

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
22 September 2020
(Also the agenda for the Mayoral Committee Meeting : 30 September 2020)**

**9.
ERF 3160, 97 LEEUBEKKIE STREET, BLOMPARK, GANSBAAI: REZONING AND
CONSENT USE: MESSRS INTERACTIVE TOWN AND REGIONAL PLANNING ON
BEHALF OF F ABRAHAMS**

3160 GBP (2810)

R Kuchar

Senior Manager: Town & Spatial Planning

6 July 2020

(028) 313 8900

1. Executive Summary

An application has been received from Messrs InterActive Town and Regional Planning on behalf of F Abrahams for the following:

- rezoning in terms of Section 17 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) (LUPO) of a portion of Erf 3160, Gansbaai to accommodate the existing liquor store on the property; and
- consent use (business premises) for the sale of alcoholic beverages (liquor store) on a 37m² portion of Erf 3160, Blompark, in terms of Section 2.2 of the Overstrand Municipality Integrated Zoning Scheme Regulations, 2013 promulgated in accordance with Section 9 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985).

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

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Town- and Spatial Planning

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Promotion of tourism, economic and social development

4. Delegated Authority

Executive Mayor

5. Legal Requirements

Section 17 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)
(LUPO)

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Section 2.2 of the Overstrand Municipality Integrated Zoning Scheme Regulations, 2013 promulgated in accordance with Section 9 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985).

6. Background/Discussion/Evaluation/Conclusion

Background

The applicant currently conducts a liquor store from the premises without the relevant statutory approvals in terms of the Land Use Planning Ordinance or the National Building Regulations. The current application seeks to legalise the unauthorised liquor store by means of a rezoning of a portion of the property and consent use.

A previous application for consent use in order to conduct a shebeen was refused by the Executive Mayor on 11 January 2013. The main grounds for refusal were the following:

- the premises is not suitable for a shebeen;
- the premises is located within an informal residential area which in terms of the former Gansbaai Zoning Scheme Regulations was reserved for residential purposes;
- the shebeen will trigger deliveries of liquor and together with illegal signage pertaining to the shebeen was not deemed compatible with the character of the surrounding residential area;
- a commercial activity in a residential area impacts negatively on the vested rights of adjoining property owners by reason of noise and disturbance, and
- negative impact on the character and appearance of the surrounding built environment

In terms of LUPO no right of appeal existed for consent use application. The applicant also did not submit an internal appeal in terms of Section 62 of the Municipal Systems Act, 2000. Thus the only recourse available was to take the matter on judicial review. Since the applicant does not agree with the reasons for refusal a new application was submitted in order to legalise the retail sale of liquor from the premises.

The application entails the rezoning of a portion of the property from Less Formal Development Zone to Business Zone 3 : Local Business measuring 37m² in extent and consent use for the sale of alcoholic beverages. The zoning of the remainder of the property remains Less Formal Development Zone.

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The applicant currently conducts a liquor store from the premises without the relevant statutory approvals in terms of the Land Use Planning Ordinance or the National Building Regulations.

Discussion

The application for rezoning and consent use was advertised in the prescribed manner and registered notices were served on adjoining property owners. No objections were received.

Evaluation

Erf 3160, Gansbaai (Blompark) is zoned Less Formal Development Zone and measures 180m² in extent. Originally the property was developed with a subsidised housing unit which had been further extended. The liquor shop predominantly operates from the original dwelling unit. Although zoned less formal development zone, the subject property is located in a formalised residential area with serviced erven.

The current application seeks to legalise the existing liquor shop which is currently operated from a portion of the dwelling unit measuring ±37m². The applicant is also in possession of a liquor licence, which license had been issued without prior notice allowing municipal comment.

The subject property is located in a residential area which in terms of the Overstrand Zoning Scheme Regulations, Overstrand Wide Spatial Development Framework and Growth Management Strategy did not identify any business erven in the vicinity of the subject property, whilst adequate provision for business erven have been made elsewhere in the Blompark neighbourhood.

Nodes for commercial purposes within settlements were recently adopted and allocated by Council and the closest node is situated ±70m to the north-east. The largest node in the area is situated along Angelier Street, which is aimed to serve a large majority of Blompark as well as the new extension to the settlement.

A site inspection was conducted and the following was found:

- original dwelling illegally utilised as liquor store without approval in terms of the applicable town planning and building legislation;
- storage facilities are not sufficient;
- no on-site parking provision for customers; and
- no provision for a loading bay.

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A liquor store is a business use that should be situated within the Central Business District (CBD) or a demarcated business node in terms of policy and the Zoning Scheme Regulations, since special attention should be given to the provision of on-site parking, loading bays and storage. The applicant does motivate that deliveries will be done by the owner's private vehicle, but does elaborate on delivery frequency and times of delivery. Further concern is the noise pollution generated by customers during normal trading hours. These aspects together with illegal signage pertaining to the business on the property are not deemed compatible with the character of the surrounding residential area.

The approval of the liquor store will introduce a commercial activity in a residential area. Given the special requirements pertaining to the type of business elaborated upon above, the opinion is held that the approval of the liquor shop would impact negatively on the vested rights of adjoining property owners by reason of noise and disturbance as well as the character and appearance of the surrounding area and cannot be supported from a planning point of view. Furthermore, provision is not made for loading bays or parking for customers. Although an argument is to be made that vehicle ownership is low, some customers make use of private transport and thus parking must be made available.

The site is reserved for residential purposes and the application involves a rezoning to Business Zone, which is not in line with the Overstrand Municipal Wide Spatial Development Framework, 2006 (SDF), nor the Overstrand Municipal Growth Management Strategy, 2010 (OMGMS). The application also did not entail an application for deviation from the SDF or the OMGMS, nor was it advertised as such.

Due to the location of the property in a residential area and the location of the existing dwelling in close proximity of the street- and lateral property boundaries, on-site parking provision cannot be made available in accordance with the requirements of the Zoning Scheme. The current zoning explicitly states that no sale of alcoholic beverages is permitted, thus the application for rezoning and consent use was submitted in an attempt to circumvent the scheme regulations. Adequate provision for these uses is made in the scheme regulations under Business Zones 1 to 3. Furthermore, Council already approved demarcated business corridors, providing amongst others for commercial use such as restaurants, shops, bottle stores and taverns

However, given that a portion of the property is to be zoned Business Zone 3 with additional rights to establish a liquor sales point, this can be seen as contradictory and incompatible with the main objective of the current zoning of the property, since these uses will still be on one cadastral unit.

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Conclusion

That the application not be supported as per the recommendation below.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Services Report

Attached as Annexure D.

Fire Department

Approval is subject to compliance with the provisions of SANS 10400 of 2011 and the By-law relating to Community Fire Safety (Fire resistance of occupancy – separating elements (T4.6) between H4 and F22 – table 4).

Building Control

Overstrand Building Department does not have any objection to the application for consent use and rezoning of above property for the sale of alcoholic beverages. Plans to be submitted to the building department for proposed additions.

Electro Technical Services

No objection. Should additional capacity be required, standard application fees and procedures will apply. Costs for any investigation, upgrading or repositioning or any existing services will be for the cost of the client's account.

District Health

Applicant to comply with all relevant health legislation and requirements. Should application be approved; an application for a Certificate of Acceptability (COA) from MHS should be completed.

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Traffic Department

Take note and inspection done at above address. Shall assist when needed.

Waste Management

No objection from solid waste planning, so long as any waste generated is properly managed and not allowed to accumulate on the property.

10. Annexures

- Annexure A: Locality Plan
- Annexure B: Site Development Plan
- Annexure C: Motivation Report
- Annexure D: Services Report

RECOMMENDATION:

1. that the application for consent use and rezoning to legalise the existing liquor shop in terms of the provisions of Section 2.2 of the Overstrand Municipality Zoning Scheme Regulations and Section 17 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), **not be approved** due to the following reasons:
 - (a) the land use for a liquor shop is not in line with the Overstrand Municipal Wide Spatial Development Framework, 2006 and the Overstrand Municipal Growth Management Strategy, 2010;
 - (b) the application did not entail an application for deviation from the applicable forward planning documents referred to in paragraph (a) above, nor was it subjected to public participation on this basis;
 - (c) the proposal is contrary to the approved council policy pertaining to the provision of Business Corridors in Blompark;
 - (d) the land use is not conducive to the residential character of Blompark in terms of noise pollution, trading hours and commercial signage, and
 - (e) a commercial corridor is identified by Council within close proximity of the subject property, where the proposed types of uses are promoted.
2. that the applicant be notified of his/her right of appeal in terms of Section 62 of the Local Government : Municipal Systems Act No 32 of 2000 with regard to non-approval of the rezoning application.

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RESPONSIBLE OFFICIAL :	SW VAN DER MERWE
TARGET DATE FOR IMPLEMENTATION :	14 OCTOBER 2020
TARGET DATE TO INFORM APPLICANT :	14 OCTOBER 2020
TARGET DATE TO INFORM OBJECTORS :	N/A

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3160 GBP (2810)

R Kuchar

Senior Manager: Town & Spatial Planning

6 July 2020

(028) 313 8900

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 22 SEPTEMBER 2020, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the application for rezoning of a 37m² portion of Erf 3160, Blompark, Gansbaai from Less Formal Development Zone to Business Zone 3: Local Business Purposes in terms of the provisions of Section 17 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), **be approved**;
2. that the application for consent use (business premises) for the sale of alcoholic beverages (liquor store) on a 37m² portion of Erf 3160, Blompark, in terms of Section 2.2. of the Overstrand Municipality Zoning Scheme Regulations promulgated in accordance with Section 9 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), **be approved**;
3. that the approvals in paragraphs 1. and 2. above be subject to the following conditions:
 - (a) that the consent use for business premises in order to operate a liquor store be personal to the property owner and may not be transferred;
 - (b) that a Site Development Plan be submitted for approval by the Senior Manager: Town and Spatial Planning indicating the extent of the split zoning (Business Zone 3 *versus* Residential Zone 1) within **thirty (30) days** of the decision date;
 - (c) that the liquor store be restricted to the area indicated on the Site Development Plan and the operation thereof be subject to a valid liquor license;
 - (d) that the liquor store may only be operated from a structure approved in terms of the National Building Regulations;
 - (e) that a building plan be submitted to the Building Control Department for approval within a period of **thirty (30) days** from the decision date and that all requirements of the Building Control and Fire Department be adhered to at that stage;

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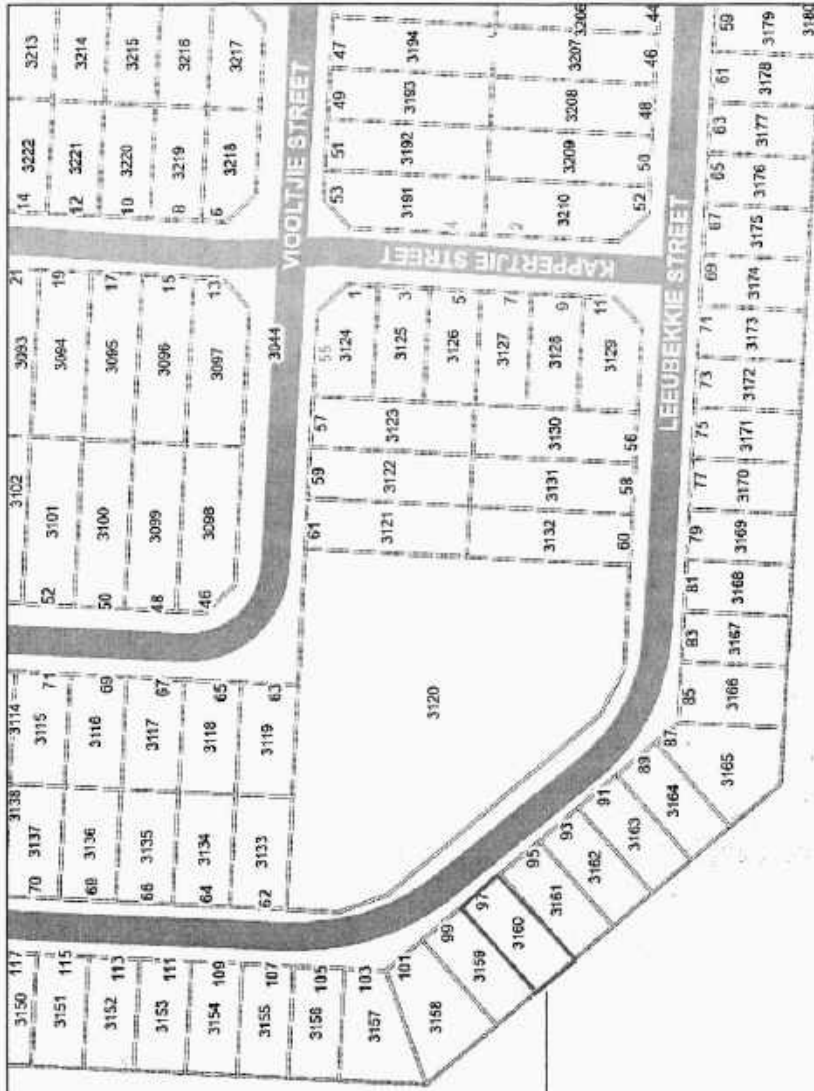
- (f) that no advertising sign shall be displayed without the written approval of the Municipality, and such sign must be in line with the Overstrand Signage By-Law;
 - (g) that the operation of a liquor store be subject to a valid Certificate of Acceptability (COA) to be issued by the Municipal Health Services, Overberg District Municipality;
 - (h) that the conditions of the Engineering Services (attached as Annexure D), be complied with;
 - (i) that the hours of operation and trading shall be restricted between 08:00 to 17:00 from Mondays to Fridays, 08:00 to 13:00 on Saturdays and do not include Sundays or public holidays;
 - (j) that, should the liquor store in future cease to exist, the exercise of the applicable primary rights is subject to the submission and approval of a Site Development Plan, demonstrating compliance with the applicable Zoning Scheme;
 - (k) that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with;
 - (l) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (m) that the written consent of the adjoining property owners, namely the owners of Erven 3156 – 3159 and 3161 – 3164, be obtained;
 - (n) that the proprietor of the liquor store shall permanently reside on the premises;
 - (o) that no more than three persons, including the proprietor, shall be involved in the operation of the liquor store;
 - (p) that the proprietor of the liquor store shall ensure that the liquor store be operated in such a manner not to create a nuisance for adjoining property owners/occupants; and
 - (q) that the approval does not permit the creation of a place of entertainment, a tavern or the consumption of liquor on the premises.
4. that the applicant be notified of his/her right of appeal in terms of Section 62 of the Local Government: Municipal Systems Act No 32 of 2000 with regard to the conditions of approval.

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RECOMMENDATION TO THE COUNCIL:

that the application to deviate from the Overstrand Spatial Development Framework, 2006 as well as the Growth Management Strategy, 2010 in order to permit a commercial land use in terms of Section 10(1) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 in terms of the provisions of Section 22(2) of the Spatial Planning Land Use Management Act, **be approved.**

RESPONSIBLE OFFICIAL :	SW VAN DER MERWE
TARGET DATE FOR IMPLEMENTATION :	14 OCTOBER 2020
TARGET DATE TO INFORM APPLICANT :	14 OCTOBER 2020
TARGET DATE TO INFORM OBJECTORS :	N/A



Application
Property

210

210 Rem.

ANNEXURE A 1/1



Date: 2019/12/03

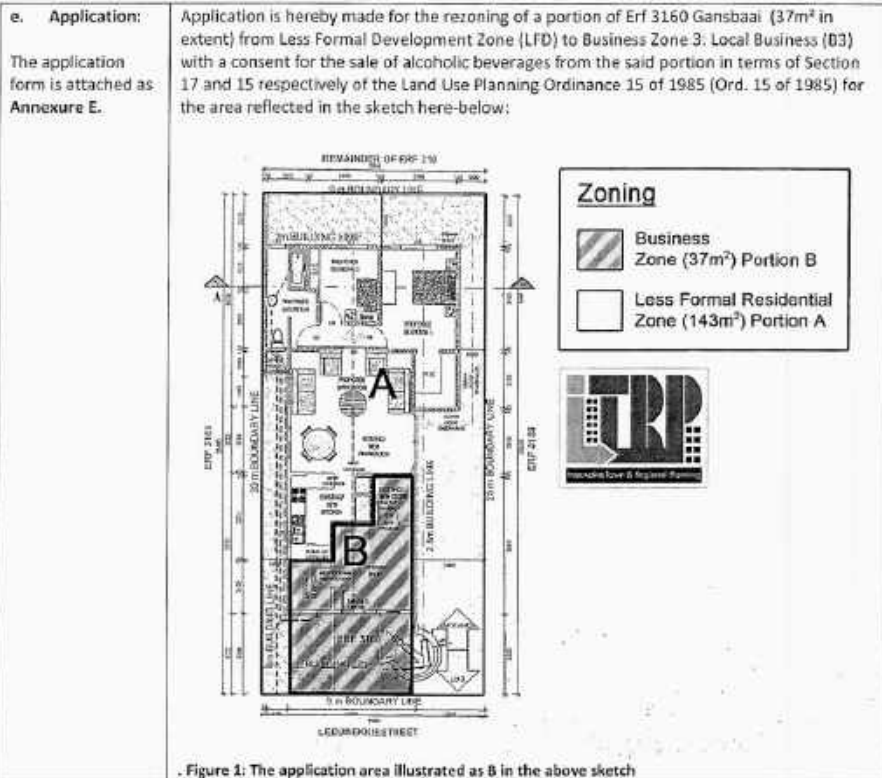
LOCALITY PLAN: ERF 3160, BLOMPARK, GANSBAAI



OVERSTRAND
MUNICIPALITY

1. Introduction				
a. Brief and Introduction: Refer to Annexure A for the Power of Attorney.	Interactive Town and Regional Planning is appointed by the owner of the property, Mr. Felix Abrahams to prepare and submit an application to legalize the existing liquor sales point on a portion of Erf 3160 Gansbaai, hereafter referred to as the application area, in terms of the Land Use Planning Ordinance, 1985 (Ord. 15 of 1985).			
	<p>A previous application was submitted for a shebeen in terms of the provisions of the Land Use Planning Ordinance, 1985 but refused by the Municipality. The arguments for the refusal of the shebeen is summarized as follows:</p> <ul style="list-style-type: none"> • The premises is not suitable for a shebeen, • The premises is located within an informal residential area which in terms of the former Gansbaai Zoning Scheme Regulations was reserved for residential purposes. • The shebeen will trigger deliveries of liquor • Illegal signage pertained to the shebeen was not deemed compatible with the character of the surrounding residential area • A commercial activity in a residential area impacts negatively on the vested rights of adjoining property owners by reason of noise and disturbance • Negative impact on the character and appearance of the surrounding built environment and the residential amenities of the surrounding area. <p>The property owner did appeal to the decision but was informed by the Department of Environmental Affairs and Development Planning that <i>"no right of appeal exists to the Administrator in terms of Section 44 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) against the decision taken by the Municipality with regard to the consent uses as provided for in the Zoning Scheme Regulations. The only recourse available will be to judicially review the Municipal decision and the appeal against the Municipality's decision to refuse a consent use pertaining to Erf 3160 Gansbaai, and will therefore not be processed any further. The matter is now considered finalized and the file is closed."</i></p> <p>The applicant does not agree with the reasons provided for the refusal of the application. Since no right of appeal existed, the applicant decided that a <u>new application</u> be submitted with a motivation providing perspective on the proposed use and environment.</p> <p>The sole objective of the client is to legalize his existing liquor sales point (liquor retail store). He clearly indicated that he wants to operate his liquor sales point within the law and therefore requested that a new application be lodged to obtain the required land-use rights.</p>			
b. Property Description and Ownership: Refer to Annexure B for the title deed.	Property	Extent	Title Deed	Registered Owner
	Erf 3160 Gansbaai	180m ²	T026112/08	Mr. Felix Abrahams
c. Conveyancer Certificate:	In the title no condition exists that prohibits the sale of alcohol or any business operation from the premises.			

<p>d. Development Criteria:</p> <p>The development parameters for the proposed building of Erf 3160 Gansbaai as per the Scheme Regulations in terms of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) are summarised as follows:</p>	The following development criteria is applicable to Erf 3160 Gansbaai in terms of the application				
	Criteria:		Town Planning Scheme Regulations (TPSR)	Application Proposal:	Comments and Response:
	Zoning		Business Zone 3: Local Business – (B3)	Application to accommodate a liquor sales point	Rezoning with a consent of a portion of the erf is proposed
	Primary Use		Shops, flats (above ground floor) offices	None	None
	Consent Uses		Bottle store, business premises, clinic, conference facility, flats (on ground floor), town housing, guest house, hotel, informal trading, institution, place of assembly, place of entertainment, place of instruction, place of worship, recreational facilities, residential building, restaurant, rooftop base station, sale of alcoholic beverages, service station, service trade, transmission tower.	Application is made for a place of sale of alcoholic beverages	The terminology "sale of alcoholic beverages" as defined in the Overstrand Municipal Zoning Scheme for will suffice to accommodate the liquor sales point A portion of 37m ² to be used for the liquor sales point which currently forms part of the existing dwelling house
	Floor Factor		1.5	0.52	Consistent
	Coverage		75%	52%	Consistent
	Buildin g Lines	Side	0m	0m and 1.0m	Consistent
		Rear	0m	2m	Consistent
		Street	3m	N.a.	Consistent
	Height		8m	3.45m	Consistent
	Setback		6.5m	More than 6.5m	Consistent
	Parking		6 parking bays per 100m ² GLA required for shops / restaurants (interpreted as appropriate for sale of alcoholic beverages)	18m ² is being used for businesses purposes i.e. 1.08 > 1 parking bay required and 1 is provided	Consistent



2. Site Information

a. Location:

Regional Context:

The application area forms part of Gansbaai and Gansbaai is, according to the Overstrand Spatial Development Framework, a sub-regional development node and is rated second (Hermanus is first) on the Overberg development node hierarchy.

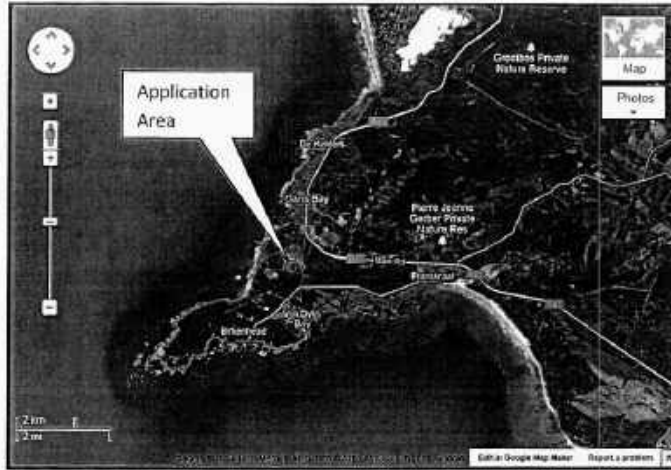


Figure 2: Locality Plan – Regional Context

Local Context:

Within the local context the application area forms part of a less developed residential area.

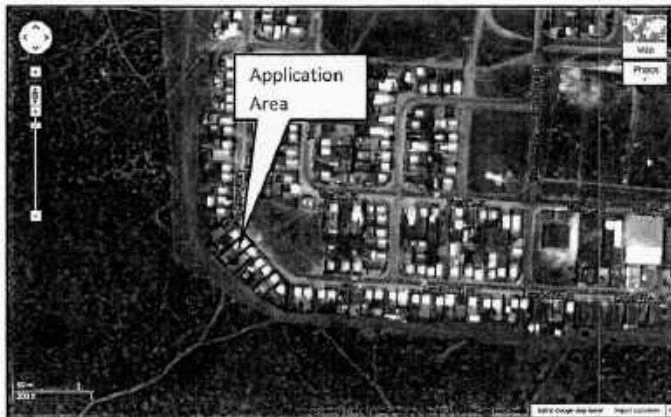


Figure 3: Locality Plan – Local Context

The application site consists of an established and developed erf with a building and businesses operating from the premises.



Figure 4: Google Street View of the Application Area

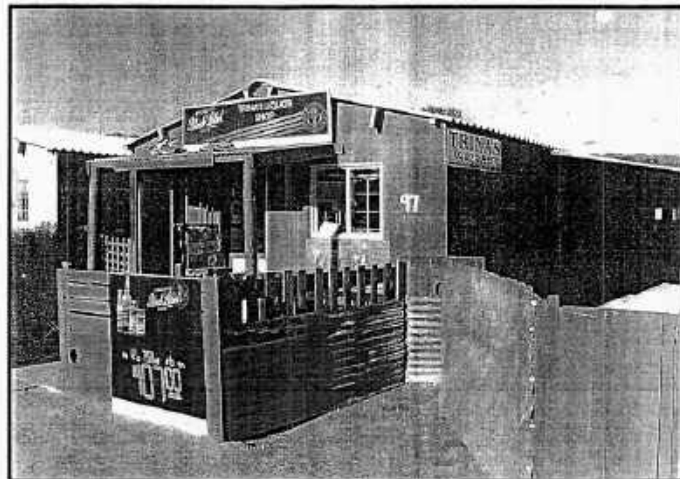


Figure 5: Photograph of the property

<p>b. Policy:</p>	<p><u>Policy for operating Taverns and Shebeens:</u></p> <p>Currently no policy for the establishment / operation of taverns or shebeens exist for the Overstrand Municipality despite the fact that a number of taverns / shebeens are presently conducted from residential erven within the Overstrand Municipal area. Several other municipalities however does accommodate the existence, reality and the need and desirability of such taverns / shebeens / liquor sales points. Subsequently policies were drawn up to ensure that taverns / shebeens can be accommodate in areas where these land-uses are accepted practise's and compatible with the residential character, and that sufficient conditions are imposed to maintain and control taverns / shebeens / liquor sales points.</p> <p><u>The Overstrand Municipality Zoning Scheme, November 2013</u></p> <p>Within the recent promulgated Overstrand Municipal Zoning Scheme land-use for the sale of liquor from a residential properties / houses is not accommodated. However, for the purposes of this application the following definitions should be noted:</p> <p>"business premises" means a property from which business or services is conducted and includes a shop, supermarket, restaurant, <u>sale of alcoholic beverages</u>, plant nursery, offices, service trade, financial institution and building for similar uses, sale of any small and big items; but does not include a place of assembly, place of entertainment, institution, service station, motor repair garage, industry, industrial hive, noxious trade, risk activity, adult entertainment business, or bottle store;"</p> <p>"bar" means an enterprise for the <u>sale and consumption of alcoholic beverages by customers upon the premises</u> where the liquor is sold and may include the offering of food to customers, but does not include the sale of alcoholic beverages for off-site consumption and a place of entertainment; and pub and tavern have the same meaning;"</p> <p>"sale of alcoholic beverages" means the sale or offering for sale to the public, of drinks capable of producing intoxication in a consumer, and may include bars, pubs and taverns;"</p> <p>"bottle store" means an establishment where the dominant use is the retail sale of alcoholic beverages for the consumption off the property, and includes an off-sale facility which is under the same management as a licenced hotel"</p> <p>The following definitions is also considered of importance to be highlighted for purposes of this application:</p> <p>"shop" means a property or part of a property used for retail sale of goods, items and services to public, including a retail concern where goods which are sold are manufactured and repaired; provided that the floor space relating to such manufacture or repair shall not exceed 50% of the floor space of the shop; "shop" does not include an industry, service trade, motor repair garage, service station, restaurant, adult entertainment business or sale of alcoholic beverages, and if such uses are included on the property they shall be regarded as separate uses subject to such separate development rules as may be determined by Council;</p> <p>"house shop" means the conducting of a retail trade from a dwelling house, or outbuilding by one or more occupants of the dwelling house concerned, who shall reside on the premises, provided that the dominant use of the property concerned shall remain for the living accommodation of a single family.</p> <p><u>Overstrand Growth Management Strategy, 2010</u></p> <p>The application area is located in an area where according to the Overstrand Growth</p>
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Management Strategy no densification is proposed, but is directly bordering a 20 – 30 DU Densification Zone.



Figure 6: Extract from the Overstrand Growth Management Strategy

Draft Integrated Spatial Development and Environmental Framework, September 2013

As part of the Key Spatial Planning Principles, Highlights of Key Actions and Commercial Centres and Activities is stated that "Neighbourhood nodes and the CBD should become the nucleus of business / commercial and other public infrastructure/services, ultimately becoming focused clusters of facilities and services/multi-purpose centres" as well as "Business / commercial related land uses should be confined to the core urban areas (central business district) and secondary / lower order nodes. The infiltration of business / commercial uses into residential areas or the periphery of the CBD, should be avoided, unless beneficial to local residents.

The key policies directing future management and development specifically recommends:

"LO3 (i) Progressively ensure housing provision for different lifestyle choices, income groups, life stages, household sizes, including adequate provision of affordable housing options and opportunities for the aging.

LO3 (iii) All housing developments should be planned within the context of creating sustainable human settlements where housing areas are integrated with social and economic facilities."

"LO4 (iv) Ensure that mixed-use densification of land uses is achieved when managing urban growth."

"VO1(i) Encourage mixed-use and high density residential development within and adjacent to urban, suburban and rural centres.

VO1(ii) Promote urban, suburban and rural centres as the primary commercial areas within settlements and suppress and limit commercial development outside these centres.

c. Zoning: The application area, Erf 3160 Gansbaai is zoned Less Formal Development Zone in terms of the relevant Zoning Scheme. The surrounding erven are zoned Less Formal Development zone, Open Space and Undetermined Zone.

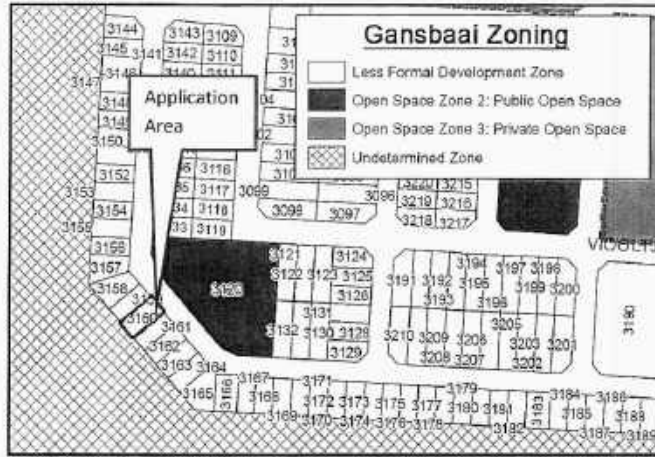


Figure 7: Extract from the Overstrand Municipality: Integrated Zoning Scheme map of Gansbaai

d. Land Use: The application area is currently used for residential purposes and a sales point for alcoholic beverages.

The land uses on the adjacent properties are used for less formal residential purposes.

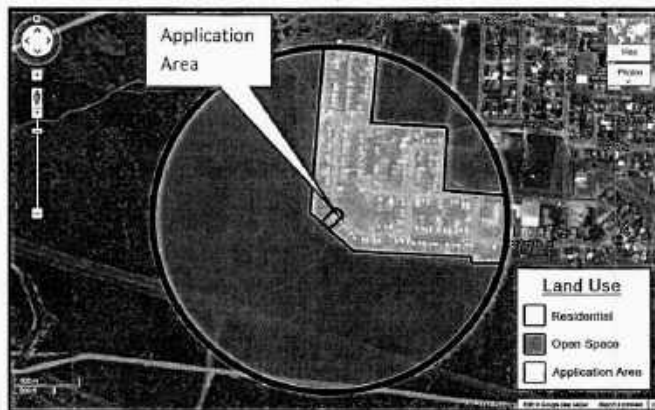


Figure 8: Land Use Plan

The current area consists of 18m² floor area of the existing building from where liquor is sold. The remainder of the dwelling is being used for residential purposes. Thus only a small portion is being used. Only the sale of liquor takes place, no serving and sale of liquor or food takes place on the application site.

	<p>Within the residential area several properties are found which are used in contrary with their approved land use rights in terms of the current zoning scheme which inter alia includes taverns and places of selling alcoholic beverages.</p>
<p>e. Motivation</p> <p>Refer to Annexure G for the Sustainable Livelihood Foundation research document</p>	<p>Applicants objective:</p> <p>The applicant's objective is to legalize the existing current liquor sales point in such a way that the he earns money from the property but simultaneously limit any potential negative impact on other residents and activities.</p> <p>Need for land-use guidelines</p> <p>In a broader sense is would be ideal and preferable if a policy / guidelines for shebeens and taverns exist. Such land-use policy / guidelines for shebeens and taverns should have the following aims:</p> <ul style="list-style-type: none"> • Enable and encourage bona fide illegal traders to legitimise their businesses • Allow for community input and involvement in determining the location of taverns • Address the issue of illegal issues at shebeens and taverns in spite of having liquor licences • Provide the opportunity for the municipality to become actively involved in the issuing of liquor licences • To allow the public, ward councillors and ward committees to be more involved in the decision making process on applications • Reduce the social cost of liquor abuse in poorer communities • Ensure that the activity is acceptable in the surrounding communities • The approval of an application to be in the public interest • Such an approval will not prejudice the residents. • To ensure that the premises to be suitable for such a business. <p>Proposed methodology to legalize land-use:</p> <p>In response to the applicant's objective, this application is to apply for the rights to sell liquor from the premises with the necessary control measures and ensure that the land-use can be managed and control.</p> <p>An application for a rezoning and consent application of the current portion from where the sales take place is intended as the property's current zoning (Less Formal Development Zone (LFD, Section 6.5.1(c)(ii))) does not make provision for the sale of alcohol beverages.</p> <p>The above procedure in terms of the Land Use Planning Ordinance, 1985 will ensure and provide the opportunity for the community as well as politicians and the Council to give input and become involved.</p> <p>Acceptance and acknowledgement of the existence / livelihood of shebeens and taverns as a living component of a town:</p> <p>The occurrence of shebeens and taverns is a common phenomenon in many, especially low cost, residential areas and generally accepted as such by the communities within these areas. This phenomenon is confirmed by the research conducted by the Sustainable Livelihood Foundation on informal liquor retailing (Refer to Annexure G). The research provides a better understanding on the establishment and existence of informal liquor retailers in low income areas.</p> <p>The following provides some of the results of the research that were made:</p>

- Liquor retailers are the single most numerous category of micro-enterprise in the township informal economy and accounts for 20% of all informal economic activity in these communities.
- Across all sites liquor retailing businesses are spatially equidistant from each other, showing that their spatial distribution (as well as density) is determined by highly localised forces of economic demand. Thus local densities of outlets are directly correlated to income.
- The high density of liquor retailers in informal settlements correlates with much higher levels of unemployment and limited to alternative economic opportunities for self-employment.
- Liquor outlet density is not an accurate indicator of liquor consumption.
- The density of shebeens is greater where the majority of households do not own vehicles thus mostly serve localised markets within walking distance.
- Most shebeens surveyed (60%) consists of shebeens selling less than 16.5 crates of beer per week.
- Only 6.5% of the retailers surveyed held liquor licences.
- 80% of retailers have not engaged a formalisation process.
- Reasons for entering the sector within the past 2 years were the growing dominance of foreign nationals in the spaza market, compelling them to close their shops and turn to liquor trading. Their objective are economic survival.
- Only 19% of liquor retailers have been supplied with branded fridges.
- Most shebeens do not provide music, table games, and DSTV.
- An intensification of law enforcement took place since 2009 aligned with the introduction of the Western Cape Liquor Act of 2008.
- The law enforcement has not discouraged new entrants from setting up liquor retailing businesses. There is a strong link between the establishment of new shebeens and law enforcement impact. As soon as a shebeen is closed down, an opportunity within the same geographical area is created for a new entrant.
- Liquor retail micro-enterprises are sustainable and attractive businesses because the businesses can operate in market segments, presenting opportunities for survivalists' entrants, with each serving a highly localised customer base.
- Despite the high risk of informal liquor retailing, survivalist traders are unlikely to abandon their businesses, especially where household livelihoods are at stake, but resist state control, both overtly through enduring arrest and prosecution and covertly through reorganising their business to disguise retail activities.
- The current liquor policy in the Western Cape to restrict the formalisation of micro-enterprises selling liquor will not succeed. The policy intention stands opposed to basic economic principles.
- Shebeens operate in localised geographical areas responding to culturally differentiated markets.

In summary, in the context of poverty and economic marginalisation, the realities of township life is acknowledge and will ensure that shebeens retain their position as business providing local access to liquor and spaces of interaction and entertainment. The policy objectives set out in the National Liquor Act (Act 59 of 2003) to incorporate unlicensed traders within a regulatory framework cannot succeed if formalisation does not acknowledge these simple economic and social reasons of shebeen endurance.

Working with the market forces of micro-enterprises in the form of shebeens and taverns

Several municipalities makes provision for liquor retailers in their different forms (taverns, shebeens, liquor retailers) within their town planning schemes and have dedicated policies

and guidelines to accommodate these entrepreneurial economic activities. The purpose / objective for these policies are inter alia shown in the following extracts from land use policies of the Breede Valley Municipality, George Municipality and Ekurhuleni Metropolitan Municipality as example of acknowledging the land-use and ways of legalizing these land-uses:

The aim of these guidelines is to allow the Breede Valley Municipality to manage the establishment of house taverns and shebeens located within the municipal area. The guidelines will facilitate commercial activities while limiting the negative impact of the businesses on the community with regard to aspects such as safety and well-being of the community; conservation of the natural and developed environment and the proposed development not causing disturbance and not infringing on the rights of any other landowner.

PURPOSE

To formulate a policy that allows the George Municipality to manage its concession of permitting the establishment of house taverns and the handling of unlicensed shebeens located within the George Municipal Area in such a way that the residents living in these areas can earn an income from their property while limiting any negative impacts of these businesses on the rights of the other residents in the area to a safe, clean and quiet living environment, promoting an entrepreneurial spirit within these neighbourhoods, and stopping the abuse of this concession by outside business owners who are profiting from it often to the detriment of the property owner and residents concerned.

PURPOSE OF THE POLICY

The purpose of the policy is to propose a uniform policy for taverns within Ekurhuleni Metropolitan Municipality, in order to ensure that taverns are compatible with the residential character, and that sufficient conditions are imposed to maintain and control taverns.

It is intended through this policy to promote a peaceful and healthy environment within which taverns will operate in the best interest of both the patrons and the adjacent residents.

Subsequently it is clear that a policy for the management and control of shebeens and taverns is also required within the Overstrand Municipality.

The application site:

The suitability of the application site:

The application site can be described as being on the edge of the existing Blompark residential area flanked by existing residential properties and fronted by a public open space.

The existing and proposed scale of the business operation is limited to only $\pm 18m^2$ (the size of a single garage). This is a micro-business where sales on average (without being contained by any rules and regulations) do not exceed more than 100 crates of beer per week. The applicant also has no intent to expand on the current operation. Thus as per the research conducted by the Sustainable Livelihood Foundation the market is restricted to a natural geographical area determined by the market forces of the area.

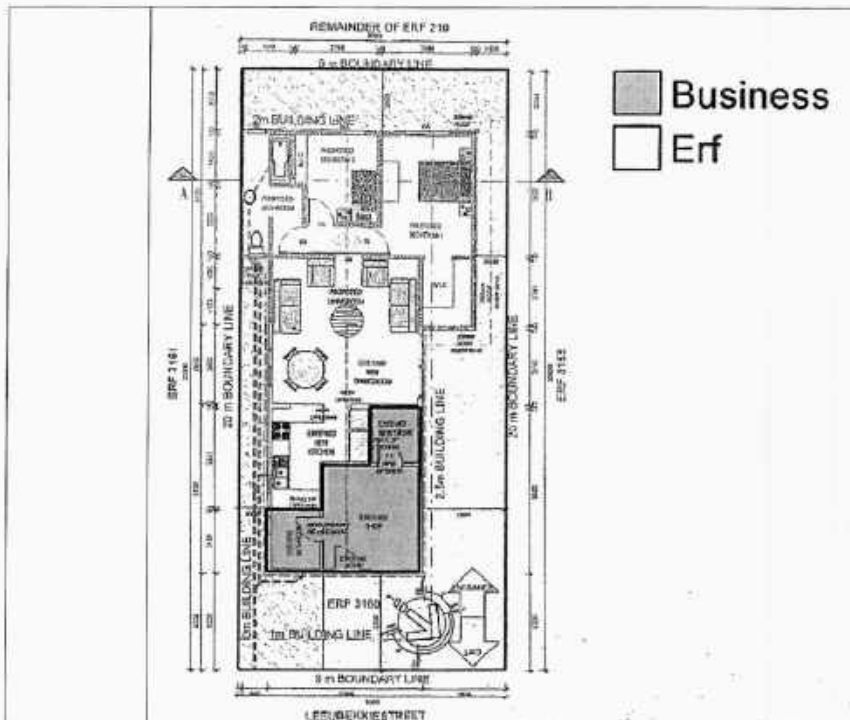


Figure 9: Extract of area illustrating the area used for the sale of liquor

In addition to the above, the business operates only as a sales point and does not allow for the usage of alcohol on the premises by clients.

The current signage makes provision for a commercial sign advertising products with prices which is aligned with the general signage permitted at house shops in terms of the Overstrand Municipal Zoning Scheme i.e. (Section 5.4.9(f) Only one un-illuminated sign, shall be permitted, which shall be fixed to the building or boundary wall or fence, and such sign shall be in line with the Overstrand by-law relating to outdoor advertising and signage)

The hours of operation and trading will be aligned with that of a house shop being restricted to 8h00 to 17h00 from Monday to Friday and from 8h00 to 13h00 on Saturday and does not include public holidays or Sundays, or such trading hours as permitted by Council.

Due to the scale of the operation, deliveries will only be made by private vehicle of the owner himself. Therefore, this implies that no heavy vehicle traffic will be generated into the suburb as a result of the applied for activity apart from the normal municipal services vehicles.

As it is a low cost residential area where private vehicle ownership is very low, and the market being served is the local geographical area. Therefore, traffic generated by the liquor selling point will be limited.

The vested rights of the adjacent properties will not be adversely affected as the existence of the liquor sales point forms part of the cultural lifestyle of the residential area as also evident in the study compiled by the **Sustainable Livelihood Foundation**. This application will also provide the opportunity of confirmation / proof through the prescribed legislative public participation process whereby the adjacent owners will receive notice of the application and have the opportunity to object to the proposed (formalisation) land-use / activity. It should be noted that in the previous application letters of support to the proposed use was received.

Although it is a small business, the potential for a liquor sales point can easily get out of hand. Therefore it is proposed that the application be made subject to the following conditions:

- a. The applicant shall obtain written comments from the surrounding neighbours. The municipality will determine the affected neighbours.
- b. The main use of the property shall remain residential.
- c. The operator of the liquor sales point must be the legal owner and a permanent inhabitant of the property.
- d. The owner of the liquor sales point must be a South African resident of 18 years or older.
- e. The extent and locality of the business component must be clearly indicated on a plan (A4) and the building area must not exceed 25m² or 50% of the total floor space (whichever is the least), excluding toilets, restrooms and storage space.
- f. In addition to the area used as liquor sales point, the property must have a residence occupied by the owner of the liquor sales point.
- g. No more than three persons, including the occupant of the residence are permitted to be involved in the operation of the business activities on the relevant property (the names of the individuals involved must be provided to the municipality).
- h. The liquor sales point may only be operated from a structure approved in terms of the National Building Regulations and Building Standards and thus informal/temporary structures or containers cannot be permitted (this is also an requirement of the Western Cape Liquor Act, as amended).
- i. Any new structure or alteration to the existing house or outbuilding must fit in with the residential character of the relevant area.
- j. The activity may not be noxious or hazardous to the health and safety of the surrounding property owners.
- k. The activity may not be a nuisance to the neighbours.
- l. The business operating hours shall be as per applicable legislation
- m. The applicant shall conduct no other use than that of liquor sales, as approved by the Municipality.
- n. If there is any change in use or the owner wants to conduct an additional use on the property, the owner/occupant should re-apply.
- o. The Liquor Board must approve a liquor licence for the property before the approval of the municipality comes to operation.
- p. The applicant may not advertise in any way on the property, except as provided in terms of the relevant Town Planning Scheme, advertising by- laws or advertising policy of the municipality.
- q. No consumption of liquor should be allowed within the boundaries of the property.
- r. The following are not permitted in a Tavern / Shebeen: Storage or sale of any explosive or flammable goods;
 - i. Slot machines;
 - ii. Video games, snooker or gaming tables or a juke box;
- s. Safety and health regulations must be obeyed with at all times
- t. Permission to operate the liquor sales point (in terms of a Departure) is granted to a specific person who operates from a designated property and is not transferable.
- u. Applicants who cease to operate the business must inform the municipality in

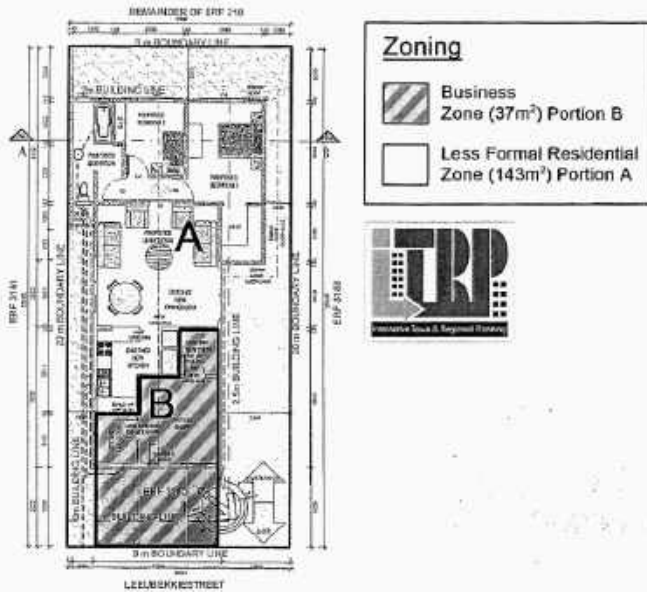
	<p>writing.</p> <ul style="list-style-type: none">v. There must no record of any criminal activity on the property under application.w. At the lapse of the Departure (after 2 years) the applicant should re-apply to Council for approval.x. The municipality reserves the right to impose any additional conditions and to rescind any approval in case of valid objections/complaints having been received or should the approval conditions not be complied with.y. Should the applicant fail to comply with any of the conditions, the permission granted will not be valid and the municipality may suspend or withdraw the permission granted. <p>The above conditions will provide the Overstrand Municipality with sufficient control and management of the liquor sales point within the application site to accommodate the reality of activity within the low cost residential area.</p>
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3. Desirability Criteria	
a. Land Use Planning Ordinance Requirement:	<p>Section 36 of the Land Use Planning Ordinance, 1985 (Ord. 15 of 1985) stipulates that applications may only be refused if it lacks desirability or if it impacts negatively on existing rights. Furthermore, the Ordinance prescribes that, when a decision is made, the health, welfare and safety of the community, and the built and natural environment must be taken into account.</p> <p>The application area is considered most compatible with and contributing to the surrounding land uses and community needs and had and will have no negative impact on the health, welfare, and safety of the nearby community, built and natural environment.</p>
b. Character of surrounding area:	<p>The area surrounding the application area is less formal residential and open space. The business meets the needs of the surrounding community.</p> <p>The proposed rezoning is for the purpose of operating a business that meets the needs of the surrounding community and the attached police report states that the business has been run in an orderly fashion and the proposed rezoning will therefore have no negative effect on the character of the area.</p>
c. Location and accessibility of the site:	<p>Both portion A and portion B of the erf have direct access to the public street.</p> <p>The proposal is therefore most compatible with the location and accessibility criteria.</p>
d. Land use Policies:	The proposal is compatible with all policies relevant to the application area.
e. Impact on existing land uses:	This application is for the rezoning of the property, but no change in land use is proposed.

4. Conclusion

It is therefore recommended that this application be approved as follows:

The rezoning of a portion of Erf 3160 Gansbaai (37m² in extent) from Less Formal Development Zone (LFD) to Business Zone 3: Local Business (B3) with a consent for the sale of alcoholic beverages from the said portion in terms of Section 17 and 15 respectively of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) for the area reflected in the sketch here-below:



**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REZONING & CONSENT USE: ERF 3160,
BLOMPARK (2810)**

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

Conditions:

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

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

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

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

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

The contribution according to the current policy (2018/2019) is as follows:

Freehold erven:

Water	R 21 688.60 x 0.147999 = R 3 209.89
Sewerage	R 14 623.16 x 0.148000 = R 2 164.23
Roads	R 6 557.01 x 1.043589 = R 6 842.82
Stormwater	R 7 565.79 x 0.036999 = R 279.93
Solid Waste	R 1 311.40 x 0.092496 = R 121.30
TOTAL (inclusive of VAT)	= R 12 618.17

Note:

The above figures are estimates

2. that only the existing water and sewerage connections will be available to the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
3. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
4. that any repositioning of existing electrical services will be for the developer's account;
5. that the developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 140400 – P: 2010: Drainage; X
6. that the on-site parking facilities are provided as per the planning Schedule, and to the satisfaction of the Department: Operational Services; X
7. that any additional and / or extended vehicle entrances will be for the developer's account;
8. that stormwater be allowed to discharge through Erf 3160, Blompark, unobstructed.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES


DATE