

ANNEXURE E 1/3




TP - A Theart (Hollivier)

ESTABLISHED 2002

Town and  
Regional  
PlanningMunicipal  
Legislation  
and ProceduresLocal Economic  
Development  
Technical  
Assistance1 Myrtle Avenue  
P O Box 1247  
Hermanus  
7200

Tel: +27 (0)28 313 1411

Fax: +27 0865083248

Email:  
wrap@telkomsa.netWeb:  
www.wrapgroup.co.zaWright Approach  
Investments 136 CCReg No  
CK 2002/060745/23Our Reference: 14/027 *023*

6 January 2015

The Municipal Manager  
Overstrand Municipality: Hermanus Administration  
P O Box 20  
**HERMANUS**  
7200

Sir

**ERF 995, HERMANUS: APPLICATION FOR THE REMOVAL OF  
RESTRICTIVE TITLE DEED CONDITIONS, SUBDIVISION AND DEPARTURE**

Your letter dated 10 December 2014 has reference.

We hereby respond to the objections that were submitted against the abovementioned development proposal. For the purposes of this letter, objections were summarised and categorised, with our response below each of the objections.

Letters of objection were received from the following:

- CK Burman; and
- D & RS Langerman.

**1. For many years subdivisions of smaller than 700 m<sup>2</sup> were not allowed within the neighbourhood.**

The local structure plan that prescribed minimum erf sizes for the greater Hermanus area was the Greater Hermanus Sub-Regional Spatial Development Framework (July 2000). This particular document was however repealed on 1 August 2012 by the Department of Environmental Affairs and Development Planning (DEADP) with Circular 14/2012. The prescriptions of aforementioned document are therefore not regarded as applicable anymore.

As stated in Section 11 of the land use application, the applicable spatial planning initiative guiding development in the municipality is the Overstrand Municipal Growth Management Strategy. Aforementioned document promotes densification within the neighbourhood through subdivision. No minimum erf size is stated within this document. It should be noted that the objector resides on a property with an extent of 410 m<sup>2</sup>, which is smaller than both proposed subdivisions.

- 9 JAN 2015 TP

FILE NO:

EL 995-Herm

SCAN NO:

47

COLLABORATOR NO: 702586


 WRAP

- 2. A second dwelling unit was approved on the subject property. The policy of the municipality states that a second dwelling unit may not be subdivided from the cadastral unit.**

The statement of the objector is incorrect. The definition of a second dwelling unit as contained within the Overstrand Municipality Zoning Scheme (June 2013) is as follows:

"Second dwelling unit means an additional dwelling unit which may, in terms of this zoning scheme, be erected on a land unit where a dwelling house is also permitted, and such second dwelling unit may be a separate structure or may be contained in the same structure as the dwelling house; provided that:

- i. The second dwelling unit shall remain on the same land unit;
- ii. The second dwelling unit shall comply with the requirements specified in this zoning scheme;
- iii. Council may require the payment of a bulk services levy or such other levy as it may determine when permitting the erection of a second dwelling unit;
- iv. Where a wendy house, shelter or outbuilding is used for accommodation purposes, such wendy house, shelter or outbuilding shall be considered a second dwelling unit for the purpose of this scheme".

From the above it is clear that the conditions are applicable where application is made for a second dwelling unit. This is however not the case. The application submitted is for the subdivision of a Residential Zone I erf on which a second dwelling unit is already developed. In the above definition, no condition is stipulated that states that an existing second dwelling unit may not be subdivided from an erf. The objection is therefore not regarded as valid.

- 3. The objector states that all subdivisions in the area were approved prior to 1990, where after a policy were instated prescribing a minimum erf size of 700 m<sup>2</sup> for the neighbourhood.**

The objection is noted. Please refer Response 1.

- 4. Some subdivisions that has been approved in the past has led to the construction of dwelling units that are not in keeping with the character of the surrounding area. The same situation can occur with the approval of the subdivision application.**

Both proposed properties are already developed with dwelling units and no additional construction is proposed. Should any future construction be proposed, it will have to adhere to the land use parameters as stipulated for Residential Zone I erven within the Overstrand Municipality Zoning Scheme. Building plans will also have to be submitted to the Overstrand Municipality for formal approval.

- 5. The objector is convinced that the residents of the surrounding neighbourhood are not aware of the Overstrand Municipal Growth Management Strategy and the proposals contained within this document with regard to densification and that they will not be in support of these proposals.**

The Overstrand Municipal Growth Management Strategy went through rigorous public participation processes and the document was available for inspection and comment during aforementioned processes. The statement of the objector is therefore not accurate. It is also not for the applicant to debate the merits or validity of this document at this stage as it has been approved by Council and subsequently implemented.



WRAP

**6. The approval of the application will establish a precedent and change the character of the area.**

Each land use application should be evaluated on its merits and cannot be motivated merely at the hand of existing precedents. A land use application should prove that it will have a positive impact on the surrounding environment and that it will not have a negative impact on existing land use rights. From Sections 14, 16 and 18 of the land use application submitted it is evident that the proposal will indeed have a positive impact on the surrounding environment and that the proposed subdivision will not have a negative impact on existing land use rights. The objection is therefore not regarded as applicable in this instance.

**7. The approval of the application will lead to the construction of more dwelling units, an increase in residents and cars, an increase in noise and fewer gardens as a result of the construction of additional garages.**

As stated in Response 4, no additional dwelling units or further construction is proposed. The approval of the application will also not result in an increase in residents or cars as two dwelling units, operating separate from each other, are already developed on the subject property. With the approval of the proposed subdivision, each newly subdivided erf will accommodate one of the existing dwelling units. The physical impact of two erven has therefore already been in place for a number of years, without having any negative impact on the surrounding environment. The objection is therefore not regarded as valid.

**8. Residents must be informed when they can voice their opinions regarding proposed densification as contained within the Overstrand Municipal Growth Management Strategy.**

Refer response 5.

We trust that you will find the above in order. Should you require any additional information within this regard, please do not hesitate to contact this office.

Yours faithfully



**JOHANN PIENAAR**  
B.Art et Scien (Pr.Pl'n A/125/2009)

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR SUBDIVISION, REMOVAL OF RESTRICTION &  
DEPARTURE: ERF 995, EASTCLIFF (2617)**

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

**Conditions:**

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

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

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

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

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

The contribution according to the current policy (2014/2015) is as follows:

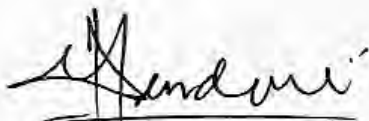
**Freehold erven:**

Water (W7A)	R 23 444.00 x 1 =	R 23 444.00
Sewerage (SEW5A)	R 18 816.00 x 1 =	R 18 816.00
Roads & SW (RDST1)	R 6 132.00 x 1 =	R 6 132.00
Electricity (E16A2A)	R 28 462.00 x 1 =	<u>R 28 462.00</u>
<b>TOTAL (inclusive of VAT)</b>		<b><u>R 76 854.00</u></b>

Note:

- 1.3 **The above figures are estimates**
- 1.4 **The above figures do not include connection fees**
2. that only the standard water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;

3. that each individual erf be provided with its own water and sewerage connection, at the owner's cost;
4. that only a standard 60 Amp single phase electricity connection will be available per additional erf;
5. that stormwater be allowed to discharge through Erf 995, Eastcliff, unobstructed.



**DENNIS HENDRIKS  
SENIOR MANAGER:  
ENGINEERING SERVICES**

14/11/2014  
DATE

**AGENDA of the  
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19 May 2015  
(Also the agenda for the Mayoral Committee Meeting : 28 May 2015)**

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**6.  
ERF 4771, VOËLKLIP, HERMANUS : PIET SE BOS & GROTTO BEACH : BASIC  
ASSESSMENT REPORT (BAR)**

**4771 HVK**

**H van der Stoep  
26 January 2015**

**(028) 313 8900**

**Hermanus Administration**

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**1. Executive Summary**

The Overstrand Municipality appointed EnviroAfrica to conduct a Basic Assessment Report (BAR) of the proposal to redevelop the Grotto Beach area. The proposal entailed the following uses e.g restaurant, amphitheatre and the rehabilitation of the wetland area at the picnic site.

This item served before the Portfolio Committee on 21 April 2015 but was referred back in order for the Directorate : Infrastructure and Planning to explain the content and gis of the report to Councillors.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning  
Town Planning

**3. Compliance with Strategic Priority**

Provision of democratic, accountable and ethical governance

**4. Delegated Authority**

Executive Mayor

**5. Legal Requirements**

- National Environmental Management Plan (NEMA)

**6. Background/Discussion/Evaluation/Conclusion**

**Background**

The Overstrand Municipality appointed EnviroAfrica to conduct a Basic Assessment Report (BAR) for the upgrading and redevelopment of Grotto Beach picnic area. The proposal entailed the following uses : Amphitheatre, restaurant and the rehabilitation of the wetland at the picnic site and the erection of new braai facilities. During the initial public participation process various objections were received, which has lead to an open day to address the objections and subsequently an amended BAR.

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The latter was distributed to all the interested and affected parties, which were given time to respond to the amended BAR. The responses received will be addressed in the documentation with the amended BAR to the Western Cape Government : Environmental Affairs and Development Planning for their consideration and finalization.

The initial Basic Assessment Report, dated August 2013 - the proposal for Erf 4771 consisted of the following:

- Ø Rehabilitation of the wetland area
- Ø Double storey restaurant
- Ø Amphitheatre
- Ø New Braai facilities.

### **Discussion**

The BAR, dated August 2013, Comments and Responses Report deals with the objections in detail.

The objections (40) received can be summarized as follows:

- Property values and sea views - The proposed amphitheatre and a double storey restaurant will influence surrounding property values and block views. The amphitheatre will detract from the existing natural setting of the picnic area.
- Operational issues of the Amphitheatre –  
The issues raised were as follows:
  - Was alternative locations considered;
  - Target market;
  - Maximum visitors;
  - Parking;
  - Services;
  - Crowd control etc.
- Noise issues.
- Parking and entry road relating to events.
- Restaurant - The double storey will impact on views, what will happen to Dutchies, funding of the restaurant, storm surges.
- Natural Habitat - Concerns that development will destroy the natural habitat.
- Blue Flag beach - A double storey structure so close to the beach will spoil the beauty.
- Rehabilitation of the wetland - Removal of rubble?

Due to the large number of objections received, it was decided to extent the public participation process so that the full extent of the public concerns could be understood and taken into account.

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An open day and a public meeting was held on 18 January 2014 at the Auditorium Hermanus Overstrand Municipality. The meeting was chaired by Adv W Zybrands and attended by 90 participants.

Following below is a summarized version of the event and a copy of the minutes is attached as reference (Annexures B and C).

The issues discussed at the meeting can be divided into four categories as follows:

**1. The legality of the public participation process followed during the Basic Assessment Process (BAR)**

The Grotto Action Group clearly indicated that the public participation process was flawed. The Group obtained legal advice on the matter and the opinion of their legal representative is that the process is flawed. One of the main issues was the fact that e-mails were not accepted by the Environmental Practitioner. During the discussion the Environmental Practitioner did indicate that he will accept e-mails with an attachment.

**2. The proposed Amphitheatre**

The public present made it clear that an amphitheatre in any format is not acceptable. People involved in the performing arts (music concerts), and owners of properties in close proximity to Kirstenbosch, indicated that noise pollution is a major problem.

**3. Wetland rehabilitation**

No objection was raised against the proposed rehabilitation. It was however suggested that trees be planted at the picnic area to provide shade for picnic sites and that the braai facilities be upgraded and moved to the area outside the proposed boardwalk. The trees to be planted must be endemic and done in collaboration with the Hermnus Botanical Society.

**4. Restaurant**

It was felt that the existing Dutchies Restaurant must be extended and upgraded to fulfil the function of a restaurant and that there is no need for a restaurant on the "Old Nautilus" site. The following concerns were raised regarding the site such as climate change, the 1:100 floodline and the setback line. The proposed building is excessive in bulk and height. It was suggested that the site be rehabilitated to a Milkwood forest.

It was mentioned that the Dutchies building does not comply with the existing Health and Safety Legislation and was built as a shop and uses that can be

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accommodated in the existing building are shop, storage and security personnel during high season.

During the meeting, the following proposals were made in terms of developing the area. The municipality should give consideration to make the existing one-way traffic to a dual traffic system up to the parking area adjacent the ablution facilities or close the road between Dutchies and the beach, but reroute it north of Dutchies over the picnic area. It was also proposed that the Old Nautilus site be rehabilitated and not be developed at all, but rather upgrade the Dutchies building in order to comply with the National Building Regulations and Health legislation.

It was brought to the attention of the meeting that, in terms of the Department of Environmental Affairs and Development Planning, the proposed restaurant does not need to go through a BAR process, since there was commencement before 1998.

The amended BAR, dated July 2014, proposed the following alternative:

The alternative option is to exclude the amphitheatre, scale down the proposed restaurant, but keep the initial location (the Old Nautilus site) and rehabilitate the wetland area.

Twenty six comment/objections were received on the amended BAR. They can be summarized as follows:

- Ø The proposal for a restaurant on the Old Nautilus site is not acceptable due to climate change and can rather be rehabilitated.
- Ø The existing Dutchies should rather be upgraded and make use of an existing amenity.
- Ø The rehabilitation of the old Nautilus site will be in keeping with the prospect of including the Grotto Beach picnic area into the Fernkloof Nature Reserve.
- Ø The site triggers environmental legislation that should have been addressed in the application, due to its locality within 100m of the sea.

### **Discussion**

The initial BAR included an amphitheatre, in the subsequent amended BAR, the amphitheatre is excluded from the proposal. The rehabilitation of the wetlands has been accepted by the community.

The first aspect that needs to be addressed are the objectors' viewpoint that the BAR is flawed in terms of the legislative requirements. The legislative requirements of the NEMA Regulations is the mandate of the Western Cape Government : Environmental Affairs and Development Planning and thus the

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Overstrand Municipality cannot comment on the legality of the process. This aspect will have to be dealt with by the relevant authority.

The objectors objected to the inclusion of the original proposal in the Amended BAR. In terms of the NEMA process, an alternative may be added, but the original proposals must be retained and may not be removed as part of the documentation and options considered.

The proposed restaurant on the Old Nautilus site attracted different responses. Some objectors were against the double storey building, but do not object to the scaled down version of a single storey building, whilst others still objected to the proposed locality. The feeling at the open day was that the existing Dutchies be upgraded in order to comply with the National Building Regulations and Health Regulations.

### **Evaluation**

The original proposal is still part of the amended BAR but the alternative was added following comments received by the community.

It should be noted that the proposed restaurant is in line with what was on the site before.

The proposed amphitheatre is not desirable and is therefore removed from the proposed development. The rehabilitation of the wetland and creation of a boardwalk is still part of the application. The braai and picnic area is still part of the application

The restaurant has been scaled down to the following development parameters:

- Height: Single storey (6,170m)
- Seating: 108 people
- The building is elevated to accommodate storm surges.

As background, the development parameters of previous buildings on the same site and footprint were as follows:

- The Driftwood Den according to the 1986 building plan:
  - § Height: Single storey
  - § Seating: 101 people
- The Nautilus according to the 1997 approved building plan
  - § Height: 7,4m (2 storeys)
  - § Seating: 198 people

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The first approved building plan was in 1981 for minor amendments to an existing tea room. Aerial Photographs indicate the restaurant in existence since 1987. The proposed restaurant will have less of an impact than previous buildings and is located on the area where previous restaurants were built.

The present Dutchies (restaurant) was never designed as a restaurant and does not have proper facilities associated with a restaurant. The building was designed as a shop and would revert back to its original design and land use or be used as storage or for an area where Law Enforcement officials can be accommodated.

The upgrading of the Grotto Beach area is essential to enhance and ensure continued Blue Flag status and to preserve the wetland area within an urbanized setting.

The most viable option available is to develop the Old Nautilus site to a single storey restaurant, elevated to accommodate possible storm surges. Progressive environmental and town planning are to mitigate existing situations in a given situation and working with nature and not against it. The building will be lower than the original Nautilus Restaurant and should not affect view lines more than the previous restaurant. The site is seen as “commenced” since it has been used as a restaurant since 1981. This gives effect to Circular 1 of 2013, issued by the Department of Environmental Affairs and Development Planning on 2 April 2013. The NEMA process makes provision for an application within the 100m of the high water mark. It clearly stipulates that *“development within the 100 meters of the high water mark is not allowed without environmental authorization”*. Thus it does not restrict all development within the 100m high water mark and in view that the activity is seen as “commenced”, it is exempted from a Basic Assessment Study as long as the footprint and locality remains the same.

In terms of financial viability, the locality is ideally situated in terms of views, transformed area, engineering services availability and can generate the necessary income to finance the rehabilitation of the wetland area, upgrade the picnic area and create a boardwalk to link with the existing coastal paths. The Grotto Beach area is a blue flag beach and will be incorporated into Fernkloof Nature Reserve to link the coastal protection zone with the mountainous area of Fernkloof. The proper development of Grotto will contribute and enhance the viability of a community based node for the Fernkloof Nature Reserve and stimulate economic activity at Grotto for locals and tourists visiting the beach and the extension towards the Kleinriver Lagoon. The latter is becoming a hive of water sport activities with no proper infrastructure or amenities and must be addressed. It is preferable to cluster activities in an area which has developed footprint as to establish and create amenities unnecessary.

The proposal that the road be rerouted north of Dutchies is not considered viable as it will dissect the picnic area and the rehabilitated Milkwood area.

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There is also existing sewerage infrastructure and a sewage pump station in the area between Dutchies and the Milkwood forest. The rerouting of the road and moving of existing infrastructure may trigger additional environmental processes.

The request that Dutchies be upgraded is not possible. The building was never designed for the present use. It does not conform to National Building Regulations, Health Regulations pertaining to the kitchen facilities, toilet facilities and access for disabled users. It can however revert back to its use as a shop and generate additional funds for the Municipality and provide additional amenities for the public.

The proposed restaurant is a single storey building on the exact footprint of the previous restaurant and no extensions will be considered in future. It should be noted that sufficient engineering services are available for the proposed development.

The stormwater pipe on Grotto Beach must be upgraded since it is an eyesore for a Blue Flag Beach.

The one aspect that needs to be investigated is the possibility of dual traffic from the western entrance of Grotto Beach to the parking area adjacent to the ablution facilities. However it has no bearing on the application at present, but a suggestion from the public.

The two options on the table are as follows:

Option 1

Develop the Old Nautilus site to a single storey restaurant, elevated to accommodate possible storm surges. The building will be lower than the original Nautilus Restaurant and should not affect view lines more than the previous restaurant did. The site is seen as “commenced” since it has been used as a restaurant since 1981. In terms of financial viability, the locality is ideally situated in terms of views, transformed area and can generate the necessary income to finance the rehabilitation of the wetland area, upgrade the picnic area and create a board walk to link with the existing coastal paths.

It should however be taken into consideration that the site has not been used as a restaurant actively and the rehabilitation thereof would be more in line with the prospect of incorporation into Fernkloof Nature Reserve. The other aspect is that climate change has had a definite influence on the coastline, especially now that the Kleinriver Estuary is not manually breach once a year. The mouth is migrating towards the west and has caused major damages to the picnic and parking area towards the east at Piet se Bos.

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These aspects can be mitigated and landscaping of the restaurant can lead to an integrated development.

Option 2

The other option is to redevelop the existing Dutchies to a full scale restaurant. This will not really limit the risk of possible storm surges. Although the building is a few meters further away from the sea, the height of the building above sea level is similar to that of the preferred location.

This option will not generate the financial benefit that a beachfront restaurant will create. Should Dutchies be upgraded and redeveloped, the Municipality loses possible income in terms of leasing the building for uses associated with beach activities.

The redevelopment of Dutchies (the possible demolition of the building to erect a restaurant with all the associated amenities) will trigger additional environmental processes.

**Conclusion**

That the amended BAR proposal excluding the amphitheatre be recommended for approval.

That Option 1 indicating the restaurant on the Old Nautilus Site be recommended for approval.

**7. Financial Implications**

None

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

None

**10. Annexures**

**Kindly refer to the annexures distributed on CD during the April cycle. The annexures are as follows:**

- Annexure A: Original Basic Assessment Report (BAR) dated August 2013
- Annexure B: Summarized Minutes of the Open Day held on 18 January 2014
- Annexure C: Verbatim Minutes of the Open Day held on 18 January 2014

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Annexure D: Amended BAR dated July 2014  
Annexure E: Objections against the Amended BAR  
Annexure F: Municipal Engineering Services comments

**RECOMMENDATION:**

1. that the amended Basic Assessment Report (excluding the amphitheatre) be **recommended for approval** to the Western Cape Government : Environmental Affairs and Development Planning; and
2. that Option 1, indicating the restaurant on the Old Nautilus Site, be **recommended for approval**.

<b>RESPONSIBLE OFFICIAL :</b>	<b>H VAN DER STOEP</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>10 JUNE 2015</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>10 JUNE 2015</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>10 JUNE 2015</b>

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**6.**

**ERF 4771, VOËLKLIP, HERMANUS : PIET SE BOS & GROTTO BEACH : BASIC  
ASSESSMENT REPORT (BAR)**

**4771 HVK**

**H van der Stoep**

**(028) 313 8900**

**Hermanus Administration**

**26 January 2015**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON  
19 MAY 2015, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

**RESPONSIBLE OFFICIAL :**

**H VAN DER STOEP**

**TARGET DATE FOR IMPLEMENTATION :**

**10 JUNE 2015**

**TARGET DATE TO INFORM APPLICANT :**

**10 JUNE 2015**

**TARGET DATE TO INFORM OBJECTOR :**

**10 JUNE 2015**

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7.

**ERF 11097, FERNKLOOF, HERMANUS, OVERSTRAND MUNICIPAL AREA:  
PROPOSED AMENDMENT OF THE CONDITIONS OF APPROVAL AND  
AMENDMENT OF THE SITE DEVELOPMENT PLAN : PLAN ACTIVE ON BEHALF  
OF NMH TRADING 23 (PTY) LTD**

**11097 HEC (2425)**

**H van der Stoep**

**13 February 2015**

**(028) 313 8900**

**Hermanus Administration**

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**1. Executive Summary**

An application has been received on 26 September 2013 from PlanActive Town- and Regional Planners on behalf of NMH Trading 23 (Pty) Ltd for the amendment of the conditions of approval and the amendment of the approved Site Development Plan on Erf 11097, Hermanus to accommodate the change of use from 9 golf lodges to 18 sectional title residential units.

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

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning  
Town Planning

**3. Compliance with Strategic Priority**

Provision of democratic, accountable and ethical governance

**4. Delegated Authority**

Executive Mayor

**5. Legal Requirements**

Section 15 and 42 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)

**6. Background/Discussion/Evaluation/Conclusion**

**Background**

The application property forms part of the Fernkloof Development, known as the Golf Estate, which was approved by Council in 2002. The application went

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on appeal and Council's decision was confirmed by the Department of Environmental Affairs and Development Planning in September 2003. The approval pertaining to this application was given by the Department of Environmental Affairs and Development Planning for 20 golf lodges (10 each on Precinct 3 and 4) in Fernkloof. However, due to site constraints, only 9 lodges with a clubhouse and swimming pool were to be developed on Precinct 4. Each lodge made provision for 4 double rooms, single storey building with pergolas.

An application has been received for the amendment of the conditions of approval, the amendment of the approved Site Development Plan and a departure from the southern building line. (The application for the departure from the said building line has in the meantime been withdrawn by the applicant).

The application was advertised in the local newspaper and registered notices were sent to all potentially affected property owners. A total of 10 comments/objections were received against the application.

The application was also circulated to all relevant municipal departments, and no objections were received.

**The comments/objections received can be summarized as follows:**

**The development is to be sold as an up market development**

Applicant's comment

The proposed development would be in line with the Berg en See Retirement Village and the target market is for 50+ years old.

Town Planner's comment

The proposed development is situated in an already up market area, but will be restricted to a target market of 50+ year old people.

**The development be fenced in and the entrance should not be the same as the Hermanus Golf Club**

Applicant's comment

The developer will fence the proposed development on the boundary line and or as per agreement with the Golf Club. The approved Site Plan did indicate that the lodges have the same access as the Golf Club, but access can be obtained from the panhandle.

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Town Planner's comment

Same as applicant's response.

**Access from the Golf Club is acceptable, but not from the panhandle**

Applicant's comment

The access point from the Golf Club is problematic for the Golf Club due to security reasons; however the panhandle is an approved access.

Town Planner's comment

The access via the panhandle is an existing right as per approved SG Diagram 2578/2009. The 10m building line on the eastern boundary pertains to structures and not hardened surfaces as per approval from the Department of Environmental Affairs and Development Planning, 2003.

**Relaxation of the southern building line is unacceptable for the placement of garages**

Applicant's comment

The garages will be omitted and only parking bays will be provided.

Town Planner's comment

That only parking bays be provided and no garage structures be built.

**Increased accommodation by adding a third bedroom and increase of footprint will add to pressure on the environment and will result in noise pollution**

Applicant's comment

The units will be marketed at a lifestyle village for residents 50+ years and older. It is envisaged that the proposed development would be the same style as Berg 'n See. It is foreseen that the development will be incorporated by Berg 'n See and has the same rules and regulations applicable to noise and pollution.

Town Planner's comment

The added third bedroom is a necessity for the elderly in terms of family visiting and should a caregiver be accommodated in times of medical need. The third room is small and can only occupy a single person. It should be taking into consideration that the lodge would have been able to accommodate 4 couples,

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holidaymakers and the noise pollution would have been of great concern, whilst an elderly couple would in all fairness not create the possible noise pollution as indicated by the objectors.

**A garage has been added to the units instead of a parking space**

Applicant's comment

With the initial planning of the golf lodges it was envisaged that parking would be provided in garages at the entrance gates. As this application is of residential nature, it was decided that garages be placed at the units.

Town Planner's comment

The proposed garage at each unit has more advantages in terms of security, and prohibits garage structures at the entrance gate of the Golf Club that would not be aesthetically pleasing. The proposed development can be architecturally designed as a unit and eliminate odd structures located in areas not conducive for an environmental pleasing environment.

**Objection to building design and the lofts (roof structures)**

Applicant's comment

The building style is in line with the approved golf lodges' aesthetic and the materials will be in accordance with the approved Zoning Scheme. The roof design and ridge height will similarly be in accordance with the original design and as such are no higher.

Town Planner's comment

The proposed development will be in line with the design of the golf lodges. The proposed structures must be single residential and a loft and/or mezzanine will be allowed.

**Roofs be the same colour and matt finish**

Applicant's comment

The house and roof will be compatible with Berg 'n See

Town Planner's comment

Accept applicant's response.

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**The proposed development will have a negative effect on the property values and retirement village of Berg 'n See. It does not meet the standards of the original approval and would undermine the principle of the current zoning**

Applicant's comment

The current zoning is General Residential Zone and the zoning will be retained. The proposed development would be in line with the Berg 'n See development and would not negatively affect the property values and or character of the area.

Town Planner's comment

The zoning is General Residential Zone and well within the parameters as stipulated in the Overstrand Zoning Scheme Regulations.

**The increase of the footprint from 36 rooms to 54 rooms will impact negatively on Berg 'n See**

Applicant's comment

The proposed development will be marketed for a lifestyle village for the 50+ year age group. It is highly unlikely that each house will be occupied by 6 people. It is envisaged that the development be incorporated into Berg 'n See with the same rules and regulations ensuring that noise and pollution will be dealt with in a similar fashion.

Town Planner's comment

In terms of the previous approval the golf lodges could accommodate 4 couples per lodge and/or families with children. The influx of people who have to pay for tourism accommodation is more prone to noise pollution as to an elderly couple residing on the property.

**The 10m setback line against Berg 'n See be honoured**

Applicant's comment

No buildings will be erected in the 10m setback line.

Town Planner's comment

Same.

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**Last unit (N) encroaches on the 10m setback line**

Applicant's comment

No structure will encroach the 10m setback line.

Town Planner's comment

Same.

**The swimming pool and clubhouse are positioned in the 10m servitude area**

Applicant's comment

The swimming pool and club house are positioned as per the previously approved Site Development Plan and will not be erected within the 10m setback area.

Town Planner's comment

The swimming pool and clubhouse are not positioned in the 10m setback line and no buildings will be allowed in the 10m setback area.

**Swimming pool and club house are situated next to the 10m set back line and can create possible noise pollution**

Applicant's comment

The client is willing to include such limitations within the rules of the Body Corporate.

Town Planner's comment

The swimming pool and clubhouse were approved by the Department of Environmental Affairs and Development Planning and can be executed by the developer. The restrictions proposed by the objector cannot be enforced and can only be requested from the applicant in good faith.

**A 10m building line be imposed on the western boundary for safety and ambiance of the area**

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Applicant's comment

The site has a 10m imposed building line on the eastern boundary and an added 10m western building line will render the proposed development not viable and cannot be entertained.

Town Planner's comment

The dismissal of the appeal in the approval letter by the Department of Environmental Affairs and Development Planning did not impose a 10m building line on the western boundary and thus cannot be enforced. There is no reason given why a 10m setback will enhance safety or ambiance as the design and approximate footprint will be retained.

**Object to rezoning as the future value of Berg 'n See will be compromised**

Applicant's comment

The application is not for rezoning, but an amendment of conditions and approved Site Development Plan.

Town Planner's comment

The rezoning is the same as Berg 'n See and devaluation of the proposed development on the Berg 'n See development has not been proven.

**Original building proposal for 9 lodges was acceptable, but the new proposal will add traffic as the lodges did not have garages and the assumption was that the Golf Club parking will be utilized. Now a roadway is proposed adjacent Berg 'n See**

Applicant's comment

The number of garages has no relevance to traffic being generated. It should be noted that garages were provided on the southern boundary of the property. With the new application the garages have been accommodated at the dwelling units.

The golf lodges have 4 lettable rooms per lodge, this equates to 36 vehicles for 9 lodges. The 18 dwelling units consist of 1 household with 2 motor vehicles per unit equates to 36 vehicles. It is the opinion of the applicant that visitors or holiday makers generate more traffic trips than an ordinary household and therefore the impact from a traffic point of view will be less.

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Town Planner's comment

Same.

**There is no need for residential properties as there is an oversupply**

Applicant's comment

The units will be marketed as lifestyle village for the 50+ year old.

Town Planner's comment

There is no oversupply for retirement villages in Hermanus if one takes into consideration the waiting lists from similar developments of Kidbrooke and Golden Harvest.

**The developer must fund the maintenance and protection of the wetlands within the Golf Estate and golf course boundaries**

Applicant's comment

When drafting the condition, the authorities envisaged the income being derived from the renting of the golf lodges and not from the sale of them. When drafting the condition the authorities clearly did not understand the nature of the intended golf lodges, which were to be sold on a freehold basis. They were not intended to be a commercial enterprise rented out on a short term as this would not have been feasible. The objective was to create a mechanism where funds be generated in perpetuity for the maintenance. This responsibility was made the responsibility of the Master Property Owners' Association (MPOA) as stipulated in the Constitution unless this is carried out by the Golf Club.

Town Planner's comment

This aspect must be discussed and resolved between the relevant parties.

**Discussion/Evaluation**

The Department of Environmental Affairs and Development Planning issued a Record of Decision (ROD), dated 2002 for the creation of the Hermanus Golf Estate. The land use application for 9 golf lodges as approved by the Department of Environmental Affairs and Development Planning in 2003 forms part of the Fernkloof Golf Estate. The application is for the amendment of the conditions of approval and Site Development Plan, which is in line with Land Use Planning Ordinance as a decision of the Department is regarded as a decision of the Municipality.

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The proposed development is for the amendment of the 9 golf lodges to 18 residential dwelling units. The lodges were restricted to 250m<sup>2</sup> per lodge, whilst garages were provided for at an area on the southern boundary. In the previous approval a lodge consisted of 4 rooms and parking bays, whilst in the proposed development a dwelling unit will consist of 3 bedrooms with a garage. Due cognizance should be taken that a lodge has a similar footprint as 2 of the dwelling units. The footprint of a lodge was approved to a maximum of 250m<sup>2</sup>, whilst 2 dwelling units consist of a footprint of 298m<sup>2</sup>. The difference in square meters is due to the fact that each dwelling unit is provided with a single garage each.

The proposed development has endeavoured to remain within the design and footprint of the original approval of the lodges. The placing of the units and the swimming pool and clubhouse is on the same positions as the approved Site Development Plan. The 10m setback area remains intact and no buildings are to be erected within the area adjacent to Berg 'n See.

Although the original application gave access to the application property via the Golf Club parking area, this aspect poses a security problem for the Golf Club. The developer will make use of the panhandle should no mutual agreement with regard to the approved access point be reached with the Golf Club. One of the objectors did indicate that the proposed access road from the panhandle transgresses the 10m setback area between the proposed development and Berg 'n See. It should be noted that the setback of 10m only restricts buildings and thus is the objection not valid.

The developer target market is for a lifestyle development for the 50+ year old population and will be in line with the adjacent Berg 'n See. The developer has consulted extensively with the retirement village of Berg 'n See, to be incorporated into the Village, however the latter has not agreed. The proposed development will thus be a development on its own. In order to align with the adjacent retirement village it is imperative that the design remains within the original approval in terms of architecture and or that of the retirement village. The developer did agree in its response on questions with regard to architectural and design parameters that the building will remain single storey, that roof paint be similar to that of Berg 'n See and that the paint used, be matt to avoid glare to houses on the eastern side of the development.

The objection with regard to noise pollution of the swimming pool and club house is not valid as this issue was not entertained by the Department of Environmental Affairs and Development Planning. This concern must be discussed with the developer in good faith. The swimming pool and club house are on the precise location as per the original approval and would have been utilized by holiday makers of the lodges with no restriction in place. It is unclear why such a restriction should be enforced, but should rather be dealt with by means of an agreement between the 2 parties.

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The Fernkloof Masters Home Owners indicated that a 10m setback line must be put in place on the western boundary between the proposed development and the golf course. This was never a condition and/or restriction pertaining to the western boundary of the property. The erf is triangular with an existing 10m setback line on the eastern boundary; to enforce a 10m setback on the western boundary will render the property not viable, except for a single residential dwelling. The reasons tendered such as security and ambiance are not valid since the proposed development will erect a fence along its boundary and is in line with the original approval, thus the ambiance of the immediate environment remains intact.

The proposed development target market will be based on a lifestyle retirement village for 50+ year old people that will assist in the need prevalent in the Hermanus area. Most of the existing retirement villages have waiting lists and the old age home is to capacity. The area is ideally located for such a development as it is located in a peaceful atmosphere in close proximity of the Central Business District (CBD) with its amenities and medical facilities. It can be argued that should the target market not respond to the development, that the development as a residential development with a target market of a younger age group will not be to the detriment of the area as the development envelope remains intact as per the original approval.

The proposed amendment to the Site Development Plan was referred to the Department of Environmental Affairs and Development Planning: Directorate: Development Management for comment. Confirmation was received from the department that the proposed amendment to the layout does not constitute any listed activities in terms of the National Environmental Management Act, 1998 read with the Environmental Impact Assessment Regulations, 2014 and that an amendment to the ROD is not required.

### **Conclusion**

The application be recommended for approval.

### **7. Financial Implications**

None

### **8. Staff Implications**

None

### **9. Comments from other Departments, Divisions and Administrations**

#### **Engineering Services**

See Annexure F.

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**Manager: Building Department**

*“Supported.”*

**10. Annexures**

- Annexure A: Locality Plan
- Annexure B: Proposed Site Development Plan
- Annexure C: Motivation Report
- Annexure D: Objections received
- Annexure E: Applicant’s comment on the Objections
- Annexure F: Services Report
- Annexure G: Record of Decision dated 11 July 2002 and the approval of the Department of Environmental Affairs and Development Planning dated 30 September 2003
- Annexure H: Comment: Department of Environmental Affairs and Development Planning dated 20 April 2015

**RECOMMENDATION:**

1. that, in terms of Section 42 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), the application for the amendment of the conditions of approval and the amendment of the approved Site Development Plan of Erf 11097, Hermanus, **be approved**, subject to the following conditions:
  - (a) that the development occur strictly in accordance with the Site Development Plan dated 16 January 2014, plan no. her11097sdp2.drw.;
  - (b) that the garages on the southern boundary be omitted;
  - (c) that the design be in line with the surrounding architecture;
  - (d) that a Body Corporate be established with design manual and architectural design guidelines;
  - (e) that the roof colour be matt and similar to Berg ’n See Retirement Village;
  - (f) that this approval does not absolve the applicant from compliance with any other relevant legislation;
  - (g) that all the conditions in the Service Report (attached as Annexure F), be complied with;

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- (h) that all relevant conditions as stipulated in the Record of Decision dated 11 July 2002 and the approval of the Department of Environmental Affairs and Development Planning dated 30 September 2003 (attached as Annexure G), be complied with;
  - (i) that an approved Environmental Management Plan be submitted to the Environmental Section of the Municipality for record purposes; and
  - (j) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
2. that the objections be noted; and
3. that the applicant/objectors be notified of their right of appeal in terms of Section 62 of the Local Government : Municipal Systems Act No 32 of 2000 with regard to the above decision.

<b>RESPONSIBLE OFFICIAL :</b>	<b>H VAN DER STOEP</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>10 JUNE 2015</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>10 JUNE 2015</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>10 JUNE 2015</b>

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7.

**ERF 11097, FERNKLOOF, HERMANUS, OVERSTRAND MUNICIPAL AREA:  
PROPOSED AMENDMENT OF THE CONDITIONS OF APPROVAL AND  
AMENDMENT OF THE SITE DEVELOPMENT PLAN : PLAN ACTIVE ON BEHALF  
OF NMH TRADING 23 (PTY) LTD**

**11097 HEC (2425)**

**H van der Stoep**

**13 February 2015**

**(028) 313 8900**

**Hermanus Administration**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON  
19 MAY 2015, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

**RESPONSIBLE OFFICIAL :**

**H VAN DER STOEP**

**TARGET DATE FOR IMPLEMENTATION :**

**10 JUNE 2015**

**TARGET DATE TO INFORM APPLICANT :**

**10 JUNE 2015**

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**10 JUNE 2015**