too much noise. The owners of the establishment can't even manage their garbage let alone a "decent establishment" (I have pictures)
 - The 'storerooms' in the 11 years we have been here have always been rented out as accommodation and any narrative or explanation to the contrary is simply untrue. The application starts out to apply for consent for the gambling machines, live entertainment and the fact that they transgressed the building line by-law. Then toward the end of the application there is a point that the application seeks to legalise the 'flats'. Why add it right at the back where it could be missed? I have the number for one resident that lives in this "storeroom" and who's husband runs a business on the premises that stays there permanently and does reservations for the owner and it causes parking issues and their fire blows all their ash into my garages resulting in guests cars getting dirty.
 - An upper-class restaurant will be most welcome. Having recently (last week) walked through what is there, and contrary to point 12 in the application, the standard of the building and finishes (shade cloth) and the state of the bar, smoking contraventions and the smells of old alcohol, food and cigarette smoke added to the general feel is anything but "High Standard". It is yet another local less than average pub/ restaurant serving the same people as the others, offering nothing new and no

10 AUG 2022

TP

- improvement in the area. This place is honestly not an upmarket or potential upmarket place of business as the menu is from the 80's and they focus on booze sales rather than the food.
- o We believe this application if approved and the when consent uses are applied there will be serious negative impact to the area and will create a platform for many complaints, disharmony and community unhappiness. I totally agree with Caron and Dave

Thank You



Kind Regards
Aaron De Waal
Business Owner

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TP- A / theorb
(S. ud name).

ERF 146,2 MARK STREET, GANSBAAI : COMMENTS ON OBJECTIONS : APPLICATION FOR CONSENT USE

Objectors :

Saxon lodge, erf 145 [2 objections]

Badenhorst, erf 140 [2 objections]

Smit, erf 642

De Waal, erf 139

FILE NO.

GF 146 Gansbaai

SCAN NO.

GGB 146

COLLABORATOR NO.

1909757

OVERSTRAND MUNISIPALITEIT

REKORDBEHEER

01 SEP 2023

DOCUMENT CONTROL

OVERSTRAND MUNICIPALITY

The following issues were common ground with all the objectors :

1] The issue with live music and Place of entertainment and subsequent noise :

Part of the application process for LPMS is the necessity to obtain an entertainment licence – this licence defines entertainment as including music and concerts and shows.

Although the licence is needed, it by no means that the business must have music, many sites who have LPMS don't have any other sort of entertainment.

As far as noise is concerned – the LPMS don't have coins and sound effects is minimal and can be muted all together.

Furthermore a letter was given by the applicant to the town planner, stating that the applicant void any live music .

The applicant also owns the only residential property namely erf 631, next to erf 146, that is his primary residential house .

2] Inadequate parking :

The parking area is sufficient as from 2006 when the restaurant application was approved and furthermore it is brought up to date with the newly drafted plans for the alterations and is at the building department of Overstrand municipality.

Entrance and exits from the property will not be affected .

This was in place before the application was submitted .

3] LPMS machines can cause traffic problems:

The mere fact that the restaurant loses 15 square meters of space to allow the LPMS machines , this means in essence that the traffic will be less because it is taking away 3 tables of four people, i.e 5 people at machines against 12 people at the restaurant . This will even mean that deliveries for the restaurant will decrease .

3] Locality and Zoning :

The proposed application will change nothing in the scale and character of the area and will be done in compliance with the guidelines of Schedule 2 of the Overstrand municipality Land Use Scheme, 2020.

Effect on coastline – the current business exist as is and improvements have been and will be made on the inside and is also on the newly drafted plans at Overstrand building department . The addition of 5 LPMS will not be noticeable at all and cannot impact on the site.

4] Character of the area and lifestyle on their property:

We submit, in the above regard, that it is a normal feature of a developed society that there will be different (and often competing) interest groups having their own sets of beliefs and social, cultural

SEP 2023

TP

and religious views or practices. However, one of the core themes of the Constitution is that all citizens (rather than merely certain groups) are entitled to freedom of belief, religion or opinion, and that the views of any single group cannot be permitted to dominate over those of others, failing which the rights of the latter under the same Constitution are compromised. It will further be recognised that licensed gambling is a legitimate leisure activity which has been provided for by the legislature, with full and religious objections of those social groups to which it is repugnant.

5) Attack on Overstrand municipality :

We will not comment on the objectors attack regarding the administrative processes on specifically the Town planning Department of Overstrand. In actual fact it is common practice to use an opportunity like this [e.g. to comment/object on an application] to address personal frustration with the municipality . These comments have no reference to the application in hand .

6) Heritage, building lines and Zoning :

All these issues were sorted out before the application was submitted to the Overstrand Town planning department.

7) Emotional objections of a personal idea/view:

See conclusion .

Conclusion :

We respectfully submit that the objectors have adduced no evidence to show that the applicant's proposed LPM operations are "*undesirable within the specific geographical environment, with reference to social, religious, educational, cultural, economic, environmental, transport and land-use aspects*". In this regard, we submit that the mere fact that the objectors objects to the application on moral and religious grounds is not sufficient to render the application undesirable *per se*. It is respectfully submitted that in order for the Board to make such a finding, specific evidence would have to be introduced regarding the particular area in question, against the backdrop of the various considerations listed in the legislation, which would point to the inherent undesirability of licensed operations on the proposed site as a result of defined circumstances arising out of its location in the specific area.

We respectfully disagree with the objectors averment to the effect that the objection is not a moral one, but a "*formal objection*". The objection is based purely on moral and religious grounds, and the fact that it has been formally lodged does not alter the character thereof.

J Steenkamp
Applicant
2023/08/31

308
TP-A Theart
(S vld Merwe)



Our Ref: HM/ OVERBERG/ OVERSTRAND/ GANSBAAI/ ERF 146
Case No.: 21091603AM0917E
Enquiries: Ayanda Mdludlu
E-mail: ayanda.mdludlu@westerncape.gov.za
Tel: 021 483 5959

M.E. de Kock
meplanners@whalemail.co.za

Section 51(1)c of the National Heritage Resources Act, 1999 (Act 25 of 1999) and Regulation 3(3)(a) of PN 298 (29 August 2003)

APPLICATION FOR A PERMIT IN TERMS OF SECTION 34 OF THE NATIONAL HERITAGE RESOURCES ACT (ACT 25 OF 1999): ERF 146, 2 MARK STREET GANSBAAI.

CASE NUMBER: 21091603AM0917E

The matter above has reference.

The National Heritage Resources Act (Act 25 of 1999) does not make provision for the condonation of illegal work (ie. Work done without obtaining a permit in terms of the same Act PRIOR to starting the proposed work).

Undertaking work without a permit constitutes a criminal offence in terms of section 51(1)c of the same Act.

Please note that this matter has been recorded for future reference and should any further illegal work be undertaken, HWC will consider laying charges.

HWC requires no further actions in terms of the National Heritage Resources Act (Act 25 of 1999).

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

.....
Colette Scheermeyer
Deputy Director



22 APR 2022

FILE NO. EL 146-GB
SCAN NO. 16
COLLABORATOR NO. 1676168

www.westerncape.gov.za/ces

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**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR CONSENT USE, DEPARTURE & DETERMINATION
OF AN ADMINISTRATIVE PENALTY: ERF 146, GANSBAAI**

Electricity	:	In order
Water	:	In order
Sewer	:	In order
Stormwater	:	In order
Roads and traffic	:	In order

Conditions:

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

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

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

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

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

The contribution according to the current policy (2022/2023) is as follows:

Freehold erven:

Water	R 26 036.00 x 0.72720=	R 18 933.38
Sewerage	R 17 555.00 x 0.72720=	R 12 766.00
Roads	R 7 872.00 x 11.178973=	R 88 000.88
Stormwater	R 9 082.00 x 1.321333=	R 12 000.35
Solid Waste	R 1 574.00 x 2.270298=	R 3 573.45
TOTAL (inclusive of VAT)	=	R 135 274.06

Note:

- 1.3 The above figures are estimates**

- 1.4 **The above figures do not include evaluation/investigation levies and connection fees**
2. that only the existing water and sewerage connections will be available to the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
 3. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
 4. that any commercial food preparation facilities (e.g. restaurant / guest house etc.) must be provided with a grease trap, which must comply with the standards and specification of the Department: Operational Services;
 5. 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;
 6. that on-site parking facilities be provided as per that Planning Schedule, and to the satisfaction of the Department: Operational Services;
 7. that any additional and / or extended vehicle entrances will be for the developer's account;
 8. that stormwater be allowed to discharge through Erf 146, Gansbaai, unobstructed.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES


DATE



ZONING CERTIFICATE

Our Reference	GGB 146
Enquiries	Mr SW van der Merwe
Contact details	028 313 8900 / svdmerwe@overstrand.gov.za
Date	12 December 2019

TO WHOM IT MAY CONCERN

Erf	Erf 146
Address	2 Mark Street, Gansbaai
Owner	J & MM Steenkamp

DEVELOPMENT PARAMETERS				
Zoning	Business Zone 2: General Business (B2)			
Primary use	Restaurant			
Consent uses (To be applied for to Council)	Adult entertainment business, bottle store, crematorium, dwelling unit, flats (on ground floor), funeral parlour, informal trading, institution, motor repair garage, place of entertainment, recreational facilities, residential building, second dwelling unit, service station, transmission tower, transport use, utility services, warehouse.			
Consent Uses Approved	None			
Departures Approved	N/A			
Density	Not Applicable			
Coverage	80%			
Height	10,5m (3 storeys)			
Bulk	1,5			
Building lines	Street	street building line is 0m subject to: - the setback restriction if required by Council in terms of 7.1.2(b); and - the enclosed part of a building from the fourth storey must be set back 4,5 m.	Perimeter N/A	Within Complex N/A
	Side	The side building line is 0m subject to: - the building or portion erected on the property boundary may have no	N/A	N/A

ZONING CERTIFICATE

		windows, doors, ventilation or other openings in any wall on such boundary, without the consent of Council; and - where a property zoned Business Zone 1 and 2, abuts a residential or Community Zone, the building line is 3,0 m.		
	Rear	The rear building line is 0m subject to: - the building or portion erected on the property boundary may have no windows, doors, ventilation or other openings in any wall on such boundary; and - where a property zoned Business Zone 1 and 2 abuts a residential or community	N/A	N/A

PARKING

See attached parking requirements as per land use. Parking and access shall be provided on the land unit in accordance with 17.1.

Minimum off-street parking requirements

Land use	Standard areas
Dwelling house	2 on-site parking bays per dwelling unit provided that on erven less than 400m ² only one on-site parking bays needs to be provided.
Second dwelling	1 bay
Group dwelling/town housing	1 bay per dwelling unit plus 1 bay per dwelling for visitors
Flats	1.5 bays per 1 bedroom dwelling unit 2 bays per 2 and more bedroom dwelling units
Bed and breakfast establishment	2 bays per establishment (owner/manager) 1 bay per guest room
Boarding house, Guest house	1 bay per bedroom/2 persons accommodated
Hotel	1 bay per bedroom plus an additional 10 parking bays per 100m ² of public access areas
Retirement home	1 bay per bedroom plus 0,25 bays per frail care bed
Crèche	1 bay per 10 children plus stop & drop facility where a

ZONING CERTIFICATE

	crèche makes provision for more than 20 children
School	1 bay per classroom or office plus a stop and drop facility
Place of instruction (tertiary education facility)	0,5 bays per student plus 1 bay per classroom or office
Place of assembly/entertainment/funeral parlor	1 bay per 4 seats
Recreation, sport	1 bay per 4 seats or persons
Hospital/clinic (general and private)	1 bay per bed plus 4 bays per consulting room
Medical consulting rooms	6 bays per 100m ² GLA
Supermarket/shopping centre	6 bays per 100m ² GLA
Shops/offices/restaurants	6 bays per 100m ² GLA
Conference centre	1 bay per 2 seats
Place of worship	1 bay per 6 seats
Motor showroom	2 bays per 100m ² GLA and 2 bays per 100m ² outdoor display area
Motor repair garage/service station/car wash/service centre	2 bays per service bay plus 2 bays per 100m ² GLA
Motor fitment centre	2 bays per service bay plus 2 bays per 100m ² GLA
Car wash	4 bays per service bay plus 2 bays per 100m ² GLA
Industry	2 bays per 100m ² GLA
Warehouse/storage	2 bays per 100m ² GLA

** GLA means Gross Leasable Area

ADDITIONAL INFORMATION:

Development of the property is limited to a restaurant of 180m² and provision of on-site parking as per attached Mayoral Committee decision dated 28 February 2019

The approval does not permit the operation of a bar. It should also be noted that the property contain illegal structures and are non-compliant with reference to onsite parking

Yours faithfully


S MÜLLER

DIRECTOR: INFRASTRUCTURE AND PLANNING