

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
22 May 2017
(Also the agenda for the Mayoral Committee Meeting : 31 May 2017)**

11.

**ERF 71, 8 SWART STREET, VAN DYKSBAAI (KLEINBAAI), OVERSTRAND
MUNICIPAL AREA : PROPOSED REZONING & CONSENT USE : MESSRS WRAP
CONSULTANCY ON BEHALF OF SC MCFARLANE**

121 GKB (1585)

SW van der Merwe

(028) 313 8900

Hermanus Administration

22 March 2017

1. Executive Summary

To consider an application received on 15 November 2010 from Messrs WRAP Consultancy on behalf of the owner of Erf 71, van Dyksbaai, SC McFarlane, for the following:

- amendment of the Greater Gansbaai Spatial Plan: 2004 and the Overstrand Spatial Development Framework: 2006;
- rezoning from Single Residential Zone to Local Business Zone, and
- consent use (tourism business).

A Locality Plan of the property concerned is attached as Annexure A. The proposed Site Development Plan (SDP) 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 Priorities

Provision of democratic and accountable governance
Promotion of tourism, rural and economic development

4. Delegated Authority

Executive Mayor

5. Legal Requirements

- Section 16 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)
- Section 5.7 of the Gansbaai Zoning Scheme Regulations

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6. Background/Discussion/Evaluation/Conclusion

6.1 Background

The application is considered in terms of the former Gansbaai Zoning Scheme Regulations and the provisions of the Land Use Planning Ordinance, 1985 which applied at the submission date of the application. It should be noted that since the repeal of structure plans by the Provincial Government: Western Cape (PGWC) the Greater Gansbaai Spatial Plan is no longer applicable. As such only the proposed rezoning and consent use application will form part of this consideration.

Kleinbaai over a number of years developed from a tranquil residential holiday town into a town renowned for its shark and whale watching opportunities, giving rise to the development of a lucrative tourism business industry (shark and whale watching business, restaurants, accommodation establishments and support services). The aforementioned occurred in an un-coordinated manner attracting large numbers of tourists, locally as well as internationally.

The shark and whale watching companies launch from the Kleinbaai Slipway, which is also used by sport and line fishers. Most of the shark cage diving operators conduct their businesses from single residential properties without the necessary approvals. There is therefore a need to legalise these operators. As a result the area around the Kleinbaai Slipway was designated as a tourism node/economic opportunity in terms of the Overstrand Growth Management Strategy, 2010 (OGMS).

More recently Council adopted the Kleinbaai Nodal Development Framework as a Precinct Plan that forms part of the SDF on 30 March 2016. The approval imposed certain conditions, namely a restriction on the number of shark and whale watching boats launching from the Kleinbaai Slipway to a maximum of ten (10) boats, whilst any additional permit holders (above ten (10)) shall launch from the Gansbaai Harbour (Minutes of the Mayoral Committee meeting attached as Annexure F). The aforementioned framework provides for mixed use tourism related development into the designated node, planning for the specific needs of the sector, balanced against the need to protect the character and amenity of the area.

The subject property is situated adjacent to Swart Street, in close proximity to the junction with Kusweg and the Kleinbaai Slipway. The property comprises a single storey dwelling measuring 147m² in extent that is currently utilised for tourism business purposes. The current application seeks to obtain the necessary development rights to legalise the current unauthorised business activities on the premises comprising the following, namely:

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- administrative/booking office component;
- transportation of guests from Cape Town to the premises;
- guests receive a safety brief before boarding the boat;
- transportation of guests to the slipway (mainly walking);
- provide breakfast and lunch before and after a trip for paying guests;
- provision of diving gear to guests, and
- sale of souvenirs.

Great White Shark Tours has a designated parking area adjacent to the slipway. A maximum of fifteen (15) tourists could be accommodated on their boat. A typical trip lasts about three (3) hours. Although the applicant states that guests arrive at 09:00 during peak season, typically two (2) to three (3) trips could be conducted on a daily basis, weather permitting resulting in an earlier arrival time. The company provides ± eleven (11) employment opportunities. On-site parking is provided in front of the existing dwelling.

6.2 Discussion

The application was advertised in the prescribed manner and registered notices were served upon interested and affected parties. Two (2) letters of objection were received. The main grounds for objection (attached as Annexure D) and the comment from the applicant (attached as Annexure E) can be summarized as follows:

Objection

AG Steyn - Erf 125, van Dyksbaai

The objector provides a detailed background of the activities in and around the slipway that is use by both the shark/whale watching companies, sport and recreational fishers, as well as commercial kelp harvesters and line fishers, including the illegal usage of residential properties by shark viewing operators, traffic impact, impact on property value, the character of the area and viability of the tourist facilities.

The main grounds for objection is based on the lack of proper planning for the development of the Kleinbaai Slipway and surrounding area without the necessary impact and feasibility studies, public participation and implementation plan.

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Kleinbaai Ratepayers and Residents Association

Does not support rezoning in a single residential area, but acknowledges that the shark viewing industry needs to be regulated and as such, requires the following, namely:

- sufficient on-site parking provision, including loading bays should be made;
- sidewalks/road reserve to be kept free from obstructions in accordance with municipal regulations;
- parking layout is misleading and cannot accommodate the number of parking bays proposed.

Applicant's and Town Planner's comment

Applicant's comment

The applicant's comment is attached as Annexure E, and each comment can be summarized with the town planner's response directly below, as follows:

Adequate parking should be provided on the erf itself

The applicant states that in terms of the Scheme Regulations parking would be provided at a ratio of six (6) parking bays per 100m² Gross Leasable Area (GLA). The development has a total GLA of 147m², therefore requires eight (8) parking bays, whilst ten (10) parking bays are indicated on the SDP.

Town Planner's comment

Parking will be provided in accordance with the provisions of the Zoning Scheme Regulations on the premises. The applicant will be required to submit a parking layout for municipal approval. Should the approved parking layout indicate that there is a shortfall in the amount of on-site parking bays, the applicant will be required to make a financial contribution in lieu of on-site parking provision, in accordance with the provisions of the Scheme Regulations. Parking that encroach property boundaries will not be permitted. Such monies due will be ring-fenced for the development of a communal parking facility as identified in the Kleinbaai Precinct Plan. Such facility to be situated within convenient walking distance of the subject property.

The applicant also has a permanent parking bay at the slipway and as such, objections pertaining to tractors and boats in the road are of no relevance.

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Applicant's comment

A loading zone for guests and bulk services should be provided on the erf

The applicant states that a thirty (30) seater bus is used for the transport of clients. The bus is not parked on the erf, but stops in front, allowing clients to disembark where after the bus is parked at the communal parking area at the slipway. The applicant states it is not clear why a loading bay for bulk services is required.

Town Planner's comment

As stated above, the applicant will be required to submit a parking layout that provides for parking provision in accordance with the provisions of the Scheme Regulations that includes a servicing/drop and go area. Any shortfall in terms of the Scheme Regulations will be met by a financial contribution in lieu of on-site parking provisions, which monies will be ring-fenced for the development of the communal parking area.

A designated loading zone for services is not required. It is not clear what the intention of the objector in this regard is.

Applicant's comment

A sidewalk of 2,5m must be maintained for pedestrian traffic

The applicant agrees with the principle that parking is to be provided on the application property itself.

Town Planner's comment

It should be noted that the applicant currently utilises a portion of the road reserve extending up to the road surface for parking as demonstrated in the attached photographs submitted by the objectors. The road reserve is also utilised for the off-loading of clients, as well as staff parking on the adjoining property. Regard shall be had to the location of the property situated about 40m from a blind corner between Swart Street and Kusweg, which situation is certainly not desirable from a traffic safety point of view. Accordingly the applicant will be required to submit a parking layout for approval, which parking layout shall had regard amongst others to the location of the subject property in relation to the road, provides for public walkway free from obstruction to the satisfaction of the Senior Manager: Engineering Services.

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Applicant's comment

No advertising signs may be erected on the side walk

The above was noted and agreed by the applicant.

Town Planner's comment

To be incorporated in the conditions of approval.

Applicant's comment

The plan attached to the application does not contain measurements

The plan is drawn to scale and accordingly no measurements are necessary.

Town Planner's comment

The applicant will be required to submit a detailed parking layout to the satisfaction of the Senior Manager: Engineering Services, dealing amongst others access/egress, manoeuvring on the premises, services, etc. since the current layout is not acceptable.

Applicant's comment

The Site Development Plan indicates two (2) parking bays on the sidewalk. This is misleading as the required amount of parking bays cannot be provided

The applicant states that the sidewalk is situated on the road reserve and that parking will be provided on the erf itself.

Town Planner's comment

The statement of the applicant is agreed with.

Applicant's comment

The use of the slipway by shark diving operators and clients creates parking problems, dust pollution and compromises pedestrian safety

The applicant states that the Municipality compiled a Development Framework for the harbour that addresses the needs of the various harbour users, identified improvements and development proposals addressing those needs. The applicant is of the opinion that the Harbour Development

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Framework addresses the concerns of the objectors and that the issues will be resolved together with the implementation of the framework.

Town Planner's comment

The objection relates to operational matters surrounding the slipway that could be caused by any of the slipway users and not only the shark/whale watching operators. It should also be noted that the use of the Kleinbaai Slipway dates back many years ago. The opinion is held that the objection/concern is an operational matter that could be addressed with the compilation of a detailed operational plan for the slipway. This issue is however a separate issue and not directly linked to the application under consideration.

Applicant's comment

The slipway is located in a residential area

The applicant is of the opinion that the objection is not valid, as the applicant was aware of the slipway and usage thereof when he purchased his property.

Town Planner's comment

Although the statement of the applicant is correct, it should be noted that the current activities on the subject property is illegal. Furthermore, the activities at the slipway, although linked to the rezoning application has no relevance on the relevant considerations of the application at hand, namely the requirements of Section 36 of the Land Use Planning Ordinance, 1985 pertaining to (lack) of desirability and impact on vested rights of adjoining properties. This is due to the fact that the slipway accords with the zoning.

The subject property is situated within a tourism node, identified in the 2010 Overstrand Growth Management Strategy and the Kleinbaai Nodal Development Framework. The character of the area is therefore not purely single residential and comprises an authorised business premises that accommodates a shop and shark cage operator, general residential flats in the immediate vicinity as well as a shop, service station, restaurant and bottle store in close proximity.

Applicant's comment

Four (4) residential premises are currently being utilised illegally for business operations

The applicant states that he does not intend to legalise the other illegal operations.

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Town Planner's comment

The statement of the objector is noted. The applications for the other three (3) illegal operators had been processed and will also be considered by the Executive Mayor.

It should be noted that the operations at Erf 120, Kleinbaai (Sharklady) is illegal since the planning application was not processed due to outstanding information. A compliance notice was served upon the owner of Erf 120 on 22 February 2017 with an instruction to submit a planning application within thirty (30) days of receipt of the notice, which notice was not adhered to. As such, legal proceedings will be instigated against the owner in order to enforce the relevant legislation.

Applicant's comment

The suggestion that a large number of businesses are located in the area is misleading

The applicant states that at least eight (8) businesses occur within a 500m radius from the slipway.

Town Planner's comment

Apart from the five (5) illegal shark operators on Erven 12, 71, 120, 121 and 149 Kleinbaai, several legal businesses operate from Erven 20, 23, 117, 110, 148 and 431 comprising shark/whale watching operators, restaurant, bottle store, shop, filling station, guest house and general residential flats (tourism accommodation). The statement of the applicant is therefore agreed with.

Applicant's comment

The road in front of the application area is often blocked and congested with vehicles

The applicant states that parking will be provided on site. According to the applicant the parking issues was discussed with neighbours who do not have an objection.

Town Planner's comment

Parking on the road reserve had in the past also been observed by officials. This is however addressed in that the applicant is required to submit a parking layout for approval, demonstrating on-site parking in accordance with the provisions of the Scheme Regulations. Furthermore, traffic/operational services could introduce parking restrictions, if deemed necessary.

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Applicant's comment

Clients/pedestrians must walk in the street. The statement pertaining to safe access is a misrepresentation

The applicant states that the route pedestrians take to the slipway is a low traffic route.

Town Planner's comment

A formal sidewalk has been provided on the eastern side of Swart Street that leads to Kusweg and the slipway. Although upgrading may be necessary, a safe pedestrian route free from traffic is available.

Applicant's comment

Parking ratio should be the same as for coffee shops

The parking ratio for restaurants (including coffee shops) and offices are the same, i.e. six (6) parking bays per 100m² Gross Leasable Area.

Town Planner's comment

Parking will be provided at the same parking ratio as per the objector's statement.

Applicant's comment

Large busses should be restricted to the entrance of the town

The point of objection is agreed with.

Town Planner's comment

The Kleinbaai Nodal Development Framework provides for a communal parking area, which will allow for bus parking. Financial contributions in respect of off-site parking to be levied will be ring-fenced for the planning and development of the communal parking area.

Applicant's comment

The valuation of Erf 115 has decreased as a result of the operations of the shark cage diving industry

The applicant states that the above is a personal opinion and that other factors could contribute to the decrease in the objector's property valuation.

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The applicant is of the opinion that development would increase the valuation, especially when such properties are rezoned for commercial purposes.

Town Planner's comment

The objector's property is also situated within the tourism node in close proximity to a working slipway where such activities normally occur, regardless of the fact whether it is shark cage operators or not. No substantive proof has been submitted pertaining to the reasons for the loss in property valuation and this objection should therefore be dismissed.

Applicant's comment

The applicant fails to acknowledge that five (5) of the seven (7) shark cage operators operate illegally from residential properties

The applicant is of the opinion that the statement is not relevant to the application and should be dismissed.

Town Planner's comment

The above point of objection is addressed in the background section pertaining to the historical development of the shark cage/whale watching industry in Van Dyksbaai that resulted in the adoption of the Kleinbaai Nodal Development Framework Report, as well as the evaluation.

6.3 Evaluation

Erf 71, Van Dyksbaai is zoned for single residential purposes. The property comprises a single storey dwelling, currently illegally being utilised for tourism business purposes. The current application seeks to legalise the current unauthorised activities.

Existing forward planning

The SDF: 2006 earmarks the subject property for residential purposes. The SDF acknowledge amongst others a balanced land use mix, economic and tourism development. The SDF does not contain specific proposals but acknowledged the contribution of the shark cage and whale watching industries.

The OGMS: 2010 identified a development node and earmarked the area between Perlemoen- and Geelbek Streets, Kusweg and Swart Street as a tourism node and area of economic opportunity.

Further to the above, the Kleinbaai Nodal Development Study was adopted by Council as a Sectoral Plan, forming part of the SDF on 30 March 2016. The

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proposed rezoning from Single Residential Zone to Local Business Zone accords with the proposals contained in the aforementioned documents.

The subject property is therefore situated in an area earmarked for tourism business/commercial purposes. The current/proposed development therefore accords with the forward planning vision of the area.

Desirability

The subject property, contrary to the opinion of the objectors, is not situated within a purely single residential area. The surrounding area has a mixed character comprising flats (general residential); single residential and business uses at Erf 117 in close proximity of the subject property as well as a guest house, shop, bottle store, filling station, and restaurant and tourism businesses in Geelbek Street. The aforementioned refers to authorised land uses in terms of the Scheme Regulations, excluding the current application as well as similar applications on Erven 12, 121 and 149 van Dyksbaai. Having had regard to the aforementioned, the opinion is held that the proposed rezoning to Local Business Zone will not detract from the character and appearance of the surrounding area and does not lack desirability.

The proposed rezoning will not unacceptably detract from the residential amenity from adjoining properties due to the following reasons, namely the area has a mixed character and is not purely single residential. A condition is imposed ensuring that briefing of clients before 08:00 in the morning take place indoors. The applicant is also responsible to manage his business, including noise so that it would not adversely impact the adjoining properties. Given the location of the property on an activity corridor in an area with a mixed character the development is not considered to unacceptably detract from the residential amenity of the adjoining properties.

The applicant stated that all services exist and that no additional services will be required. No objection is raised from an engineering services point of view, subject to conditions.

The application was not accompanied by a Traffic Impact Statement (TIS). The TIS for the adjacent shark cage operators (Erven 12, 72 and 149) indicated that the respective shark cage businesses have a low traffic impact on the surrounding road network and could be supported from a transport perspective, subject to sufficient on-site parking provision being made.

The development based on the SDP triggers the provision of nine (9) on-site parking bays in accordance with the provisions of the Scheme Regulations (six (6) parking bays per 100m² Gross Leasable Area. During the site inspection a yard wall and wendy house was observed, which structures are not indicated on the SDP. The parking indicated on the proposed SDP is not

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feasible and cannot be accommodated on the property. As such, the applicant will only be able to provide a maximum of seven (7) on-site parking bays.

In case that the development in future will result in a shortfall of on-site parking, the applicant will be required to make a financial contribution in lieu of parking provision in accordance with the requirements of the Scheme Regulations to be paid into a parking fund. Any such contributions to be levied shall be ring-fenced for the planning and development of the communal parking area.

The Title Deed does not contain any restrictive conditions that prohibit the proposed rezoning.

Conclusion

That the application be supported in the manner as set out in the recommendation of this submission.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Environmental Section

No listed activities.

Operational Services

Annexure G.

Electrical Services

No objection.

Engineering Department

Annexure H.

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10. Annexures

- Annexure A: Locality Plan
- Annexure B: Site Development Plan
- Annexure C: Motivation Report
- Annexure D: Objection
- Annexure E: Comment on objections
- Annexure F: Minutes of the Mayoral Committee Meeting, dated
30 March 2016
- Annexure G: Comment: Operational Services
- Annexure H: Services Report

RECOMMENDATION:

1. that the objections be noted;
2. that, in terms of the Provisions of Section 16 of the Land Use Planning Ordinance, 985 (Ordinance 15 of 1985) the application for the rezoning of Erf 71, Van Dyksbaai from Residential Zone to Local Business Zone for tourism business purposes, **be approved**;
3. that, in terms of Section 5.7 of the Gansbaai Zoning Scheme Regulations the application for consent use (tourism business and tourism accommodation) to accommodate the existing shark viewing, **be approved**;
4. that the above approval be subject to the following conditions:
 - (a) that a Site Development Plan (SDP) containing the exact location and description of all buildings and structures be submitted for approval by the Senior Manager Town and Spatial Planning;
 - (b) in the event that the SDP in paragraph (a) above demonstrates building line encroachments the applicant will be required to submit a departure application to legalise the building line encroachments within the prescribed period;
 - (c) that a parking layout be submitted within thirty (30) days from the final approval of the application to the satisfaction of the Senior Manager Engineering Services;
 - (d) that the on-site parking bays be permanently demarcated and at all times be available for use by clients/visitors to the premises. No parking on the road reserve will be permitted;

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- (e) that in the event that the parking standard cannot be met on-site, the applicant will be required to make a payment in lieu of onsite parking provision in accordance with the requirements of the scheme regulations;
- (f) in the event that a payment in lieu of parking provision be applicable, such monies to be ring fenced into a parking fund for the planning and development of a communal parking area in van Dyksbaai, as per the van Kleinbaai Nodal Framework Report;
- (g) that the applicable business license in terms of the relevant legislation be obtained;
- (h) that the briefing of clients before 08:00 may only take place indoors;
- (i) that commercial rates and service tariffs, as determined by the annual budget, be made applicable, which tariffs are automatically adjusted in terms of the annual budget;
- (j) that the display of advertising shall comply with the Overstrand Signage By-law;
- (k) that a R918 Certificate of Acceptability must be applied for at the Overberg District Municipality;
- (l) that the establishment be conducted in such a manner that it is not found to be detrimental to the peacefulness and amenity of the surrounding area;
- (m) that should any justified complaints with regards to noise and disturbance be received, the applicant be responsible for the appointment of a noise specialist at his cost as well as the implementation of the relevant mitigation measures;
- (n) that all the conditions in the Services Report (attached as Annexure H), be complied with;
- (o) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
- (p) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
- (q) that Council may impose additional conditions in order to minimise any potential public nuisance.

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5. that the applicant be notified of his/her right of appeal in terms of the provisions of Section 62 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) and/or the Municipal Systems Act, 2000 (Section 62) with regard to the above decision.

RESPONSIBLE OFFICIAL :	SW VAN DER MERWE
TARGET DATE FOR IMPLEMENTATION :	14 JUNE 2017
TARGET DATE TO INFORM APPLICANT :	14 JUNE 2017
TARGET DATE TO INFORM OBJECTOR :	14 JUNE 2017

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11.

**ERF 71, 8 SWART STREET, VAN DYKSBAAI (KLEINBAAI), OVERSTRAND
MUNICIPAL AREA : PROPOSED REZONING & CONSENT USE : MESSRS WRAP
CONSULTANCY ON BEHALF OF SC MCFARLANE**

121 GKB (1585)

SW van der Merwe

(028) 313 8900

Hermanus Administration

22 March 2017

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
22 MAY 2017, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION:

1. that the objections be noted;
2. that, in terms of the Provisions of Section 16 of the Land Use Planning Ordinance, 985 (Ordinance 15 of 1985) the application for the rezoning of Erf 71, Van Dyksbaai from Residential Zone to Local Business Zone for tourism business purposes, **be approved**;
3. that, in terms of Section 5.7 of the Gansbaai Zoning Scheme Regulations the application for consent use (tourism business and tourism accommodation) to accommodate the existing shark viewing, **be approved**;
4. that the above approval be subject to the following conditions:
 - (a) that a Site Development Plan (SDP) containing the exact location and description of all buildings and structures be submitted for approval by the Senior Manager Town and Spatial Planning;
 - (b) in the event that the SDP in paragraph (a) above demonstrates building line encroachments the applicant will be required to submit a departure application to legalise the building line encroachments within the prescribed period;
 - (c) that a parking layout be submitted within thirty (30) days from the final approval of the application to the satisfaction of the Senior Manager Engineering Services;
 - (d) that the on-site parking bays be permanently demarcated and surfaced to the satisfaction of the Senior Manager : Engineering Services and at all times be available for use by clients/visitors to the premises. No parking on the road reserve will be permitted;

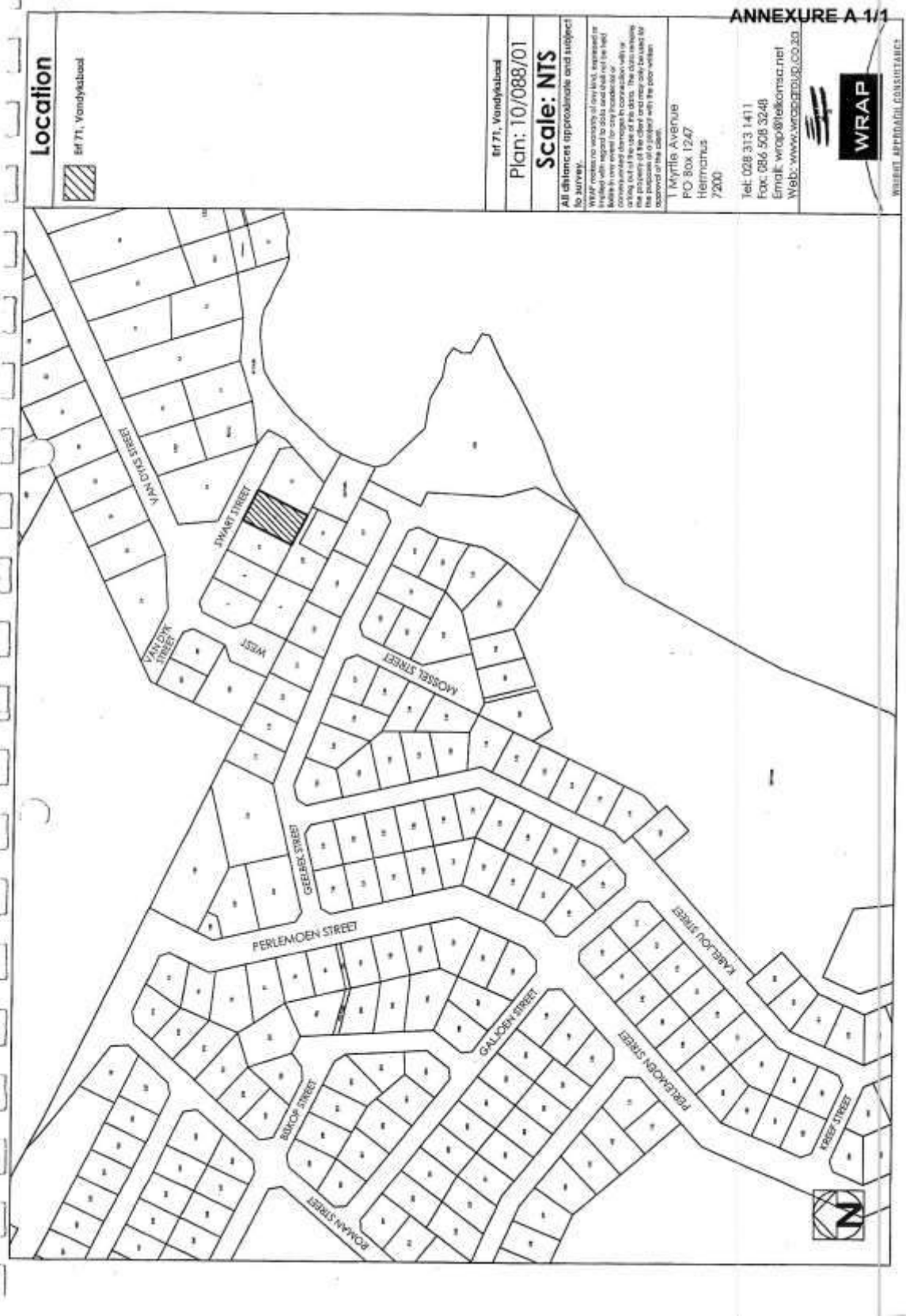
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- (e) that in the event that the parking standard cannot be met on-site, the applicant will be required to make a payment in lieu of onsite parking provision in accordance with the requirements of the scheme regulations;
- (f) in the event that a payment in lieu of parking provision be applicable, such monies to be ring fenced into a parking fund for the planning and development of a communal parking area in van Dyksbaai, as per the van Kleinbaai Nodal Framework Report;
- (g) that the applicable business license in terms of the relevant legislation be obtained;
- (h) that the briefing of clients may only take place indoors;
- (i) that commercial rates and service tariffs, as determined by the annual budget, be made applicable, which tariffs are automatically adjusted in terms of the annual budget;
- (j) that the display of advertising shall comply with the Overstrand Signage By-law;
- (k) that a R918 Certificate of Acceptability must be applied for at the Overberg District Municipality;
- (l) that the establishment be conducted in such a manner that it is not found to be detrimental to the peacefulness and amenity of the surrounding area;
- (m) that should any justified complaints with regards to noise and disturbance be received, the applicant be responsible for the appointment of a noise specialist at his cost as well as the implementation of the relevant mitigation measures;
- (n) that all the conditions in the Services Report be complied with;
- (o) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
- (p) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
- (q) that Council may impose additional conditions in order to minimise any potential public nuisance.

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5. that the applicant be notified of his/her right of appeal in terms of the provisions of Section 62 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) and/or the Municipal Systems Act, 2000 (Section 62) with regard to the above decision.

RESPONSIBLE OFFICIAL :	SW VAN DER MERWE
TARGET DATE FOR IMPLEMENTATION :	17 MAY 2017
TARGET DATE TO INFORM APPLICANT :	17 MAY 2017
TARGET DATE TO INFORM OBJECTOR :	17 MAY 2017



Location



Sif 77, Vandykbaai

Sif 77, Vandykbaai

Plan: 10/088/01

Scale: NTS

All distances approximate and subject to survey.

WRAP neither warrants nor represents or guarantees the accuracy or completeness of the information or data included in this plan. The client remains responsible for the accuracy of the information and data included in this plan. The client remains responsible for the accuracy of the information and data included in this plan.

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ANNEXURE A 1/1



WRAP

WRAP APPROVAL CONSULTANCY

Site Development Plan



Erf 71, Van Dyksboel

Plan: 10/088/02

Scale 1:200

All distances approximate and subject to survey.

WRAP makes no warranty of any kind, express or implied, in connection with the use of this plan. It is intended for use as a guide only and does not constitute a contract. It is intended for use as a guide only and does not constitute a contract. It is intended for use as a guide only and does not constitute a contract.

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ANNEXURE B 11





SEPTEMBER 2010

SECTION B: INTRODUCTION

1. BACKGROUND AND BRIEF

Van Dyksbaai has become a popular tourist destination in recent years due to the abundance of great white sharks in the area. A number of cage diving operators have established themselves in Van Dyksbaai in particular due to the small boat harbour that is developed on the eastern shore. This harbour is also the closest harbour with regard to the diving spots that is frequented by above operators.

Erf 71, Van Dyksbaai is located in the eastern part of Van Dyksbaai, near the harbour. The erf is zoned as Single Residential Zone and is developed with a dwelling unit of approximately 147 m². The erf is the base of operations for Great White Shark Tours, which is a shark cage diving operator. The property is the venue where clients register, are provided with a breakfast, are briefed with regard to safety and where they gather after a trip.

As the property is zoned as Single Residential Zone, the land use rights for the operation of a business on the property are not in place. Furthermore, the erf has been identified only for single residential land use purposes in the "Groter Gansbaai Ruimtelike Struktuurplan".

In light of the above, Wright Approach (WRAP) Consultancy was appointed for the preparation and submission of all motivational documentation, application forms and plans for the obtainment of the necessary land use rights (refer **Annexure A**).

2. THE APPLICATION (refer **Annexure B**)

Application is hereby made for the following:

- The **REZONING** of Erf 71, Vandyksbaai from Single Residential Zone to Local Business Zone in terms of Section 17 of the Land Use Planning Ordinance, 1985 (no.15 of 1985);
- **CONSENT USE** on Erf 71, Vandyksbaai for the establishment of a tourism business (toerisme sake); and
- The **AMENDMENT** of the Overstrand Municipal Wide Spatial Development Framework in terms of the Municipal Systems Act, 2000 (Act 32 of 2000).



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Application is also made to the Overstrand Municipality to recommend for approval to the Department of Environmental Affairs and Development Planning:

- The **AMENDMENT** of the "Groter Gansbaai Ruimtelike Plan" in terms of Section 4(7) of the Land Use Planning Ordinance, 1985 (no.15 of 1985).

3. PROPERTY DESCRIPTION, SIZE AND OWNERSHIP (refer **Plan 1**)

The characteristics of Erf 71, Vandyksbaai (hereafter referred to as the application area) can be summarised as follows:

PROPERTY DESCRIPTION	APPROX EXTENT (HA)	OWNERSHIP	TITLE DEED NUMBER
Erf 71 Van Dyksbaai, situate in the Overstrand Municipality, Division Caledon, Province of the Western Cape.	795 m ²	Sandra Christine McFarlane	T7343/2003

4. TITLE DEED (refer **Annexure C**)

The subject property's title deed was studied and it was found that no restrictive conditions have been registered that prohibits the proposed development from taking place. A bond has been registered over the property, and the consent of the bond holder will be forwarded to the Overstrand Municipality in due course.



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SECTION C: CONTEXTUAL ANALYSIS

5. LOCATION (refer Plan 2)

Erf 71 is located in the established township of Van Dyksbaai. The erf is situated in Swart Street and is bound by Swart Street to the north, Erf 11 to the east, Erf 579 to the south and Erf 72 to the west. The property is furthermore located within easy walking distance of the Van Dyksbaai harbour.



Figure 1: Location

6. ACCESS

Access to the property is via Swart Street through an existing access point.



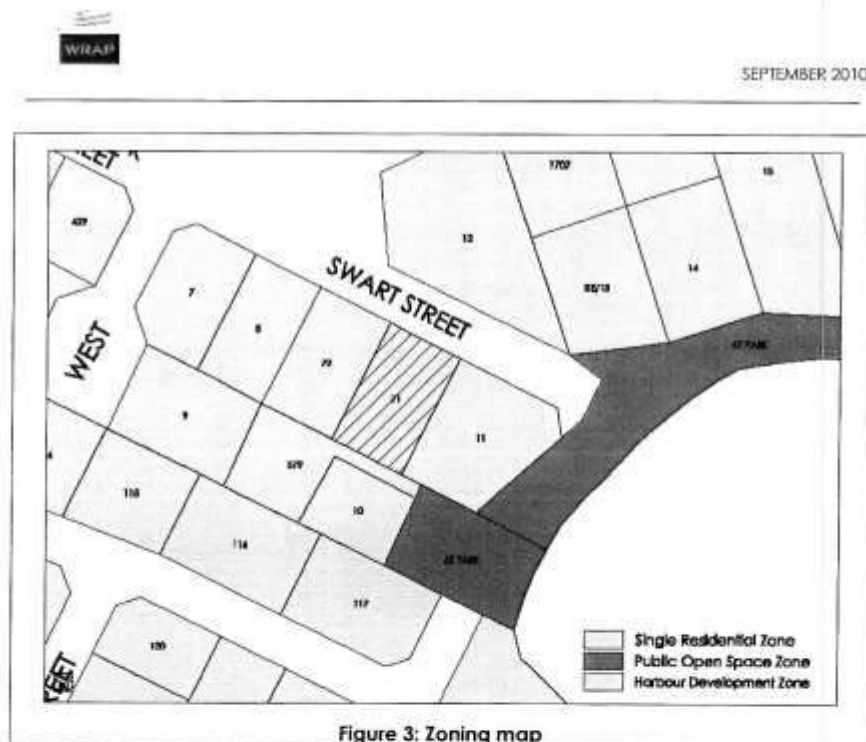
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Figure 2: Existing access point from Swart Street

7. ZONING

The property is currently zoned as Single Residential Zone in terms of the Gansbaai Zoning Scheme. The land use restrictions and regulations associated with above zoning have been attached as **Annexure D**. Surrounding properties are zoned for single residential use (yellow hatching) as reflected by the figure below.



8. LAND USE & STATUS QUO

The property is developed with a dwelling unit (approximately 147 m² in extent) that is currently being used for the operations of Great White Shark Tours. Clients arrive at the property at about 9 AM, where they are presented with a breakfast, while registration takes place. After this they attend a safety briefing, a captains briefing, followed by a shark info session. When the shark info session is completed the clients walk to the harbour where they board the boat for the dive. At around 2 PM the clients arrive back from the dive, where they watch a DVD of the trip for about an hour, where after they depart.

The attached land use plan illustrates the different uses that take place in the building. This includes a breakfast area, a kitchen, a lounge area, a safety equipment room, toilets, a laundry/recovery room, an office and a bait room. The recovery room is used when a client gets sick on the boat. A second boat is then sent to pick up the sick client where after he/she is brought back to the subject property. The client then recovers in the above room and is looked after by the staff.

Thirty clients can be accommodated at one time. The operation has a minibus that can transport up to 15 clients. This minibus can easily be accommodated on the premises as is confirmed in figure 14. The operations further make use of a 30-seater bus at times.



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Due to the size of this vehicle, it cannot park on site or in Swart Street. Therefore it drops the clients at the property, where after it parks at the communal parking area located in the harbour. After the dive is complete the bus picks the clients up again at the property.



Figure 4: Breakfast area



Figure 5: Registration



Figure 6: Lounge/DVD viewing area



Figure 7: Office



Figure 8: Laundry/recovery room



Figure 9: Toilet



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Figure 10: Toilet



Figure 11: Staff parking area



Figure 12: Bait room



Figure 13: Parking area



Figure 14: Parking area (minibus in foreground)



Figure 15: View towards harbour

9. NEIGHBOURING LAND USE

The erven located around the subject property are all zoned as Single Residential Zone. However, a number of similar businesses operate across and around the subject property. The location of the property with regard to the Van Dyksbaai harbour is also regarded as very favourable.



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Figure 16: Shark diving unlimited (Erf 12)



Figure 17: Cage diving business (Erf 117)

10. SPATIAL PLANNING INITIATIVES

Spatial planning initiatives that were considered for the purposes of this application include the Western Cape Provincial Spatial Development Framework, the Bio-Regional Planning Framework for the Western Cape Province as well as the Overstrand Municipal Spatial Development Framework. None of these documents make specific provision for the land uses as proposed in this application. However, the proposal was measured against the principles of these documents and it was found that it is consistent therewith. Shark cage diving is also identified in the Overstrand Integrated Development Plan (IDP) as a main tourist attraction and states that activities related to this industry should be supported and promoted. Unfortunately no specific strategies are identified for the above. However, the land use proposal does comply with the principles of the IDP.

The "Groter Gansbaai Ruimtelike Plan" was also studied and last-mentioned document confirms that the economic sector of the Gansbaai area is experiencing a change from a fishing industry economy to a tourism economy. It further stresses the importance of developing the tourism sector in order to ensure sustainable growth in the Gansbaai area. Although no specific strategies with regard to the land use proposal are identified, the natural environment (whales, sharks, fynbos, etc) is confirmed as important tourist attractions and that development should be based around these resources. In light of the above it is evident that the development proposal does indeed comply with the strategies and goals for the development of the tourism sector as identified in the "Groter Gansbaai Ruimtelike Plan".



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11. SITE ANALYSIS

Vegetation

No indigenous vegetation is present on the site.

Topography

The topography of the erf is flat. However, as no new structures are proposed for the purposes of this application this specific aspect is not regarded as a determining factor.

12. EXISTING SERVICES INFRASTRUCTURE

Roads

The property is located next to Swart Street, from where access to the erf is gained. The property is furthermore developed with a parking area for clients.

Water

The property is connected to the water network of the municipality.

Electricity

The erf is connected to the electricity grid.

Sewerage

A conservancy tank (10 000 litres) is developed on the property, that is serviced by the municipality.



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SECTION D: THE APPLICATION

13. OVERALL DEVELOPMENT PRINCIPLES

The development is informed by the developmental and broad land use proposals / guidelines established in the aforementioned planning concept which form the basis of the application. The broad development concept is to accommodate the existing business that is located on the property. This will be done in accordance with:

- The Western Cape Provincial Spatial Development Framework;
- The Bio-regional Planning Framework For The Western Cape; and
- The Overstrand Municipal Wide Spatial Development Framework.

14. DEVELOPMENT OBJECTIVES (refer Plan 3)

The objective of this application is to rezone the subject property from Single Residential Zone to an appropriate zoning that can accommodate the existing business that operates from there.

15. APPLICATION FOR REZONING

Application is hereby made for the rezoning of Erf 71, Van Dyksbaai from Single Residential Zone to Local Business Zone in terms of Section 17 of the Land Use Planning Ordinance, 1985 (no.15 of 1985). With the approval of this application the following land use rights and restrictions will be established:

Primary use: Shop, offices, guest house, flats, dwelling unit.

Consent uses: Service station, townhouse, nursery, supervisor's dwelling, supermarket, special recreational facility, tavern, tourism business, place of gathering and residential building.

Floor factor: at most 1.5.

Coverage: 100%.

Height: 10.5 m.

Setback: at least 6.5m.

Street building line: 0m.



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Lateral building line: 0m. However the Council may enforce lateral building lines for the sake of public safety or to enforce any law or rights.

Parking: 1 parking bay per 25 m² of the total floor area.

In addition to the above parking prescription, the following is also contained in the Gansbaai Zoning Scheme:

"As 'n alternatief vir die parkeervereiste in klousule 3.10.2 vermeld, kan die eienaar met die toestemming van die raad, as die raad van mening is dat dit uit 'n beplanningsoogpunt onwenslik of ondoenlik is om die vereiste parkeerruimte op die terrein te verskaf, grond met die voorgeskrewe oppervlakte vir die betrokke parkeergeriewe elders aanskaf op 'n plek wat die raad goedkeur; met dien verstande dat hy 'n notariële akte teen sodanige grond laat registreer ten effekte dat die raad en die publiek vrye toegang daartoe het vir parkeerdoeleindes, en die eenaars verplig is om hierdie grond gelyk te maak, van 'n permanente oppervlakte te voorsien, in stand te hou en af te baken tot genoeë van die raad; die registrasiekostes van die serwituut word deur die eenaars bestry".

Considering the size of the dwelling that is used for the purposes of the business (147 m²) a total of 6 parking bays have to be provided on site. A total of 10 bays can be provided in accordance with the parking specifications of the Overstrand Municipality. An arrangement is also in place with the owner of Erf 11 with regard to parking for staff. Figure 11 illustrates the area where staff park their cars and therefore the total number of 10 bays are available for clients to park. Even without the above arrangement, adequate parking can be provided on site.

16. APPLICATION FOR CONSENT USE

Application is hereby made for consent use on Erf 71, Gansbaai for the establishment of a tourism business (toerisme saak) in terms of the Land Use Planning Ordinance, 1985 (no.15 of 1985).



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The definition of "toerisme sake" is as follows:

"Toerisme sake beteken die aanwending van 'n perseel, en/of die geboue op sodanige perseel, vir doeleindes van 'n sake aktiwiteit wat na die mening van die raad geredelik deur toeriste besoek sal word en oor die algemeen toerisme sal bevorder en wat beskou kan word as synde aanverwant tot die toerismebedryf, en sluit ondermeer restaurante, gastehuse, aandenkingswinkels, toerisme, inligting sentrums, snuistrywinkels, antieke ware winkels, plaaslike kunswerk winkels, kunsatelljies, reisagentskappe, toerondernemings, ens in, maar omvat in die geval van toerondernemings nie die stalling van toerbusse en ander toervoertuie nie en is onderworpe aan dieselfde ontwikkelingsreëls as die van winkel in plaaslike sakesone, en in die geval van enkelresidensiële sonering, onderworpe aan dieselfde ontwikkelingsreëls as die in enkelresidensiële sone".

In light of the above definition, the current business located on Erf 71 can be defined as a tourism business and therefore the approval of the consent use application will accommodate it.

17. APPLICATION FOR THE AMENDMENT OF THE GROTER GANSBAAI RUIMTELIKE PLAN AND THE OVERSTRAND MUNICIPAL WIDE SPATIAL DEVELOPMENT FRAMEWORK

In the above structure plan, the subject property is identified for single residential use. Application is therefore made for the amendment of the "Groter Gansbaai Ruimtelike Plan" in terms of Section 4(7) of the Land Use Planning Ordinance, 1985 (no.15 of 1985). The amendment of the above plan will make it possible for the proposed zoning to be established.

The property is furthermore reserved for residential land use and therefore application is also made for the amendment of the Overstrand Municipal Wide Spatial Development Framework in terms of the Municipal Systems Act, 2000 (Act 32 of 2000).



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SECTION E: MOTIVATION

18. LOCATION AND ACCESSIBILITY

The property is located within walking distance of the harbour and is therefore ideally situated for the land use proposals contained in this application. The erf is furthermore located in an area that cannot be exclusively regarded as a residential neighbourhood. A great number of businesses, similar to the above, are located in the immediate surrounding area. It should also be mentioned that a number of guesthouses and bed and breakfast establishments are located near the abovementioned businesses. Clients of the diving operators often make use of these accommodation facilities and as a result of the above, Van Dyksbaai has developed into a true tourist destination.

Access to the property is via Swart Street. An existing access point will be utilised for the purposes of this application. A total of 10 parking bays can be provided on site. The parking layout has been done in such a way as to ensure that no off-street parking bays are provided. Access to the property is therefore safe and does not pose a threat to road users. It should also be mentioned that the operator sometimes make use of a 30-seater bus. The bus does not park on the property, but only drops clients at the subject property. From there it is parked at the harbour in the communal parking area. After the clients complete the dive, the bus collects them at the property again.

Considering the above, it is evident that the property is ideally located for the land use proposal contained in this application and that the property enjoys excellent access. Therefore we recommend that this application be approved.

19. COMPATIBILITY WITH THE CHARACTER OF THE SURROUNDING AREA

In the above section it is stated that the character of the surrounding area is not purely residential in nature any more. A number of businesses have established themselves in the area surrounding the harbour. These include shark cage diving operators, accommodation facilities for tourists a restaurant, etc. It is therefore evident that the character of the surrounding area is a mix of different land uses, all supporting the tourism sector of Van Dyksbaai.



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In light of the above argument, it is maintained that the land use proposals contained in this document are compatible with the character of the surrounding area and therefore this application should be approved.

20. IMPACT ON EXISTING USE RIGHTS

The land use rights linked to the subject property relates to the land use rights as contained in the Gansbaai Zoning Scheme under Single Residential Zone. However, with the approval of this application these rights will change as discussed in Section D15 and 16 as a result of the Local Business Zoning that will be awarded along with the consent use.

No negative impact on land use rights of surrounding property owners are foreseen due to the fact that the business has been operating for a long time from the premises, without any incident. As mentioned previously, the peak time of the business is limited to about an hour and a half in the mornings and an hour in the afternoon. Therefore the impact that the business has on the surrounding area is very limited.

Considering the above, it is our recommendation that this application be approved as the land use proposals will have no negative impact on the existing land use rights in the area.

21. SERVICE INFRASTRUCTURE

The application area is already connected to all of the necessary service infrastructures. No additional facilities (such as toilets, etc) are proposed and therefore there won't be an increase in the capacity required. The existing service infrastructures are regarded as adequate for the purposed of this application.

As the proposed rezoning and consent use will have no impact on the existing service infrastructure of the area, we recommend that this application be approved.



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22. GRANTING OR REFUSAL OF APPLICATIONS

The Land Use Planning Ordinance, 1985 (no 15 of 1985) in Section 36 stipulates that:

- "any application shall be refused solely on the basis of a lack of **desirability** of the contemplated utilization of land concerned including the guideline proposals included in a relevant structure plan in so far as it relates to desirability, or on the basis of its effect on existing rights concerned", and
- "regard shall be had, in considering relevant particulars to only the **safety and welfare of the members of the community** concerned, the conservation of the natural and developed environment concerned or the effect of the application on existing rights concerned".

The acceptance of land use on a specific land portion must be tested in accordance with the physical characteristics of the property, existing planning in the area, and the character of the environment, the potential, location and accessibility of the property as well as the provision of service infrastructure to the proposed development.



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SECTION F: CONCLUSION AND RECOMMENDATION

This motivational report has proven that there is a need for the proposed development to take place and that it will take place in a desirable manner. The land use proposals are compatible with the character of the surrounding area as it definitely contributes to the tourism sector of Van Dyksbaai. The impact of the land use is furthermore limited to a couple of hours per day and there may be days that no clients make use of the facilities (especially during bad weather when it is not possible to go to sea).

In light of the above, it is our recommendation that the following applications be approved:

- The **REZONING** of Erf 71, Vandyksbaai from Single Residential Zone to Local Business Zone in terms of Section 17 of the Land Use Planning Ordinance, 1985 (no.15 of 1985);
- **CONSENT USE** on Erf 71, Vandyksbaai for the establishment of a tourism business (toerisme saak); and
- The **AMENDMENT** of the Overstrand Municipal Wide Spatial Development Framework in terms of the Municipal Systems Act, 2000 (Act 32 of 2000).

It is also proposed that the Overstrand Municipality recommends for approval to the Department of Environmental Affairs and Development Planning the:

- The **AMENDMENT** of the "Groter Gansbaai Ruimtelike Plan" in terms of Section 4(7) of the Land Use Planning Ordinance, 1985 (no.15 of 1985).

Mr. S. Muller
 Director: Infrastructure and Planning
 Gansbaai Administration
 Overstrand Municipality
 P.O.Box 26
 Gansbaai
 7220



P.O.Box 1116
 Gansbaai
 7220

20th January 2011

Sir,

Erf 71, 8 Swart Street, Van Dyksbaai: Application for rezoning, consent use, amendment of the Greater Gansbaai Spatial Plan and the Overstrand Municipal Wide Spatial Development Framework

I am the owner of Erf 125, Van Dyksbaai and have been served with notice of the above application.

A. Objection to the above applications.

1. Location and Accessibility

The focal point of Van Dyksbaai is the Kleinbaai slipway. It is widely utilized by fishermen, both recreational and commercial, kelp harvesters, abalone divers, recreational boaters, whale watchers and shark cage operators. It is dominated by 8 shark cage operators, 7 of whom have the right to permanent parking at the slipway. The eighth operator parks his boat at his premises in Geelbek Street and tows it to the slipway on a daily basis. A single whale watching operator is also parked permanently at the slipway.

The boats used by the shark cage operators have increased substantially in size in the last five years and the total capacity more than doubled. The applicant operates one of the largest boats with a capacity of 40 passengers and 5 crew. Subject to weather conditions the boats do at least one trip a day, often two and sometimes three. This has had a dramatic impact on traffic in the area with concomitant problems of parking, dust pollution, pedestrian safety and noise. The situation is exacerbated by the fact that the slipway is situated in a residential area and, with one exception, all the adjacent properties are zoned for single residential use. In the immediate area surrounding the applicant property 4 other residential premises are illegally used for business purposes by shark cage operators. The footprint of each of these businesses is therefore larger than that of a business conducted solely on the premises themselves.

Handwritten note:
 Erf 125

Additional business premises are located at the intersection of Geelbek and Perlemoen Streets.

To suggest, as the applicant does, that a "great number" of businesses similar to that of applicant are located in the "immediate surrounding area" is a misrepresentation.

Access to the slipway is via two narrow roads, Swart and Geelbek Streets.

Applicant's property is situated in Swart Street on a blind rise above a sharp corner. The property is situated opposite another shark cage operator illegally utilizing residential premises for business purposes. The road is often either blocked or congested by vehicles ranging from mini-busses to large trucks servicing the two premises.

Pedestrian traffic to and from the slipway has no public access to the property other than via Swart street resulting in pedestrians, usually tourists, often walking in the road on a blind rise and round a blind corner.

To suggest, as the applicant does, that access to the property is safe is a misrepresentation.

The nature of applicants business and the location of the property at the apex of the high-use slipway area make the provision of adequate, safe on-premises parking imperative. The operating hours of the applicant are very similar to a coffee shop in that peak times are mornings, midday and often mid-afternoon. A useful guideline for the parking requirements would therefore be those applied to a coffee shop in a residential area, i.e. one parking bay per three seats. This would mean that applicant would be required to provide, on the premises, at least 13 bays for clients and at least 3 more for own use and service vehicles. The total of 10 bays indicated by applicant includes at least 2 on the road verge and is therefore a misrepresentation.

An additional problem is caused by large tourist busses regularly servicing the applicant and the other shark cage operators. With no designated parking area assigned to them, they park in front of residential properties, on the road verge or in the road itself. To suggest that the limited public parking area adjacent to the slipway is suitable for this purpose arrogantly ignores the legitimate interests of other stakeholders. Access for busses, including mini-busses, to the immediate area of the slipway must be limited and parking provided closer to the entrance to Kleinbaai where business development has already been designated.

2. Compatibility with character of the surrounding area and impact on existing use rights.

The cumulative impact of the shark cage operations on residential properties adjacent to the slipway has been negative. During the recent general property valuation in Overstrand the valuation of Erf 125 Van Dyksbaai was reduced primarily on the basis of the impact of the shark cage operations at Kleinbaai slipway.

The applicant justifies his application with reference to other similar businesses that have been established in the area surrounding the slipway. He fails to disclose that 5 of the 7 premises used by shark cage operators are doing so illegally from residential

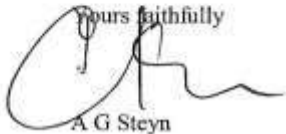
premises. I am not aware of any guest houses or bed and breakfast establishments in the immediate vicinity of applicant's property or the slipway other than the Great white House at the top of Geelbek Street. If there are others in the immediate vicinity they are operating so discretely as to be difficult to identify.

B. Conclusion

Since 2002 I have repeatedly attempted to obtain the co-operation of the relevant authorities in the proper long term planning of the Kleinbaai slipway and surrounds. This has not been successful and the management of the area has been characterized by ad hoc decisions, almost exclusive preference for the interests of the shark cage operators and a failure to implement undertakings or to consult other legitimate interests.

1. Any amendment of the relevant spatial development framework or plan is opposed subject to proper planning of the development of the Kleinbaai slipway site and surrounds, including impact studies, feasibility studies, public participation and implementation plan.
2. The rezoning of Erf 71 is opposed subject to the same conditions above.
3. The consent use of Erf 71 is opposed subject to the same conditions above.

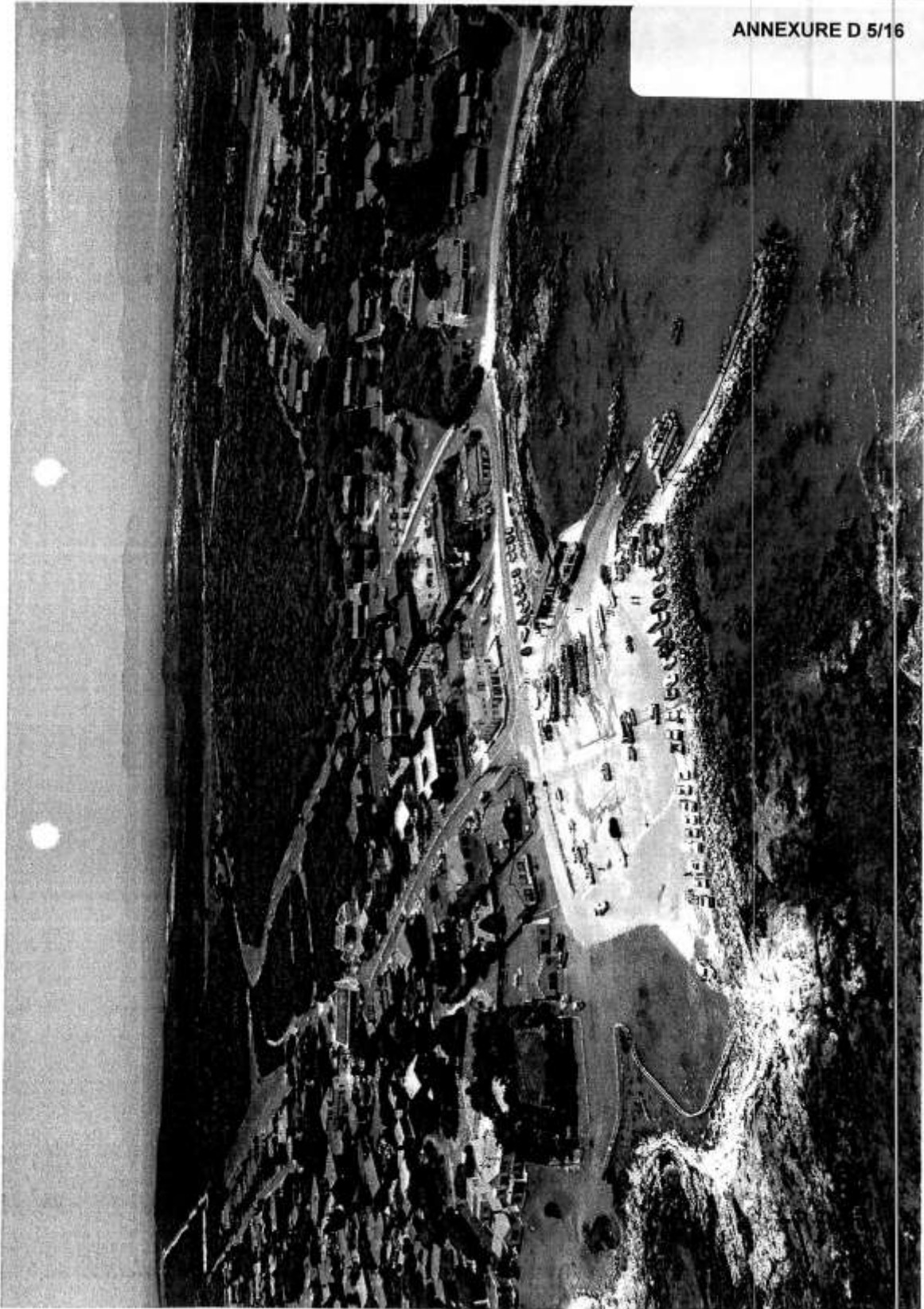
Yours faithfully

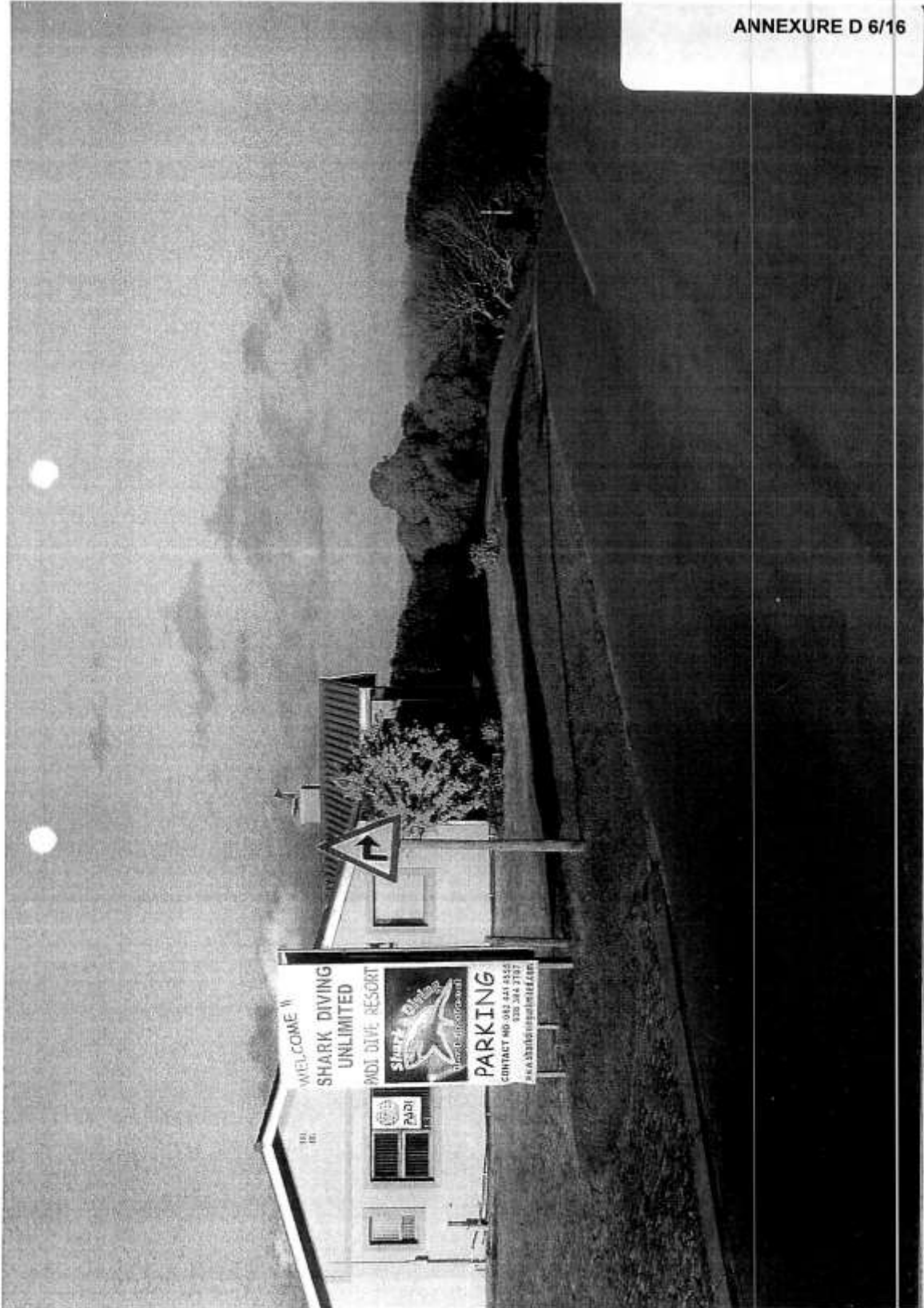


A G Steyn

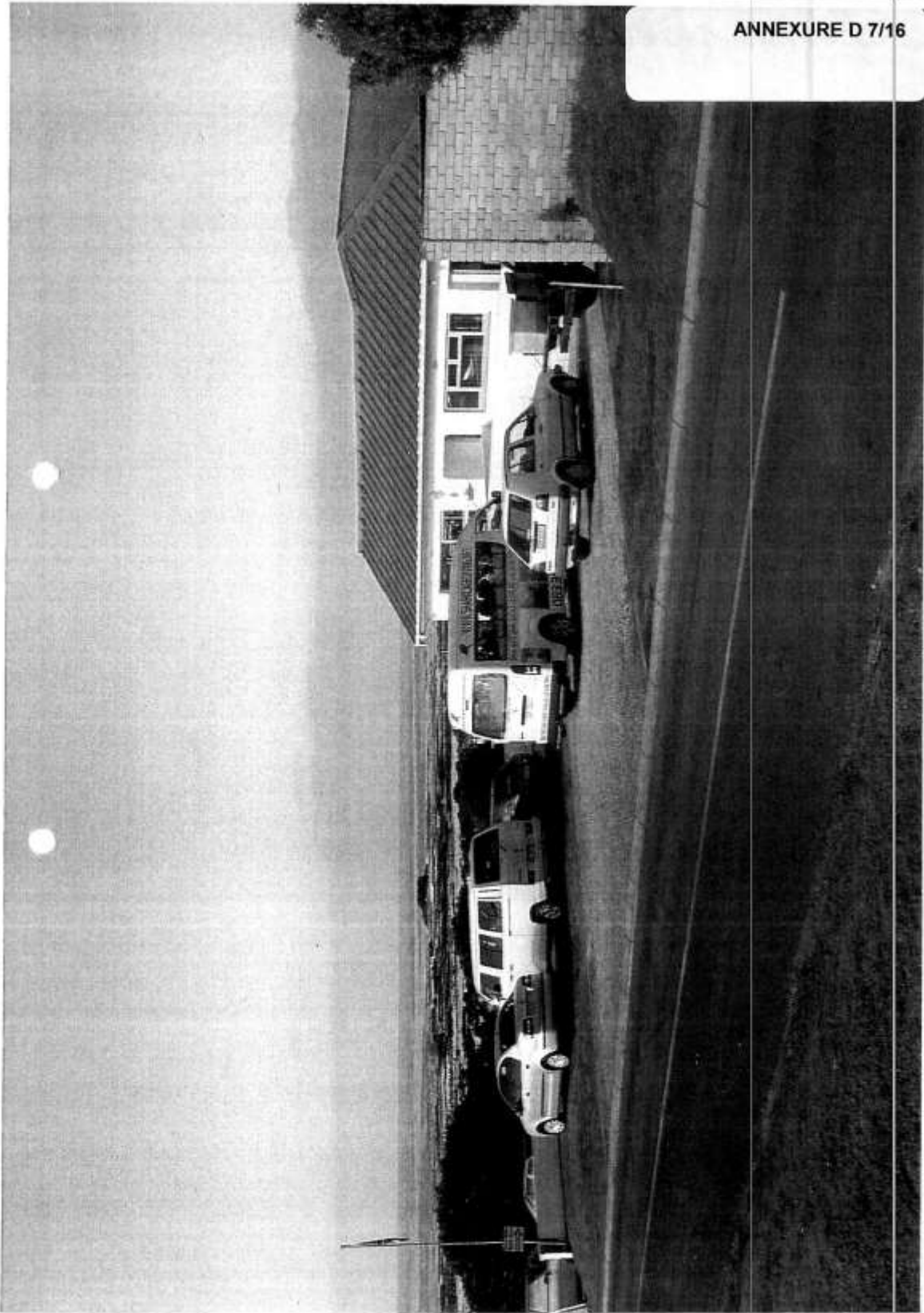
ANNEXURES

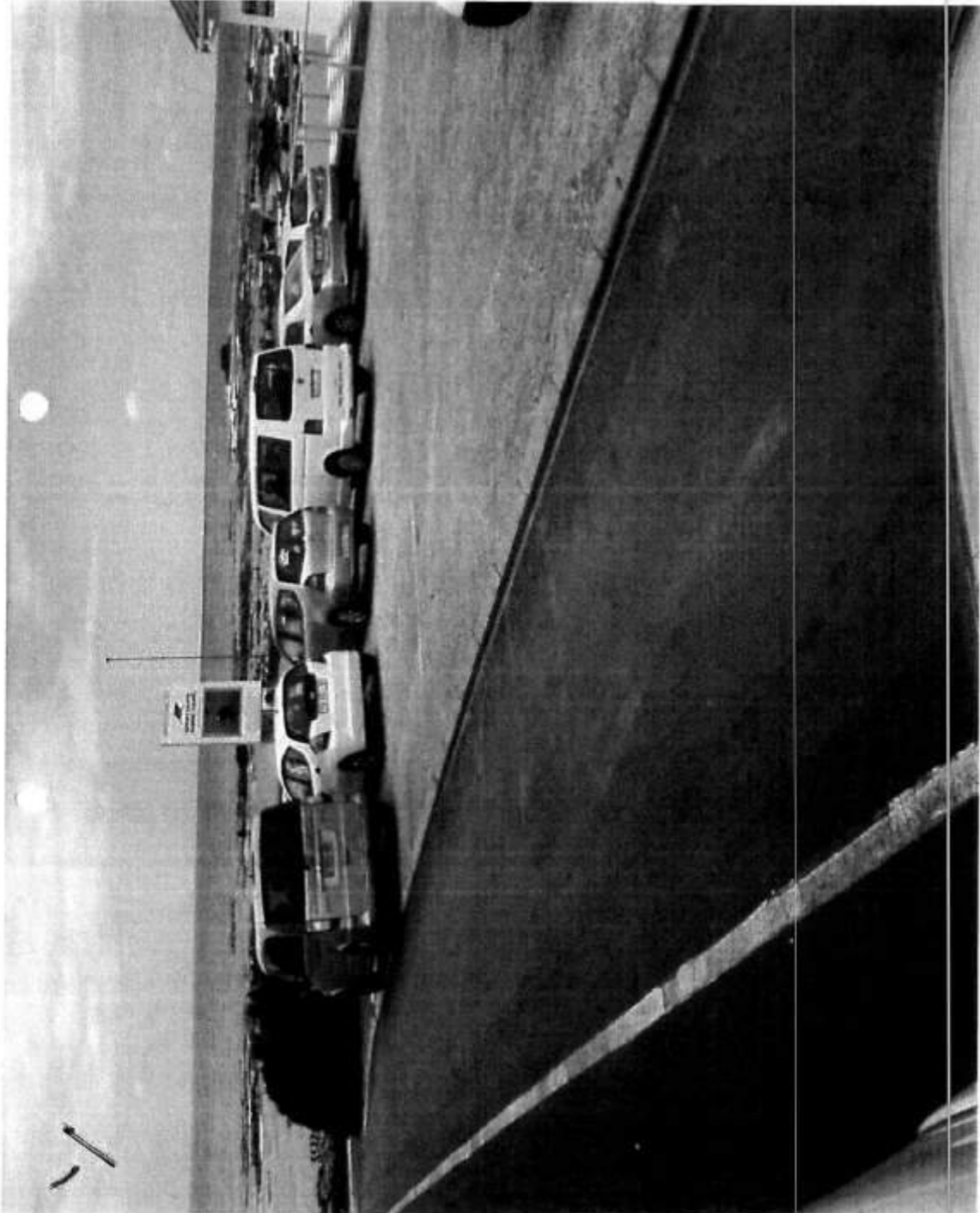
1. Arial view of the Kleinbaai slipway site indicating the applicant property (1), other shark cage operators premises (2), other business premises (3) and the property of the objector (4)
2. The blind rise in front of the applicant property and the residential property being utilized as business premises by another shark cage operator
3. The parking area in front of the applicant property with an indication of the sharp corner at the bottom of the blind rise.
4. Ditto
5. The road in front of applicant property being fully utilized.
6. Bus parking
7. Bus parking
8. Bus parking
9. Other users of the slipway parking area
10. Other users of the slipway parking area.





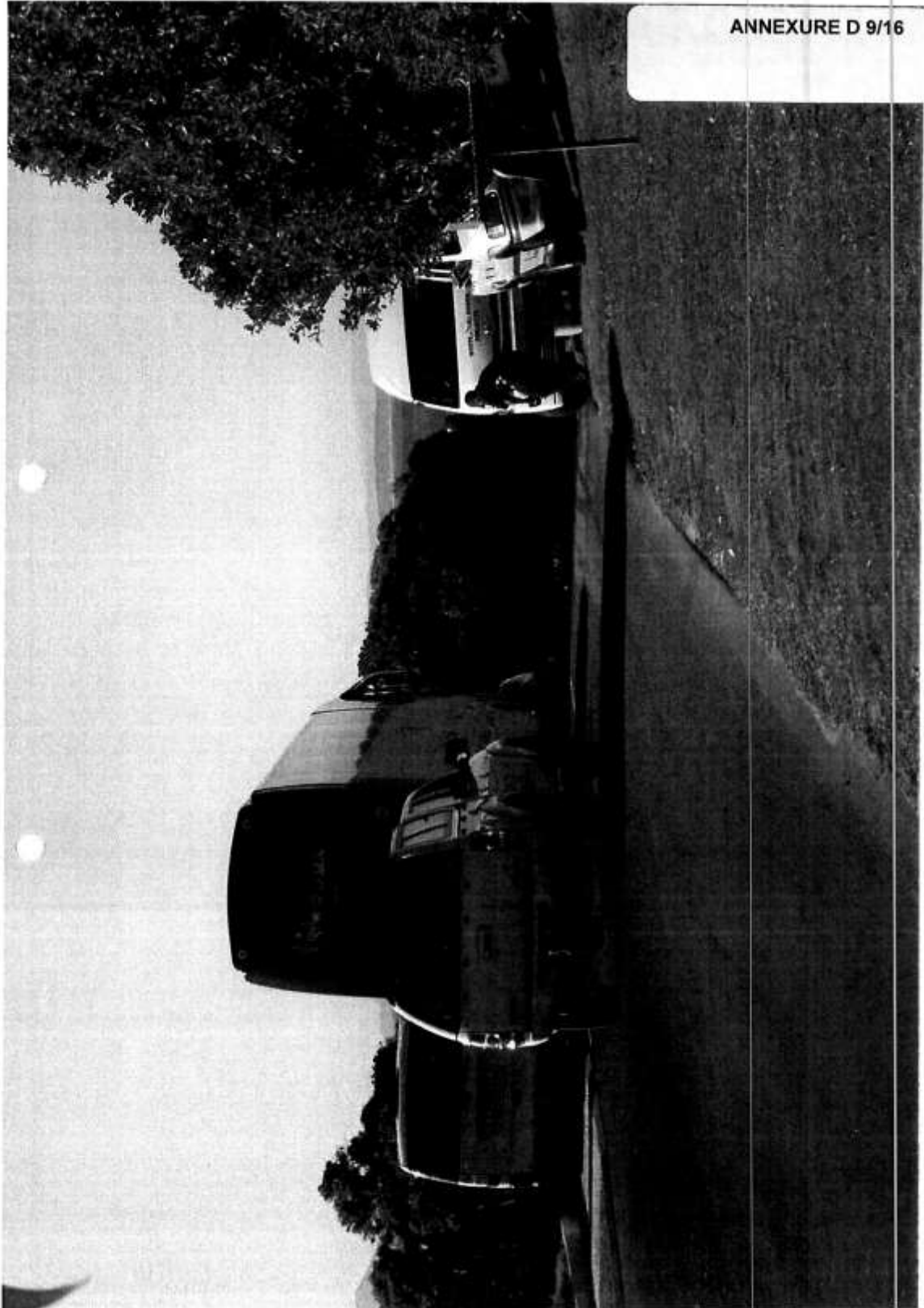
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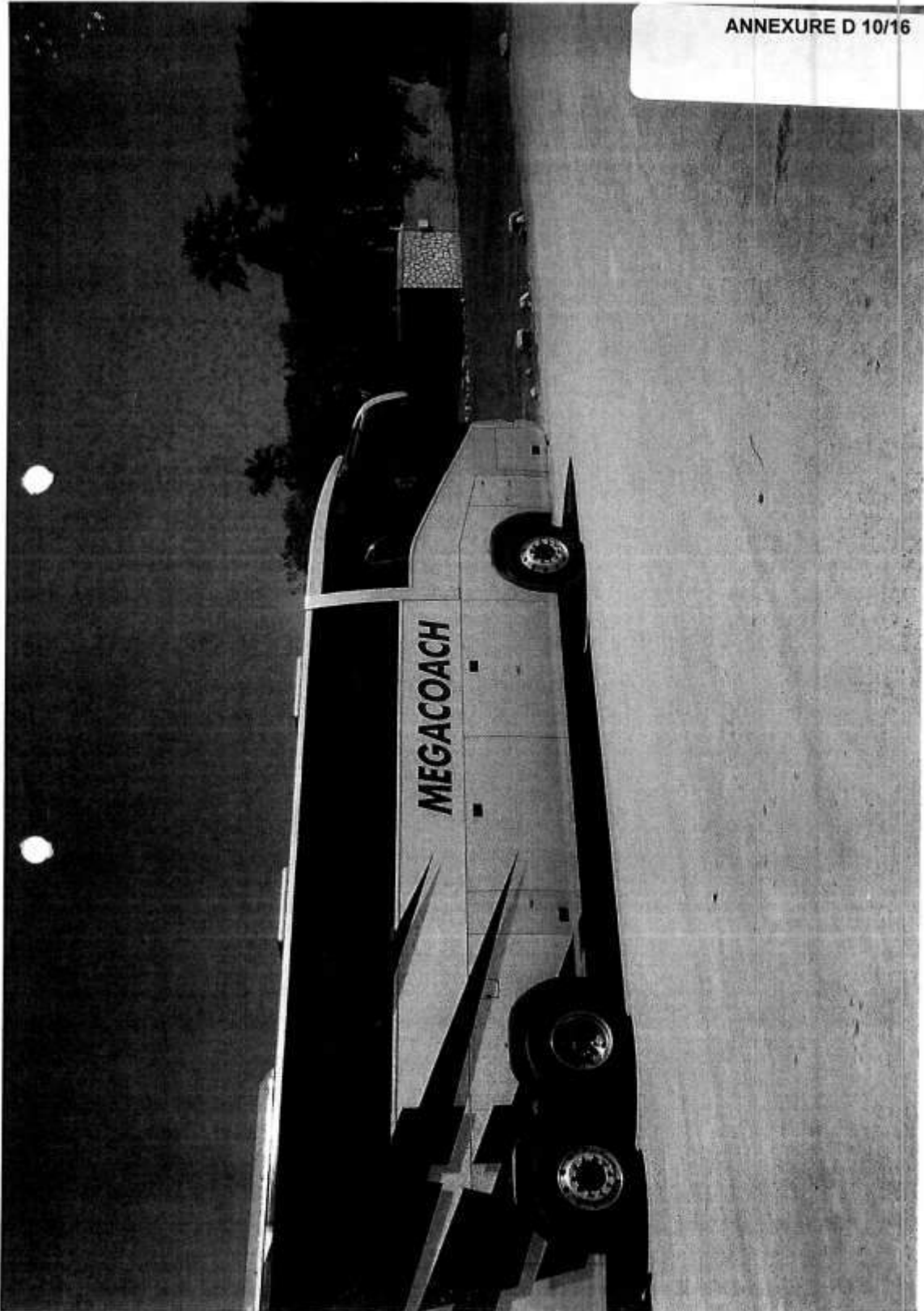


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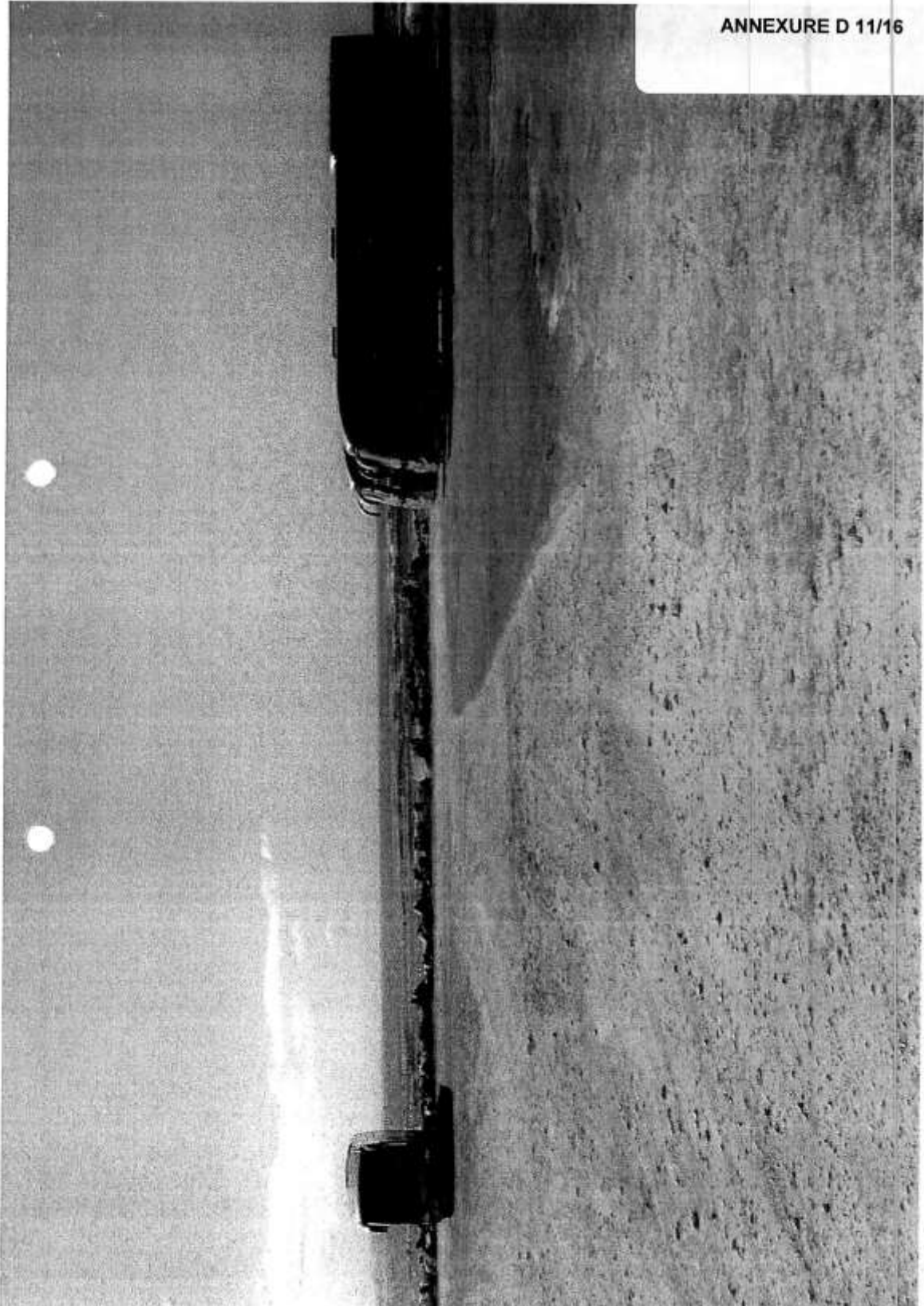
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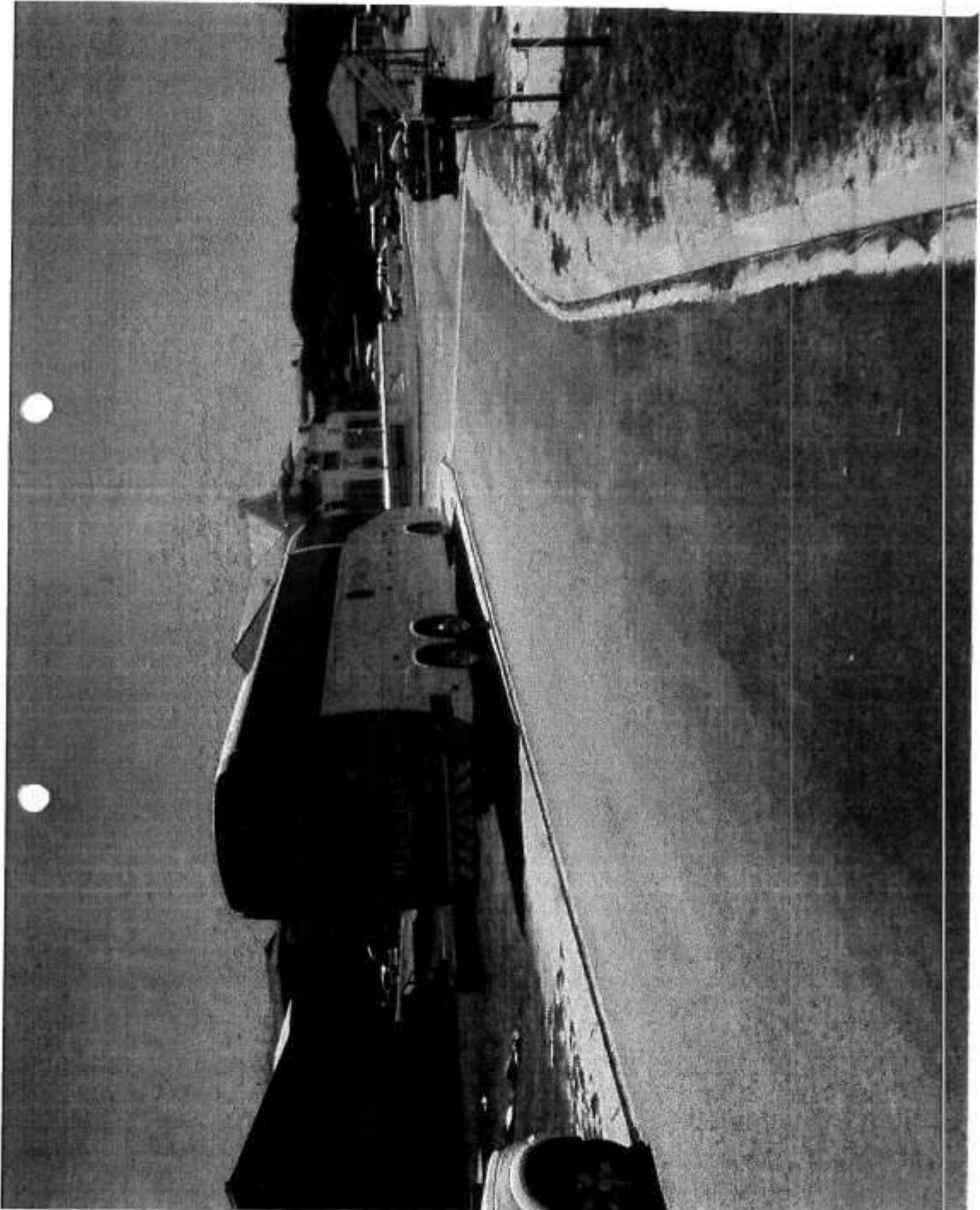


ANNEXURE D 10/16



ANNEXURE D 11/16







ANNEXURE D 13/16

ANNEXURE D 14/16

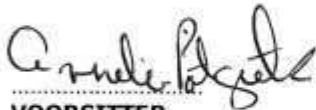


- 5 Let daarop dat die aansoek voor ons gelê nie enige afmetings op die planne aandui nie. Dit is dus moeilik om te verstaan. Dit is egter duidelik dat daar **nie** 10 parkeerplekke voorsien kan word in die beskikbare ruimte nie. Twee parkeerplekke word ook in die misleidende kaart op die sypaadjie aangetoon. Die area is slegs voldoende vir $4\frac{3}{4}$ parkeerareas aan die een kant en aan die ander kant nog een minder agv van die wendyhuis wat daar geplaas is. Vergewis u hiervan met 'n ter plaatse ondersoek en kommunikeer dit asseblief aan ons. Parkering op die sypaadjie is nie vir ons aanvaarbaar nie, agv van ons versoek by p 3. [Sal u asb seker maak dat alle kaarte/voorleggings in die toekoms van afmetings voorsien word].

Ons versoek is dus dat hierdie hersonering aan alle regulasies moet voldoen alvorens enige goedkeuring verleen sal word en dat daar ook wetstoepassing ten opsigte van hierdie regulasies sal geskied. Sou dit die geval wees, kan daar geen beswaar wees teen die aansoek.

Ons dank u by voorbaat.

Die uwe



VOORSITTER

Annelie Potgieter
Sel 076 677 8506

FILE NO: <i>Ref 71</i>
SCAN NO: <i>17</i>
COLLABORATOR NO: <i>210365</i>

WRAP

ANNEXURE E 19

Our Reference: 10/088

10 February 2011

The Municipal Manager
Overstrand Municipality: Gansbaai Administration
P O Box 26
GANSBAAI
7220

Dear Sir/Madam

ERF 71, VAN DYKSBAAI: APPLICATION FOR REZONING, CONSENT USE, THE AMENDMENT OF THE GROTER GANSBAAI RUIMTELIKE PLAN AND THE AMENDMENT OF THE OVERSTRAND MUNICIPAL WIDE SPATIAL DEVELOPMENT FRAMEWORK.

Our application dated 10 September 2010 and your letter dated 27 January 2011 refers.

We hereby formally respond to the objections that were received against the above applications. Letters of objection were received from the following parties:

- AG Steyn; and
- The Kleinbaai Belastingbetalers- en Inwonersvereniging.

The objections and comments have been categorised and summarised and are contained, together with our response, in the sections below.

1. Adequate parking should be provided on the erf itself.

In terms of the Overstrand Integrated Zoning Scheme, 6 parking bays per 100 m² GLA should be provided for the intended land use. The footprint of the building on the erf is approximately 147 m² and therefore 8 parking bays should be provided. 10 bays are indicated on the site development plan.

Municipal legislation and procedures • Property development planning • Property development law • Project facilitation • Urban planning • Body corporate management.
1 Myrtle Avenue, POBox 1247, Hermanus, 7200
Tel: +27(0)28 313 1411 • Fax: +27 0865083248
Email: wrap@telkomsa.net • Web: www.wrapgroup.co.za
Wright Approach Investments 136 CC Reg No CK 2002/06075/23

TP



Handwritten signature/initials

2. A loading zone for guests and bulk services should be provided on the erf.

As mentioned in the original application, at times a 30-seater bus is used for the transport of clients. The bus does not stop on the erf itself, but in front of the erf, for a very brief period. After clients have disembarked, the bus is moved to the communal parking area in the harbour.

It is not clear why a loading zone should be provided for bulk services, as it is not a requirement in terms of the relevant zoning scheme.

3. A sidewalk of 2.5 meters must be maintained for pedestrian traffic.

Noted and agreed. All parking bays are provided for on the erf itself.

4. No advertising signs may be erected on the sidewalk.

Noted and agreed.

5. The plan attached to the application does not contain measurements.

The attached plan did not contain measurements, due to the fact that it was drawn to scale (1:200).

6. On the site development plan, two (2) parking bays are indicated on the sidewalk. This is misleading as the stated number of parking bays can therefore not be provided.

As mentioned in the response to point 4, all parking bays are provided on the erf itself. The sidewalk is located inside the road reserve of Swart Street and not on the applicant's erf.

7. The use of the slipway by shark diving operators and clients creates parking problems, dust pollution and compromises pedestrian safety.

A development framework has been compiled for the Overstrand Municipality for the Kleinbaai harbour. During the compilation of the above framework the needs of all of the harbour users were identified and subsequently a number of development proposals were compiled to address these needs. This includes a revised road layout to promote pedestrian activity, additional car parking, the rezoning of nearby properties to create a tourist node around the

harbour, boat and trailer parking, a helicopter landing pad, etc. Due to budget constraints, all of the proposals cannot be implemented at the same time. The harbour is therefore upgraded in phases. Considering the concerns raised by the objector, it is evident that the development framework addresses these concerns and that the issues will be resolved as the development framework is implemented.

8. The slipway is located in a residential area.

Noted. However, the objector was aware of the slipway and the associated usage thereof on the day that he purchased his property and therefore the above objection is not regarded as valid.

9. Four (4) residential premises are currently being used illegally for business operations.

Noted. This application does not intend to legalise all of the erven's zonings that operate as diving operators. The above objection is therefore not relevant to this application.

10. The suggestion that a large number of businesses are located in the area is misleading.

The initial observation is maintained as at least 8 businesses occur within a 500 meter radius of the harbour. The above statement is therefore not misleading.

11. The road in front of the application area is often blocked and congested with vehicles.

As mentioned previously, all parking for clients are provided for on site. In addition, employees park their vehicles on Erf 11. The applicant has an agreement with the owner of Erf 11 with regard to the above arrangement. The photo that was attached by the objector is also not very clear in the sense that one cannot determine where it was taken. It is therefore questionable if the photo was taken in front of the applicant's erf. It is also interesting that surrounding property owners did not object to the application or raise the above matter, even though they are situated next to the application area. After the objections were sent to the owner of the property for scrutiny, he discussed the matter with his neighbours. They indicated that they do not have a problem with the land use of the subject property, nor have they ever had any problems with regard to traffic. At this stage it should be mentioned that the objector is located approximately 130 meters from the

application area and would ordinarily not make use of Swart Street. It is therefore difficult to comprehend how the traffic in Swart Street would influence him.

12. Clients/pedestrians must walk in the street to and from the slipway and therefore the statement that access is safe is misrepresentation.

The route that the clients have to take to the slipway is a low traffic volume route and therefore the statement with regard to safe access is maintained.

13. The same parking ratio as coffee shops should be implemented as they have similar operating hours.

In the Overstrand Integrated Zoning Scheme the parking ratio for restaurants (coffee shops included) are 6 parking bays per 100 m² of GLA. The same ratio is applied to offices. The GLA of the building is only 147 m² and therefore only 8 parking bays have to be provided. However, a total of 10 bays are provided on the erf itself. It is therefore evident that an adequate number of parking bays are provided.

14. Large busses cannot park on or in front of the subject property nor the slipway and must be restricted to the entrance of Kleinbaai.

Noted and agreed. Vacant land has been identified at the entrance of Van Dyksbaai for the parking of busses by the Municipality. As soon as this land has been developed as a parking area, busses will be restricted to parking there.

15. The valuation of Erf 125 Van Dyksbaai has decreased as a result of the operations of the shark cage diving industry.

The above is a personal opinion and it can be argued that other factors contributed to the decrease in residential valuation. However, considering the development of the harbour, the devaluation of Erf 125 is not regarded as the norm. Development usually increases the value of properties, especially when such properties are rezoned for business use.

16. The applicant fails to disclose that 5 of the 7 shark cage operators operate illegally from residential premises.

The above statement is not relevant to the application and therefore we request that the above objection be dismissed.

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

Regards



JOHANN PIENAAR
B.Art et Scien (TRP SA)

3/23/2017

Great White Shark Diving, Contact Page



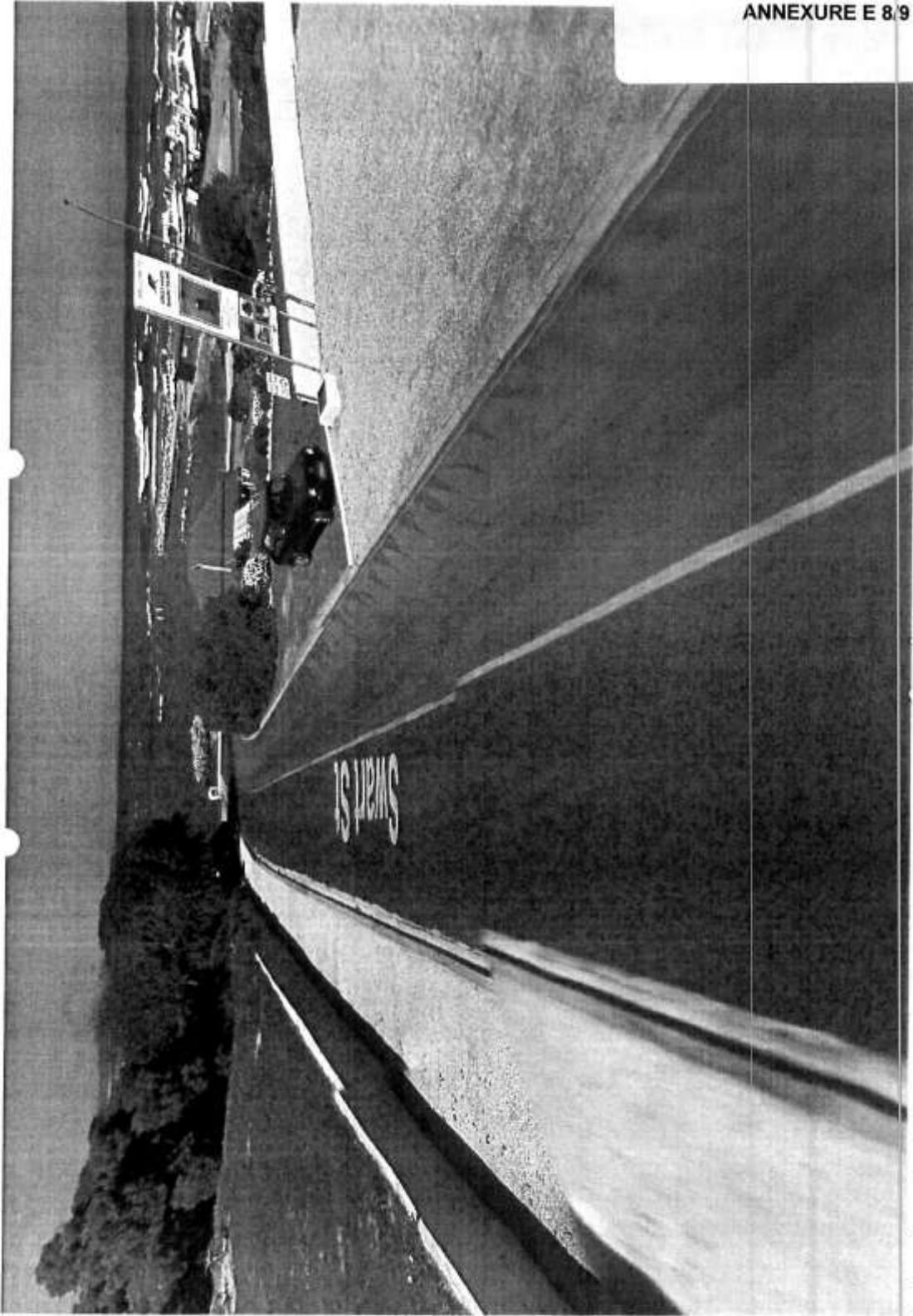
JOIN OUR SHARK CAGE DIVING COMMUNITY



ANNEXURE E 8.9

1 Swart St. - Google Maps

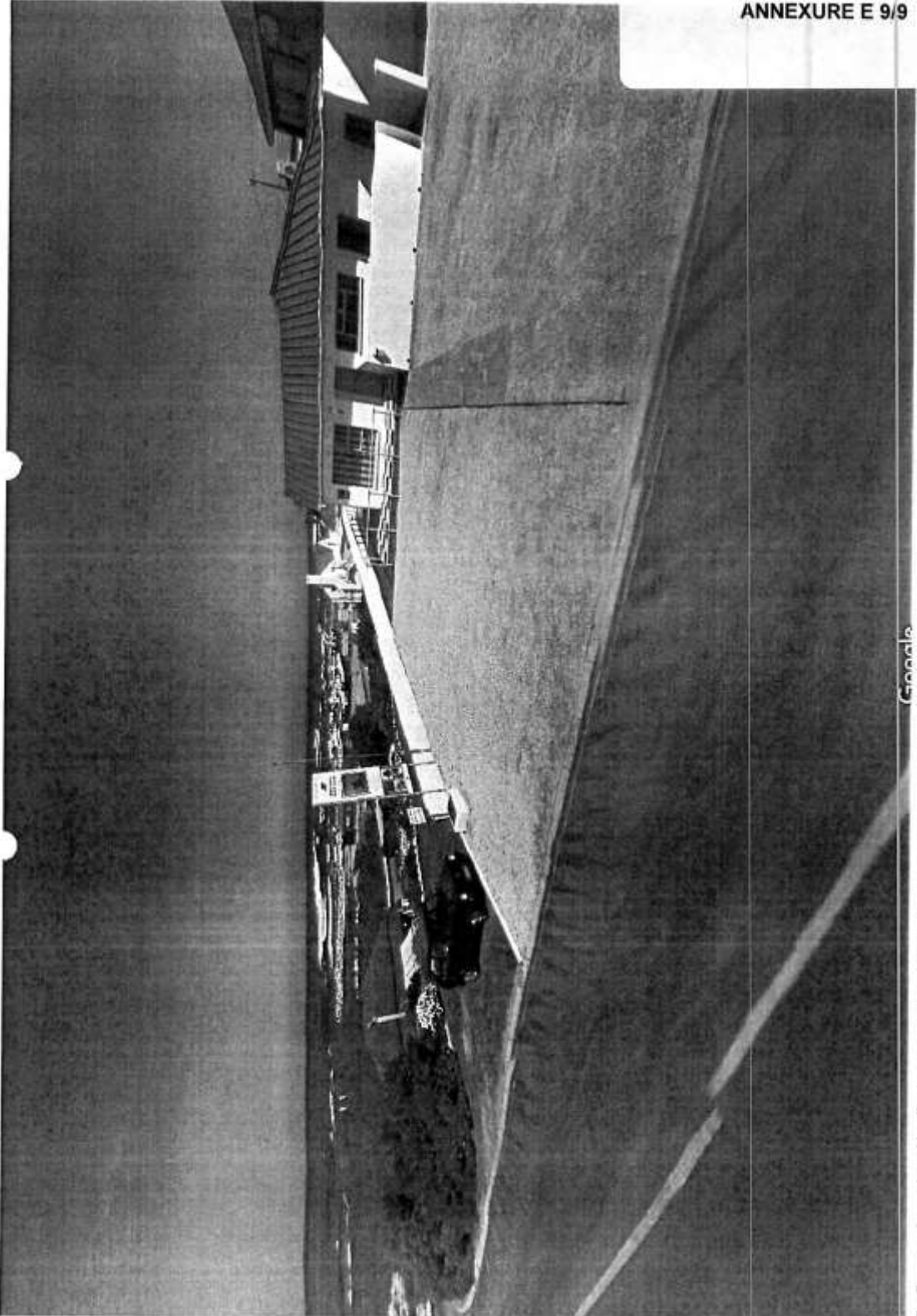
3/23/2017



<https://www.google.co.za/maps/@34.011871,27.853104,15z>

1 Swart St - Google Maps

3/23/2017



© 2017 Google

<https://www.google.com/maps/@34.1111111, -118.1111111, 15z>

**22.
KLEINBAAI NODAL DEVELOPMENT FRAMEWORK : MESSRS DECA & CSM ON
BEHALF OF OVERSTRAND MUNICIPALITY**

Kleinbaai Development Node
SW van der Merwe (028) 313 8900 Hermanus Administration
19 January 2016
(Updated 26 February 2016)

EXECUTIVE SUMMARY

The purpose of this report is to table the Kleinbaai Nodal Development Framework for adoption and inclusion as part of the Overstrand Spatial Development Framework (OSDF).

RECOMMENDATION TO THE COUNCIL:

that Council adopts the Kleinbaai Nodal Development Study as part of the Overstrand Spatial Development Framework, subject to the following conditions:

- (a) that parking at the Kleinbaai slipway for shark/whale watching boats be restricted to a maximum of 10 parking bays in accordance with the recommendations of the Engineering Report; and
- (b) that any future permits over and above the 10 referred to in (a) above, be issued by Western Cape and/or National Government be subject thereto that such enterprises operates from Gansbaai Harbour.

RESPONSIBLE OFFICIAL :	SW VAN DER MERWE
TARGET DATE FOR IMPLEMENTATION :	13 APRIL 2016
TARGET DATE TO INFORM APPLICANT :	13 APRIL 2016
TARGET DATE TO INFORM OBJECTOR :	N/A

Stadsbeplanningsaansoek

Datum	30 Maart 2011	Erf	71
Gebied	Kleinbaai / Van Dyksbaai	Omgewing	Swartstraat, Haal Operateurs
Tipe Aansoek	Hersonering		
Beskrywing tipe aansoek	Hersonering & Vergunning vanaf Res1 na Toerisme (Sake) Wysiging van Ruimtelike Plan		

Kommentaar

Bestaande perseel word reeds gebruik as haaibootoperateur basis en daar is reeds normale huishoudelike dienste.

Wateraansluiting sal net so behoue bly. Indien groter aansluiting benodig word sal daar 'n nuwe aansoek ingedien moet word.

Vullisverwydering sal teen normale tariewe gedoen word.

Stormwater moet op perseel hanteer word en aanpassings sal gemaak moet word indien nodig.

Riooltenk in gebruik kan behou word. Indien die gebou in die toekoms verander word en veral indien daar aan badkamers of kombuis verander word moet daar 'n rioolopgaartenk voorsien word en indien in gebruik sal 'n sypelriool afgesluit moet word.

Die straat is gevestig en moet so behou word, geen veranderings aan die toegang of padreserwe mag sonder toestemming geskied nie.

DJP
30/03/11

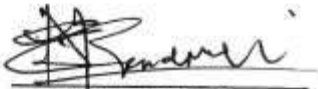
2De Datum Tipe aansoek verander?

Verdere Kommentaar

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REZONING & CONSENT USE: ERF 71, KLEINBAAI**

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

1. 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;
2. that only the standard water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the developer's cost;
3. that stormwater be allowed to discharge through Erf 71, Kleinbaai, unobstructed.



**DENNIS HENDRIKS
MANAGER: PROJECT MANAGEMENT
& DEVELOPMENT CONTROL**

23/5/2011
DATE

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
22 May 2017
(Also the agenda for the Mayoral Committee Meeting : 31 May 2017)**

10. Annexures

- Annexure A: Locality Plan
- Annexure B: Site Development Plan
- Annexure C: Motivation Report
- Annexure D: Objection
- Annexure E: Comment on objections
- Annexure F: Minutes of the Mayoral Committee Meeting, dated
30 March 2016
- Annexure G: Comment: Operational Services
- Annexure H: Services Report

RECOMMENDATION:

1. that the objections be noted;
2. that, in terms of the Provisions of Section 16 of the Land Use Planning Ordinance, 985 (Ordinance 15 of 1985) the application for the rezoning of Erf 71, Van Dyksbaai from Residential Zone to Local Business Zone for tourism business purposes, **be approved**;
3. that, in terms of Section 5.7 of the Gansbaai Zoning Scheme Regulations the application for consent use (tourism business and tourism accommodation) to accommodate the existing shark viewing, **be approved**;
4. that the above approval be subject to the following conditions:
 - (a) that a Site Development Plan (SDP) containing the exact location and description of all buildings and structures be submitted for approval by the Senior Manager Town and Spatial Planning;
 - (b) in the event that the SDP in paragraph (a) above demonstrates building line encroachments the applicant will be required to submit a departure application to legalise the building line encroachments within the prescribed period;
 - (c) that a parking layout be submitted within thirty (30) days from the final approval of the application to the satisfaction of the Senior Manager Engineering Services;
 - (d) that the on-site parking bays be permanently demarcated and at all times be available for use by clients/visitors to the premises. No parking on the road reserve will be permitted;

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
22 May 2017
(Also the agenda for the Mayoral Committee Meeting : 31 May 2017)**

- (e) that in the event that the parking standard cannot be met on-site, the applicant will be required to make a payment in lieu of onsite parking provision in accordance with the requirements of the scheme regulations;
- (f) in the event that a payment in lieu of parking provision be applicable, such monies to be ring fenced into a parking fund for the planning and development of a communal parking area in van Dyksbaai, as per the van Kleinbaai Nodal Framework Report;
- (g) that the applicable business license in terms of the relevant legislation be obtained;
- (h) that the briefing of clients before 08:00 may only take place indoors;
- (i) that commercial rates and service tariffs, as determined by the annual budget, be made applicable, which tariffs are automatically adjusted in terms of the annual budget;
- (j) that the display of advertising shall comply with the Overstrand Signage By-law;
- (k) that a R918 Certificate of Acceptability must be applied for at the Overberg District Municipality;
- (l) that the establishment be conducted in such a manner that it is not found to be detrimental to the peacefulness and amenity of the surrounding area;
- (m) that should any justified complaints with regards to noise and disturbance be received, the applicant be responsible for the appointment of a noise specialist at his cost as well as the implementation of the relevant mitigation measures;
- (n) that all the conditions in the Services Report (attached as Annexure H), be complied with;
- (o) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
- (p) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
- (q) that Council may impose additional conditions in order to minimise any potential public nuisance.