



**MEETING OF THE
MUNICIPAL PLANNING TRIBUNAL
(MPT)**

A G E N D A

DATE:	13 OCTOBER 2022
VENUE:	TOWN PLANNING COMMITTEE ROOM
TIME:	14:00

OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT
Civic Centre
HERMANUS
7200

5 October 2022

TO : THE MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

CONVENING NOTICE : SESSION OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)

NOTICE IS HEREBY GIVEN that the **Municipal Planning Tribunal (MPT)** will go into session on **Thursday, 13 October 2022 at 14:00** in the **Town Planning Committee Room, 16 Paterson Street, Hermanus** to consider the attached agenda.

H JANSER (MS)
CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL

Distribution:

1. Ms H Janser (Chairperson)
2. Mr S Müller (Vice Chairperson)
3. Mr S Madikane (Member)
4. Mr H Blignaut (Member)
5. Ms R Louw (Member)
6. Mr R Kuchar (Authorised Official)
7. Mr S van der Merwe (Senior Town Planner)
8. Ms H van der Stoep (Senior Town Planner)
9. Secretariat

- 1. OPENING**
- 2. APPLICATIONS FOR LEAVE OF ABSENCE**
- 3. CONFIRMATION OF MINUTES**
- 3.1 Minutes of a Municipal Planning Tribunal Meeting held on 1 September 2022**

4. ITEMS FOR CONSIDERATION

- 4.1 ERF 4156, 5 VILLAGE LANE, HEMEL & AARDE VILLAGE, ONRUSTRIVIER, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE: MESSRS INTERACTIVE TOWN & REGIONAL PLANNING ON BEHALF OF HERMANUS MICROBREWERY (PTY) LTD**

Report attached

- 4.2 PORTION 203 OF THE FARM NO 559, PRINGLE BAY: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND CONSENT USE: MESSR IC@PLAN ON BEHALF OF C-VIEW AT PRINGLE (PTY) LIMITED**

Report attached

- 4.3 ERF 2099, MELKHOUT STREET, PEARLY BEACH, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REZONING, AMENDMENT OF A CONDITION OF APPROVAL, AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF PSP EIENDOMME CC**

Report attached

- 4.4 ERF 210 GANSBAAI, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR SUBDIVISION, REZONING AND CONSENT USE (MINING) AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS WRAP PROJECT OFFICE ON BEHALF OF SIZISA UKHANYO TRADING 410 CC AND OVERSTRAND MUNICIPALITY**

Report attached

MUNICIPAL PLANNING TRIBUNAL (MPT)

13 October 2022

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4.1

ERF 4156, 5 VILLAGE LANE, HEMEL & AARDE VILLAGE, ONRUSTRIVIER, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE: MESSRS INTERACTIVE TOWN & REGIONAL PLANNING ON BEHALF OF HERMANUS MICROBREWERY (PTY) LTD

4156 HON (330/2021)

H van der Stoep

15 August 2022

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application was received on 29 October 2021 from Messrs Interactive Town & Regional Planning on behalf of Hermanus Microbrewery (Pty) Ltd, applicable to Erf 4156, Onrustrivier for the following:

- temporary departure in terms of Section 16(2)(c) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) to allow for live music on the property ("place of entertainment").

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 4156, Onrustrivier is zoned Special Zone and forms part of the Hemel & Aarde Village Special Zone Development. The Overstrand Land Use Scheme is thus not applicable to the development, but the development is still subservient to town planning legislation. The property is known as "The Brewery".

The property is 3664m² in extent and is developed with a beer garden, a micro beer winery, a gin bar, outside soup kitchens, a wooden bar platform, a wood grill restaurant that seats 350 people both internally and externally, an outside play area for children, and an outside pizza oven. It caters for functions and events within the restaurant and also caters for live music by various local and national musicians. The said soup kitchens are used when functions, events and entertainment activities take place.

The restaurant employs 30 staff members and 8 internships and accommodates community youth development programs, as well as integrated training and placement for people with disabilities.

The applicant did not apply for an application for the determination of an administrative penalty for the illegal land use (live music) in terms of the provisions of Section 90(5) of the By-Law.

4. SUMMARY OF APPLICANT'S MOTIVATION

The Motivation Report in support of the application is summarised as follows (only the main points are summarised as follows - the detailed report is attached as Annexure B):

Motivation for departure

- ❖ The Brewery strives for an elegant dining experience that caters for people longing for quality food and beverages that has in a relative short time contributed to becoming a destination with an eccentric vibe for the local communities and visitors.
- ❖ The development objective is to apply for a departure use for a "place of entertainment" to allow for live music from 19h00 to 22h00 with a maximum of 2 hours per evening and for 4 hours during day times for events.
- ❖ Live entertainment is to occur indoors and outdoors depending on the weather and the circumstances of the event.
- ❖ The deeds conveyancer's certificate indicates that a restrictive Title Deed condition exists against the proposal pertaining to a liquor licence, but the licence can be obtained with the consent of the relevant authority.
- ❖ The property is used for business purposes (brewery and restaurant) and surrounding land uses consist of business and vacant land. The proposal is consistent with the land uses of the area.
- ❖ No change in zoning is proposed.
- ❖ The SDF states in VO 1* (Where we want to be in 2050) encourage the development and recognition of vibrant social, recreation, arts, and culture precincts in urban and rural centres.
- ❖ The heading of Paragraph 3.7 of the SDF states that "An Overstrand that enables a prosperous and diverse economy." In the description it states, amongst others, that regions that are well integrated with its surrounding spatial entities that consists of well preserved and high quality rural and natural environments with strong local identity and sense of place attract and retain people and investment, contributing to economic prosperity. In order to be prosperous, the Overstrand should value its environments, tourist attractions, and heritage resources and profit from these economic pillars. It must stimulate economic growth and improve stability by diversifying its economy by means of new sectors and expand existing sectors with growth potential. Some of the objectives for the 2050 economic picture is for the Overstrand to maintain and strengthen its tourism business.
- ❖ The SDF further mentions that there is a need to provide satisfactory residential environments and that a full need for residential needs must be catered for. The application is therefore consistent with the SDF.
- ❖ In terms of the Growth Management Strategy the property falls within a No Densification area. No densification is applicable to the application, but the area also falls within a Local Economic Opportunity area.
- ❖ Tourism plays a vital role in the Overstrand's economy, and it is a key strategic objective of the Municipality to contribute to the growth of this industry and broaden the participative reach of tourism activities in the area.

- ❖ The variance of tourists between mid and low seasons have decreased in recent years due to larger numbers of internationals spending longer times in the Overstrand. The area used to be very seasonal whereas visitors are now attracted throughout the year making seasonality less apparent, except for a large spike during Decembers.
- ❖ The Local Economic Development Strategy's aim is to enhance the area and the community's ability to adapt and cope with the changing economic conditions and a successful local economy is a prerequisite for the development of the Overstrand. The particular focus of this initiative is thus on combined economic growth and poverty reduction at local scale.
- ❖ Author's own wording. The applicant elaborates a lot on the Overstrand's Events Policy, but it has no relevance to the departure application and is therefore not summarised, except that the applicant states that the hosting of events are a significant part of the Overstrand's competitiveness strategy since events play an important part in, amongst others, economic growth. The Events Policy vs the departure application will be discussed in the evaluation of this submission.
- ❖ Western Cape Noise Control Regulations, 2013. A noise impact assessment was done by Machoy – Mackhenzie Hoy Consulting Acoustic Engineers. Sound measurements at various points were done with a 95db source sound pressure level at the property on the 13th and 14th of May 2021. The sound measurement indicated 55.0 dBA that does not exceed the maximum allowable daytime noise level limit. According to the Western Cape Noise Control Regulations, unamplified human voice is not considered as a "disturbing noise". Thus, all events that are hosted at the property which does not have amplified human voice or music, does not contravene the said Regulations. Preliminary calculations indicate that all will be outdoor events held at the property during 22:00 and 06:00. Events will have sound levels below 92dBA and insofar the predicted noise level at the property's boundary will not exceed the maximum allowable rating level. To ensure that the Brewery does not cause a disturbing noise, it is recommended that the owners must take the steps to reduce the noise levels at the venue to 92dBA and the specific mitigation measures are undertaken by the owners.
- ❖ The property has become an iconic gathering place (restaurant) of the town, as well as for many visitors to Hermanus area. Live entertainment was offered until recently but had to be terminated on instruction of the Municipality.
- ❖ From a business perspective the provision of live entertainment proved to enhance the income streams to ensure the survival of the business, hence the reason for the application.
- ❖ A number of local and regional events contribute to the economy of the area. These events include the Lighthouse to Lighthouse, Walkerbay Extreme, the 85km Brewery to Brewery, MTB Classic, and other events.
- ❖ The container will be moved outside the building line, cladded, and used as a soup kitchen.
- ❖ The following must be taken into consideration when the application is evaluated: The property is located in a node with a variety of activities that consist of inter alia the well-known Wine Village, chef school, cycle shop, Wooden Ways, Incanda Furniture Stores, nursery with a tearoom, Hermanuspietersfontein Winery that regularly holds markets over weekend that attracts a large number of people, Whalehaven Wineries, as well as the Biga Restaurant.

- ❖ The node is situated at the R43 Hemel-en-Aarde intersection that is subjected to substantial traffic and road noise. Diagonally across the node is the thriving node with the Engen Garage, fast food outlets, Wonderland Nursery, Agrimark, and the Whale Coast Shopping Centre. The vacant property directly to the south of the subject property is planned for more retail facilities. It is thus clear that the subject property is part and parcel of the R43 Hemel-en-Aarde intersection activity node and hub.
- ❖ The property of nearly 3700m² accommodates guests comfortably and on-site parking is almost double the parking that is required that makes the property suitable for a place of entertainment and to accommodate large events.
- ❖ Together with the management of limited live music and mitigation measures, the proposal is most suitable in terms of location.
- ❖ The proposal is consistent with the Planning Principles as set out in SPLUMA.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local newspaper	Yes	22/12/2021	28/01/2022
Gazette	N/A		
Notices	Yes	19/11/2021	20/12/2021
Ward councillor	Yes	19/11/2021	20/12/2021
Total comments	FORTY NINE (49)		
Total letters of support	FIFTY EIGHT (58) including a petition with TWENTY THREE (23) signatories in support of the application		
Was public participation undertaken in accordance with Section 46 - 50 of the Proposed Draft By-Law on Municipal Land Use Planning?			Yes
Was the application processed correctly (if no, elaborate below):			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			Yes
In case of application for removal, amendment, or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies.			N/A

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

Name	Date received	Summary of comments
Building Department	19/11/2021	No objection. The building plan applications must comply with all applicable law.
Fire Department	22/11/2021	No objection subject to compliance with the provisions of SANS-A:2016, 10400-T: 2020 and the By-Law relating to Community Fire Safety.

Engineering Services	30/11/2021	Attached as Annexure E.
Waste Management	07/12/2021	No objection.
Local Tourism (F Lloyd)	22/11/2022	The Brewery contributes greatly to our economy through the hosting of events and charitable functions such as Lighthouse2Lighthouse handing over of funds. It is a popular tourism destination out of town and assists with directing visitors out of the busy CBD during season. I have no objection to this application.
Local Heritage	23/11/2021	Not heritage – supported.
Provincial Department of Transport and Public Works	12/01/2022	No objection – attached as Annexure G.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Comments were received from the following individuals and parties:

1. Hemel & Aarde Estate Home Owners' Association.
2. Hemel & Aarde Village Home Owners' Association.
3. Kidbrooke Place Home Owners' Association.
4. Glenfruin Home Owners' Association.
5. L Hanson-Moore (Erf 4359, Glenfruin).
6. F Barnard (Erf 4352, Glenfruin).
7. W van Zyl, (Erf 8092, Hemel & Aarde Estate).
8. SE McArthur (Erf 4361 and Erven 4362 and 4368 (co-owner), Hemel & Aarde Estate).
9. M Roux (Erf 4353 and Erven 4362 and 4368 (co-owner), Hemel & Aarde Estate).
10. CH de Villiers (Erven 4347 and 4358, Glenfruin).
11. F Kellermans (no address provided).
12. S Gill (Erf 11130, Hemel & Aarde Estate)
13. W Botha (Erf 2631, Sundew Villas, Sandbaai).
14. NR & JMM Wilson (Erf 4180, Glenfruin).
15. D Möhr (Erf 4342 and Erven 4362 and 4368 (co-owner), Glenfruin).
16. P Jones (Erf 4345, Glenfruin).
17. EA Pretorius (Erf 4839, Glenfruin).
18. C Greyling (no address provided).
19. C du Plessis (no address provided).
20. HO & IL Frangs (Erf 8296, Hemel & Aarde Estate).
21. T Rabe (no address provided).
22. M Reifarth (Erf 2681, Sundew Villas, Sandbaai).
23. MA Folscher (Erf 2671, Sundew Villas, Sandbaai).

24. J Makepeace (Erven 4365, 4366, 4179, Glenfruin and Farm 338/581).
25. G Oosthuizen (Erf 4152, Hemel & Aarde Village).
26. JJM Wilson (Erf 4344, Glenfruin).
27. W le Roux (Erf 2630, Sundew Villas, Sandbaai).
28. JE van Niekerk (Erf 2642, Sundew Villas, Sandbaai).
29. The Hudd Trust (Erf 5057, Onrustvriër – owners of Kidbrooke Place).
30. WCM Frade (Erf 8130, Hemel & Aarde Estate).
31. JM Toua (Erf 4360, Glenfruin).
32. LH & MY Roux (Erf 4353, Glenfruin).
33. AL Hitge (Erf 2674, Sundew Villas, Sandbaai).
34. R Stander (Erf 2616, Sundew Villas, Sandbaai).
35. AE Nel (Erf 2722, Sundew Villas, Sandbaai).
36. PN & G Finlayson (Erf 4349, Glenfruin).
37. HS Selawry (Erf 4357, Glenfruin).
38. DA Panaretou (Erf 8210, Hemel & Aarde Estate).
39. FJ & CR Klinck & Pflügler (Erf 8205, Hemel & Aarde Estate).
40. H Pflügler (Erf 11122, Hemel & Aarde Estate).
41. J Lawson-Smith (Erf 4346, Glenfruin).
42. CW & S Alheit (Erf 4346, Glenfruin).
43. C Makepeace (Erf 4365, Glenfruin).
44. J Makepeace o.b.o. Redbuilt Trust (Erven 4179, 4362, 4368, Glenfruin, Erf 283 small holding) and Farm 338/581).
45. J & L Makepeace (Erven 4362 and 4368, Glenfruin).
46. M Toua (Erf 4360, Glenfruin).
47. RB Maarschalk (Erf 4348 and Erven 4362 and 4368 (co-owner), Glenfruin).
48. F Raimondo & L Makepeace o.b.o. Onrust Mountain Conservancy (no address provided).
49. O Bagnall (Erf 8104, Hemel & Aarde Estate)

Due to the quantity of comments received, and the fact that many commenters have similar reasons for commenting, only the key points of all the comments are addressed in group-format style, thus avoiding an unnecessary comprehensive response to the various comments - the detailed comments are attached as Annexure D:

Points of comments and applicant's and town planner's responses thereto

In the introductory of the applicant's responses to the comments received, amongst others, the following points are stated:

- ✚ The application area forms part of an existing business node with existing residential areas adjacent to the business node that contains 38 businesses.
- ✚ The application property forms part of the Hemel & Aarde Village development which has a Special Zone to accommodate Tourism Business, Cottage Industry & Dwelling Houses. Tourism Businesses includes restaurants and wineries. Evident from the above is that the majority of the businesses within this business node are not consistent with the approved zoning of the said node.
- ✚ The character of The Brewery, situated at the base of the Hemel & Aarde wine valley, is intended to emulate the style and character of the valley. The Cape styled building contributed to a unique landmark facility consistent with the zoning status of the property.

- ✚ The restaurant accommodates 350 seats both internally and externally in an area of approximately 500m² and employs 30 staff members and 8 internships and also accommodates community youth development programs as well as integrating training and placement for people with disabilities.
- ✚ The Brewery strives to create a dining experience that caters to people desiring quality food and beverages in a welcoming and friendly atmosphere as a destination for the local as well as tourists from afar and emerging from the public participation process supporting comments.
- ✚ Various objections and comments are not directly applicable to the application, but more about the functioning of the business node. Most of the objections are about noise.
- ✚ Various objections appear to be a deliberate orchestrated campaign by individuals to achieve maximum negative and adverse impact against the application.

Points of comment

Group 1 of points of comments

Noise levels will rise as the site is too close to existing residential areas (Hemel & Aarde Village, Sundew Villas, Glenfruin Meadows) - the silence and tranquillity will most likely be disturbed.

The mountain behind forms a natural amphitheatre for any sound generated, particularly emanating from the Hemel & Aarde Village one-off events.

Large events will spoil the relative peace and tranquillity enjoyed by residents after hours and on weekends.

The efficiency and methodology of the Noise Impact Assessment is questioned. The NIA indicates that the maximum noise levels are exceeded.

The noise affects dementia patients:

Allow music until 10pm - music pounds extremely loud when music is played. Open air live entertainment sound carries particularly if their broadcast equipment faces the mountain. Indoor live entertainment sound can be acoustically controlled / dampened.

Applicant's response

The owners of The Brewery are fully aware of the requirements of the Western Cape Noise Control Regulations, 2013 because of the application. As part of the application a Noise Impact Assessment (NIA) was conducted on the neighboring properties on 21 May 2021 by the well-known and reputable Acoustic Engineers, Mackenzie Hoy Consulting Acoustic Engineers in accordance with the Western Cape Noise Control Regulations 2013. The outcome of the study indicated that live music can be accommodated on the property. The calculations of the noise impact study also indicated that all outdoor events to be held at The Brewery, with live music and sound pressure below 92dBA, will not be in contravention of the Western Cape Noise Control Regulations 2013.

The recommendations of the acoustic engineers are that the necessary steps need to be taken to ensure that the noise levels at the venue do not exceed 92 decibels during evening events. The Brewery have agreed to implement the following mitigation measures:

- ✚ Restrict and manage all sound in accordance with the limits indicated by the NIA through sound monitoring instruments.
- ✚ Restrict live music to no later than 22h00.
- ✚ To adhere to the Western Cape Noise Control Regulation 2013.
- ✚ Limit the number of patrons to the seating capacity of the venue and monitor and manage it accordingly.
- ✚ If The Brewery hosts one-off live events/performances which are likely to exceed the Homeowners' Association restricted criteria limits, this would be done with prior notification and collaboration with the Hemel & Aarde Village Homeowners' Association.
- ✚ The point that the noise levels will rise above the allowable limit is based on unfounded assumptions. The owners of The Brewery have no intension at all to create sound beyond the statutory sound limits and merely intend to provide live family entertainment and operate within all statutory requirements and limits applicable to the facility as well as within the determined mitigation measures and laws and regulations.
- ✚ The adjacent residential areas will be respected in terms of sound and all other applicable legislation, but specifically the sound being within the limits of the Western Cape Noise Control Regulation, 2013 and accordingly monitored.
- ✚ Many of the objections were deliberately or purposefully orchestrated by individuals within the area of the application site.
- ✚ It should also be noted that other businesses within the Hemel & Aarde Village also provide live entertainment and community activities.

Town Planner's response

It should be noted that live music is proposed and not events although certain popular public events are conducted from the property annually like the Lighthouse to Lighthouse, Walkerbay Extreme, the 85km Brewery to Brewery, the MTB Classic, and other events that falls under the ambit off the approved Events Policy. Live music without the necessary approvals have been illegally ongoing for a considerable time with various notices being served on the owners to cease the unlawful activity. Even after the application was submitted the owners openly advertised live music events at the venue thus disregarding the Municipal notices of Non-Compliance. (See Internal Memo to Municipal Manager that indicates the communications with the landowner to date [attached as Annexure J]).

In terms of the Noise Impact Assess (NIA) that was conducted, amongst others, the following statements and findings contained in the report can be summarized as follows (the report is attached as Annexure L):

- ✚ The calibration of the sound level meter that was used, is valid.
- ✚ The noise measurements were conducted at Hemel & Aarde on the 13th and 14th of May 2021 at the western, northern, eastern, and southern boundaries of the property, as well as the source.
- ✚ A correction of 5dBA must be applied where the alleged noise has audible tones such as whines, whistles, hums, and music. According to the Western Cape Noise Control Regulations, 2013 (Regulations) the following maximum noise level limits on the property boundaries are allowed:
 - Daytime: 62dBA (60dBA + 7dBA - 5dBA = 62dBA).
 - Night-time: 52dBA (50dBA + 7dBA - 5dBA = 52 dBA).
- ✚ The results of noise transmission loss measurements conducted at The Brewery with the source sound pressure level set at 95dBA, the measured sound pressure level is 55dBA. The results indicated that the sound pressure level at the northern property boundary does not exceed the maximum allowable day-time noise level limit. The sound pressure level at the northern boundary exceeds the maximum allowable night-time allowable noise level limit with 3dBA that is categorized/considered a "disturbing noise" in terms of the Western Cape Noise Regulations.
- ✚ The implementation of noise mitigation for the venue will be impractical as it will affect the aesthetics of the venue and the location of the venue will require very high structures to provide sufficient noise control.
- ✚ It is recommended that the Brewery must take the necessary steps to reduce the noise level at the venue to 92dBA.

(All above and below underlining are author's own underlying to emphasize the findings and response of the noise measurements taken.)

For information purposes the definition of a "disturbing noise" as set out in the Western Cape Noise Regulations is hereby quoted:

"**disturbing noise**" means a noise, excluding an unamplified human noise, which-

- (a) exceeds the rating level by 7 dBA;
- (b) exceeds the residual noise level where the residual noise level is higher than the rating level;
- (c) exceeds the residual noise level by 3 dBA where the residual noise level is lower than the rating level;
- or
- (d) in the case of a low-frequency noise, exceeds the level specified in Annex B of SANS 10103;"

The above response of the applicant that the outcome of the study indicates that live music can be accommodated on the property is in view of the NIA not a true reflection of the findings by the acoustic engineers. The NIA indicates that the maximum allowable noise levels during night-time will be exceeded with 3dBA and that noise mitigation for the venue will be impractical as it will affect the aesthetics of the venue and the location of the venue will require very high structures to provide sufficient noise control.

The applicant further indicated that if the application is approved, the property owners will implement steps to reduce noise levels. The acoustic engineers on the other hand categorized the noise measured levels as a “disturbing noise” which in terms of the above definition is a noise category that excludes amplified human noise. Thus, if the measurements were taken when events and/or live music performances occurred, it would have exceeded the maximum allowable noise levels at night-times even more. The exact levels are therefore undetermined. To strengthen the said concern is the fact that the report further states that the assessment was done based on geographical data, site layout, and **expected noise levels** (see paragraphs 2.6 and 2.7 of the report attached as Annexure L). Although the Municipality has no officials that specializes with noise measurement equipment, the commenter’s point that the efficiency and especially the methodology of the NIA is questionable, should be noted.

For information purposes Regulation 2. Of the Western Cape Noise Regulations is hereby quoted:

“Prohibition of disturbing noise

2. A person may not-
 - (a) cause a disturbing noise; or
 - (b) allow a disturbing noise to be caused by any person, animal, machine, device, apparatus, vehicle, vessel or model aircraft, or any combination thereof.”

In view of the above findings set out in the NIR, the residual noise levels (unamplified human noise) already exceed the night-time levels at the specific venue without amplified human noise and the commenters point of objection in this regard can therefore be agreed with to some extent. However, the other noise factors that is further elaborated upon by author under paragraph 7 of this submission, must also be taken into consideration.

The applicant’s further response that the recommendation of the acoustic engineers that steps be taken to ensure that the noise levels at the venue do not exceed 92 decibels during evenings by implementing mitigatory measures, is also not a true reflection of the NIA findings. The NIA clearly states that the implementation of noise mitigation measures for the venue will be impractical as it will affect the aesthetics of the venue and due to the location of the venue will require very high structures to provide sufficient noise control. The acoustic engineers unfortunately did not elaborate on the specific type of tall structures that need to be constructed to ensure sufficient noise control at the venue. The applicant further responded that, amongst others, management would limit the number of patrons to the seating capacity of the venue, being 350 both inside and outside, and monitor and manage it accordingly. It is, with respect, highly arguable whether the number of patrons can effectively be policed/managed since all patrons are not necessarily seated during events and it is therefore the opinion that the venue can altogether accommodate more than 350 patrons at a time.

Should the landowners limit the number of patrons at the venue, it will most probably result in negative impacts on revenue for the owners since it would be irrational for any business owner to limit its patrons/customers if it is not restricted to a certain number of patrons which is not the case.

The Zoning Scheme of the Village requires four parking bays per 100m² floorspace for businesses and not seats or patrons in this case. Floorspace is not defined in the relevant Zoning Scheme. However, the application involves a temporary departure that in terms of the By-Law may not exceed a 10-year period which is a mentionable period should the application be approved taking the comments and the findings of the NIA into consideration. Although the applicable Zoning Scheme does not make provision for a “place of entertainment” resulting in the application for a temporary departure, the fact of the matter is that an additional land use right is being applied for. The applicant indicated that it complies with the parking ratio as set out in the relevant Zoning Scheme. However, the latter requirement is not appropriate for the proposed activity since the Overstrand Land Use Scheme requires one parking bay for every four seats at an entertainment venue. Having regard that the applicant states that the number of patrons would be restricted to 350, the opinion is held that parking would become more and more problematic in future. In terms of the Overstrand Land Use Scheme at least 88 parking bays are required for an entertainment venue with 350 patrons. In the matter at hand there would technically be a shortfall of 39 parking bays which is regarded as being problematic should the application be approved since it would lead to motorists parking on adjacent properties and the already narrow road reserve that is undesirable. During various site visits by author at various time during the day it was observed that the parking bays at the venue are already nearly fully occupied, especially in the afternoons.

Group 2 of points of comments

Conditional support:

If the application has been limited to live music, on days of festivals, special events and public holidays and renewed every few years and not being transferred to other businesses or buildings and reasonable times it would have been supported.

Applicant’s response

The comment is noted and will be addressed by measures as reflected in the first paragraph.

Town Planner’s response

Noted. It should be noted that events (weekend markets) are also being held on Erf 4150 and therefore not restricted to the subject property. These events are regarded as being in line with the primary rights of the properties within the Village since it is associated with tourism, but live music or amplified human noise is not allowed since the Zoning Scheme of the Village prohibits such uses.

Group 3 of points of comments

Scheme Regulations and Design Guidelines:

No business or property owner has the right to independently override or change the Hemel & Aarde Scheme Regulations or Design Guidelines. Our main concern is that the building guidelines of the H&A Village is not adhered to.

Applicant's response

It is evident that the objections against the Place of Entertainment, was facilitated in an orchestrated manner, but incorrectly and mistakenly interpreted and followed by many objectors. The reality is that this point of objection has no relevance to the application and should therefore be completely ignored.

It should also be noted that a preliminary survey revealed that approximately 70% of businesses within the Hemel & Aarde Village precinct are not compliant with its Scheme Regulations. Notwithstanding this, The Brewery owners amended its building plans to ensure all buildings on the property are compliant with the National Building Regulations and the Hemel & Aarde Scheme Regulations and submitted to the Homeowners' Association for prior approval before submission to the local authorities for consent.

Town Planner's response

From the contents of the comments received it is to a reasonable extent agreed with the applicant that many of the points of comments/objections are similar in nature and can be regarded as being orchestrated. To strengthen this opinion, it is observed that almost half of the objections are from landowners within the Glenfruin development situated to the north of the Hemel & Aarde Village Development whilst, except for the Hemel & Aarde Village HOA, only one objection is on record that was received from a landowner within the Hemel & Aarde Village development. Further, it was confirmed by the Town Planner: Land Use Management & Compliance that there are several complaints on record from landowners within the Glenfruin Meadows development and a property on the northern perimeter of the development.

The landowners need to submit building plans for all structures on the property. At that stage, the association of the Village needs to compare the uses and aesthetics of all the structures with its Zoning Scheme and Architectural Guidelines prior to endorsing it for submission at the Building Department. After submission, the Planning Department also need to scrutinize the building plans to compare it with the relevant Zoning Scheme before it may be finally approved. The applicant did not apply for any contravening structures on the property, other than the departure application under consideration. The building inspector for the area on the other hand conducted a site inspection during February 2022 and its findings are attached as Annexure F. If the landowners did not address the findings of the building inspector satisfactorily at the time of submission of the required building plans, any contraventions will be addressed in accordance with the provisions of the Planning By-Law.

The rest of the applicant's responses are noted.

Group 4 of points of comments***Zoning / Land use rights:***

The Hemel & Aarde Village was originally proposed under Rural Zone 3: Agri-Village (R3) and this zoning does not allow a place of entertainment.

Erf 4180 zoned Agricultural Zone 1 was bought specifically for the rural tranquillity.

A place of entertainment opens doors to possible uses like night clubs, strip clubs, gambling, etc.

The original zoning was based on a "Live- Work from Home" concept.

The unique Scheme Regulations do not make allowance for a place of entertainment.

Applicant's response

The current and historic zoning of the area is noted. However, the application is based on the current statutory zoning and the Overstrand Municipal Amendment By-Law, 2020. Subsequently there are no restraints to apply for amendments to existing land-use rights.

The owners of the nearby properties should have considered (when they bought their properties) that their properties are within close proximities of probably the busiest intersection in Hermanus with several businesses in proximity which could potentially generate noise and sounds in future.

The surrounding residential areas adjacent to the Hemel & Aarde Village are all enclosed security developments and should the application be approved, it will not deprive these property owners from their current lifestyle given the fact that the sound emanating from the application site will be mitigated and will be within the statutory requirements of the Western Cape Noise Control Regulations, 2013.

These points of objections are considered a further orchestrated exaggeration of the situation.

It is also clearly mentioned in the application that the application for the Place of Entertainment is only to accommodate live and amplified music.

The objectors make inappropriate and incorrect assumptions that the venue will be used for night clubs, gambling, or strip clubs.

These points of objections should thus be omitted.

Town Planner's response

The applicant's response is to a large extent being agreed with.

The Hemel & Aarde Village development has a zoning status of Special Zone with its own Land Use Scheme. Application is only made for a temporary departure use for a place of entertainment to allow for live and amplified music. Thus, the objector's point that the departure application will open doors to possible uses like night clubs, strip clubs, and gambling, is non-factual, irrational, and has no relevance to the essence of the application at all.

Group 5 of points of comments

Traffic and Parking:

Traffic congestion on the narrow access servitude during once-off events are alarming.

Road infrastructure insufficient - Increased traffic on the R320 and the entrance / exit to the Hemel and Aarde Estate and Village are already at unacceptable levels and is too close to the R43 intersection.

Motorists regularly exceeds the speed limits causing dangerous traffic situations - will increase with added events.

Intersection on R320 becomes problematic and dangerous as hitch hikers, crowds of people use this intersection to seek lifts.

The narrow badly maintained access road to Glenfruin and more than 10 businesses carries high volumes of traffic, is not suitable.

The application is not supported by a TIA (what TIA was conducted?) and there are still more to develop.

No public parking is provided in the H&A Village.

Limited parking provided in the H&A Village - stating that 250 people can be accommodated inside and outside, i.e., parking needs to be provided for 500 people meaning 62,5 parking bays are required resulting to a shortfall of 17 parking bays.

Applicant's response

It should be acknowledged that the application site forms part of approximately 38 businesses within a business node and thus to accuse the application site of traffic congestion, speeding, congestion, and parking problems is most inappropriate, unfair, and not justified.

In addition to the above, the very occasional and/or exceptional events which attracts larger numbers of visitors/patrons are normally held after hours or outside business peak hours due to the nature and character of the facility.

The problems mentioned by the objectors is rather a matter to be resolved between the Hemel & Aarde Property Owners' Association and the local authority.

It is the opinion that instead of objecting to a single successful business within the business node, all businesses should rather work together in a collective way which will benefit all the businesses within the node.

Therefore, these points of objections should be ignored by the decision-making authorities, but also encourage the property owner's association to be pro-active and ensure the proper functioning of the business node.

Town Planner's response

The Hemel & Aarde Village, although a Special Zone status, is functioning as a complex with its own homeowners' association with and approved constitution and design guidelines. The Glenfruin Meadows development functions similarly but does not have any business rights since it predominantly comprises of residential erven together with private open spaces and private roads. The internal road of the Village is a private road and registered in the name of the association. Vehicular and pedestrian access to Glenfruin is gained by means of a right of way servitude that is registered over a section of the Village's private road.

The matters surrounding traffic congestion, speeding, public parking, congestion of vehicles, the narrow and badly maintain access road to Glenfruin Meadows, and public parking when events are held, are therefore inhouse matters that must be resolved by both the associations and not the Municipality. However, the fact remains that the internal road is too narrow to even accommodate the traffic of the existing developments it serves.

Should the application be successful it would attract even more motorists to the venue that will subsequently worsen the current problems experienced by the landowners within the developments which is undesirable and unasked for.

The vacant property (Erf 4155) adjacent to the subject property has recently been sold and the new owner already indicated that it wants to develop the property to its full extent that will result in even more motorists using the road that will intensify the current problems experienced. Events (weekend markets) are also being held on Erf 4150 and therefore not restricted to the subject property. Markets are events which are regarded as being in line with the primary rights of the properties within the Village since it is associated with tourism.

The relevant zoning scheme of the Village requires that one parking bay be provided for every 25m² of the total floor space provided on the property. The applicant indicates that the development of the property requires 28 parking bays, but that 49 parking bays are provided being a surplus of 21 parking bays. Although the applicable Zoning Scheme does not make provision for a "place of entertainment" resulting in the application for a temporary departure (10 years), the fact of the matter is that an additional land use right is being applied for and being for a maximum period of 10 years that is regarded as a mentionable period for such a land use in a tourism hub with specific and related land uses. Although the applicant indicated that it complies with the parking ratio as set out in the relevant Zoning Scheme the said parking requirement is not appropriate for the proposed activity. The Overstrand Land Use Scheme requires one parking bay for every four seats at an entertainment venue. Having had regard that the applicant states that the number of patrons would be restricted to 350, the opinion is held that parking would become more and more problematic in future as the tourism industry expands and more tourists visit the venue should the application be approved. In terms of the Overstrand Land Use Scheme at least 88 parking bays are required for an entertainment venue with 350 patrons (1 bay for every 4 seats). In the matter at hand there would technically be a shortfall of 39 parking bays which is regarded as being problematic should the application be approved since it would lead to motorists parking on adjacent properties and the already very narrow road reserve that is undesirable.

The fact further remains that the internal road being too narrow results that it cannot even accommodate the traffic of the existing developments it serves. During various site visits by author at various times during the day it was observed that the parking bays at the venue are already nearly fully occupied and more specifically in the afternoons. Should the application be successful it would attract even more motorists to the venue that will subsequently worsen the current problems experienced by the landowners within the developments which is undesirable and unasked for.

Group 6 of points of comment

Property values:

The undesirable impact on the immediate adjacent Glenfruin Meadows will diminish property values.

Applicant's response

The objector's objections are based on unfounded assumptions with no sound basis for such objection. The application site is subject to legislation, and it will be adhered to.

Although the objectors' properties are within relatively proximity to the business node as well as a busy intersection, they are also secluded from this node being within a gated area.

It is therefore recommended that this point of objection be ignored.

Town Planner's response

The applicant's response is noted and supported.

Group 7 of points of comment

Character of the area:

When the properties were bought, the area was studied to ensure long term tranquillity taking the scheme and design manual into consideration where restaurants, guest houses, winery was / is allowed. The property is a quiet residential location in Hermanus.

Applicant's response

The character of the area and development patterns have already been established over several years in accordance with statutory legislation. The application for a Place of Entertainment on Erf 4156, Onrustrivier is subject to existing applicable laws and regulations which determines the character of the area. Therefore, the character of the area will not change.

In view of the above, the point of objection should be ignored.

Town Planner's response

The general plans of the Glenfruin Meadows- and the Hemel & Aarde Village developments indicate that both developments were approved during 1995. The Village was approved as a tourism related business hub with various primary uses that includes uses that generates much higher noise levels than noise levels experienced within a predominant residential area like the direct adjacent Glenfruin Meadows development.

Further, the noises caused by vehicles and pedestrians at the very busy Hemel & Aarde/Sandbaai R43/R320 intersection, and the additional vehicle lanes that were constructed for the R43, contributes to even higher than normal noise levels that are experienced in pure residential areas and these accumulated noise levels certainly does not make the Hemel & Aarde Village and surrounding area a tranquil and quite residential area.

The point of comment that the properties within Glenfruin Meadows development were purchased due to the Hemel & Aarde Village being a tranquil and quite residential location in Hermanus, is thus disagreed with.

Group 8 of points of comments

Health and Safety:

The drawing of large crowds and additional traffic poses a serious threat to the safety and well-being of the properties, patrons, and occupants as there is only

one restricted access road- especially during the fire season - road was completely blocked - also applicable to medical and municipal emergencies.

Applicant's response

The point of objection is noted and considered valid, however is not considered applicable to this application for a Place of Entertainment per se. The point of objection forms part of a bigger business node and is applicable to all the businesses within the business node. Therefore, it is a matter that needs to be dealt with by the Home and Property Owners' Association of the Hemel & Aarde Village.

The decisionmakers should also be made aware that possible congestion because of events by The Brewery is only likely to take place during limited special events, like cycle races and marathons. During such events special traffic management measures will be brought in and can be included as a condition of approval. It should also be noted that such events attract much needed tourist to the area and stimulates the economy of the town.

It should also be acknowledged in a case of an emergency when emergency vehicles need to travel through a congested traffic file, drivers do make way and let emergency vehicles through.

Subsequently, this point of objection is considered as a stacking approach to discredit this application for a place of entertainment.

The potential limited short period congestion because of the special events is manageable and is not seen as a good enough reason to deprive the town and area of vitally important vibrant economic and entertainment opportunities.

Town Planner's response

The applicant's response is noted and supported. It is the responsibility of the HOA to see to inhouse issues like maintaining the internal road since the road is a private road that is registered in the name of the HOA. However, and regardless the aforesaid, if the application is to be approved it will result in an increase in traffic that will worsen the current situation even more.

Group 9 of points of comments

Setting a Precedent:

If the application is successful, it will set a precedent for businesses whom many of have large live music events, weddings etc.

Applicant's response

Every application made with the Overstrand Municipality is considered on the merit in terms of the impact of such application on the area based on the Spatial Planning Land Use Management Act's (Act 16 of 2013) Planning Principles.

In the light of the above the point of objection is unfounded and should be overruled and disregarded by the Overstrand Municipality.

Town Planner's response

Annual public events that occur from the subject property, is associated with tourism and draws people from all over the country. Events permits are however a requirement of the relevant Events Policy which is issued by the Events Committee of the Municipality.

Group 10 of points of comments***Mitigating Measures:***

In the alternative in that the application be considered favourable, mitigating measures should be imposed for example:

Limit area of entertainment to the inside of the building.

Doors and windows closed.

Regulate parking.

Owners' commitment to crowd control.

Presence of security.

Qualified parking attendants.

Traffic control officers.

Event by-law to be adhered to.

Binding commitment by the applicant and HOA to the upgrading and maintenance of roads and infrastructure.

Trial period.

Applicant's response

The proposed mitigating measures are acknowledged and the mitigation measures as per the response to the first point of objection are to be incorporated.

The comments relating to parking, regulating of parking, presence of security, crowd control, and qualified parking attendants, is the prerogative of the landowners who must in any event adhere to the inhouse rules of the HOA. The Municipality further cannot enforce it since it is a private development.

Town Planner's response

The Traffic Department of the Municipality has got no legal authority to utilize its traffic control officers within private developments.

The HOA does not need to commit to an agreement to upgrade and maintain the roads and infrastructure, since it is their responsibility to see to it in terms of its approved constitution. The commenters should therefore approach the HOA and inform it of its constituted responsibilities.

Group 11 of points of comments***Soup Kitchen:***

Could be set up closer to the areas where it is required, let undernourished people walk far distances, lead to squatting.

Unapproved, temporary structures including the soup kitchen does not comply with the Hemel and Aarde Design Guidelines and Scheme Regulations.

Applicant's response

The application is for a Place of Entertainment and subsequently this point of objection is not relevant or applicable at all. It should also be noted that the soup kitchen facility has been removed and is therefore not applicable. Therefore, this point of objection should thus be rejected in totality.

Town Planner's response

The applicant's response that the soup kitchen facility has been removed and is not applicable, is in contradiction with the statement in its motivation where it mentions that the soup kitchen facility has been moved outside the building line to a different location on the property and that the structure will be clad and used as a soup kitchen. It is also indicated as such on the plan in paragraph 2. of the motivation report. The applicant needs to submit building plans for all structures and uses thereof that needs to be endorsed by the homeowners' association. The structures therefore need to comply with the architectural guidelines and the uses of the zoning scheme of the Village otherwise the HOA will not endorse the building plans resulting that the Municipality may not approve such plans. As already mentioned, the different local events that occur annually from the property will be addressed in the evaluation section of this submission. The commenter's point that undernourished people need to walk far distances and that it would lead to squatting on the property is regarded as farfetched and unfounded since the applicant did not indicate that the soup kitchen will be used for underfed people, charitable or alike purposes.

Group 12 of points of comments.***Process:***

The letters did not reach the affected parties on time.

To date no consultation with anyone in the H&A Estate took place to date.

Applicant's response

The application was dealt with by the Overstrand Municipality completely in compliance with the Overstrand Municipality By-Law, 2020. Furthermore, the public participation period was extended by a further month and advertisements were placed to provide more than sufficient time to comment.

Hence this point of objection is inapplicable and should thus be ignored / disregarded completely.

Town Planner's response

The applicant's response is factual. In addition, author is not aware that consultation, other than notices or advertisements in local newspapers, needs to be undertaken with the HOA of the Estate regarding town planning matters. The relevant By-Law is very prescriptive in the way a public participation process needs to be done. At first a notice was not served on the Estate, but the public participation process was extended with a month by advertising the application in a local newspaper to ensure that a wider part of the community was made aware of the application.

The advertisement was placed in The Village News local newspaper and in its comment/objection the Association, amongst others, states that “A copy of the advertisement was forwarded to the Chairperson of the Hemel-en-Aarde Home Owners’ Association Trustee Committee on 23 December 2021 by one of the persons associated with the application. The notice was circulated to the other members of our Trustee Committee.” The media advertisement was placed in the Village News on 24 December 2021 and the closing date for comments were the 28th of January 2022. The advertisement that the Association refers to, was the notice that was circulated and not the advertisement in the media. With the extended public participation process that was followed, it is the opinion that a thorough public participation process has been followed and that the Association was indeed aware of the application prior to the closing date for the submission of comments.

Applicant’s response on commenters who are in favor of the application

The applicant also responded to the commenters’ points who are in favor/support the application. The responses of the applicant on these various points of support are summarized as follows (it is also summarized in group-format points since various points are similar):

Group 1 of points of comments in favor of application

Brought renewed energy to the area.

Applicant’s response

It is noted and agreed that the successful application for a Place of Entertainment will bring renewed energy to the area, an activity which has taken place at the facility, an activity which is clearly popular for the patrons of the business and clearly well supported by the community.

Town Planner’s response

Noted.

Group 2 of points of comments in favor of application

Central and secure area.

Applicant’s response

This point is noted and due to the central and secure area currently contributes to the tourism character of the area and Hermanus.

Town Planner’s response

Noted.

Group 3 of points of comments in favor of application

Increase in Property Value.

Applicant's response

The increase in land-use through the provision of live music will increase the activity in the area and subsequently is likely to increase the value of the surrounding businesses and those of the properties in the proximity.

Town Planner's response

Noted.

Group 4 of points of comments in favor of application***Good exposure.***Applicant's response

This statement is supported without any doubt being visible from the R43 Provincial Road.

Town Planner's response

Noted.

Group 5 of points of comments in favor of application***Valuable asset to area.***Applicant's response

This comment is supported by most of the respondents in support of the application.

The value and popularity this facility brings to the area is evident by the number of regular visitors to The Brewery. The Brewery has been established as a landmark in the relatively short period of existence.

The provision of live music will furthermore contribute to the much-needed activities in the Hermanus area and thereby contribute to the economy of Hermanus.

The fact that the sound can be managed so as not to cause a nuisance to the neighboring residential areas augments the desirability of this asset to the town.

Town Planner's response

Noted.

Group 6 of points of comments in favor of application***Out of town spend.***Applicant's response

The Brewery contributes to a wider distributed expenditure and support other businesses in the area.

Town Planner's response

Noted.

Group 7 of points of comments in favor of application***Local tourism.***Applicant's response

Local Tourism is extremely vulnerable and therefore a destination facility like The Brewery assists with local tourism in the area and not only to The Brewery alone. Therefore, this point of comment is strongly supported.

Town Planner's response

Noted.

Group 8 of points of comments in favor of application***Support of employment and growing of the local economy and development.***Applicant's response

The Brewery has become a landmark facility in Hermanus, supported by all ages. The allowance of live entertainment at The Brewery in a responsible manner will boost the economy further of not only The Brewery but also the neighboring businesses, as well as in general the economy of the town. This is likely also to contribute to the further growth of the area.

Town Planner's response

It should be noted that Local Tourism (F Lloyd) also supports the proposal. Its comment is quoted as follows:

"The Brewery contributes greatly to our economy through the hosting of events and charitable functions such as Lighthouse2Lighthouse handing over of funds. It is a popular tourism destination out of town and assists with directing visitors out of the busy CBD during season. I have no objection to this application."

Group 9 of points of comments in favor of application***Upliftment of the area.***Applicant's response

This statement is being agreed with in the sense that the dynamic and progressive way The Brewery is being operated, it can be expected that additional activities like live entertainment will contribute towards the upliftment of the area.

Town Planner's response

Noted.

Group 10 of points of comments in favor of application***Encouraging local talent and support the live music.***Applicant's response

The regular accommodation of artists, especially aimed at the youth of the town, provides the opportunity for the employment and development of local talent. This point of comment is considered valid and is supported.

Town Planner's response

Noted.

Group 11 of points of comments in favor of application***No nuisance to the property owners of Sundew Villas.***Applicant's response

This comment is in contradiction with the objections stating that it causes a noise nuisance to the residents in Sundew Villas. The essence of the matter is that the owners of The Brewery will have to function within all the relevant Laws and Regulations applicable.

Town Planner's response

Various objections were in fact received from owners of properties within the Sundew Villas group housing development that is situated on the opposite side of the R43.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

As above.

9. MUNICIPAL ASSESSMENT OF COMMENTS

As above.

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

N/A

Legal Services

The comment from Legal Services on the application and this submission is quoted as follows:

“To whom it may concern

1. From the documentation placed at my disposal the Application **per se** as per **bullet 1 of the Executive Summary on page 1** might seem relatively simple but the import, impact, principles, and the law might indicate the opposite.
2. Be that as it may, the Applicant’s Motivation for the departure, although somewhat detailed and lengthy, and its responses to the objections are in my opinion, although understandable, rather subjective and do not actually address the responses of the Town Planning Official and the well-motivated objections of the objectors who number more than 49 in total given the fact that there are also 3(three) HOA’s, 1(one) Trust representing 4 erven and 1(one) farm and another 5 (five) owners representing 14(fourteen) erven. As opposed to this, the comments in favour of the application, although summarized, are **lacking in detail and substance** and bar one, consist mainly of “one liners” with one set/group of comments (Group 10) even contradicting the objection of the actual residents of **Sundew Villas**.
3. From the documentation it would appear that the main objection levelled against the departure pertains to the **“noise”** factor which most of the objectors seem to have experienced in the past when the Applicant held live shows at the Brewery and will in all probability continue to experience should the departure be approved.
4. At the outset I think it’s fair to say that **music** in whatever form is or might be a pleasant sensory sensation and experience in a particular setting to one person but at the same time an unpleasant sensation and sensory experience i.e., **“noise”** to another, so when considering the objections in the matter at hand these two divergent views must be kept in mind and in this regard it is prudent to take cognisance of the law re “noise” and “noise disturbance”, “noise nuisance” and “nuisance” and in general “disturbance of the peace” which in general determines that urbanisation, and the consequent magnitude of residential estates that are becoming increasingly dense and populated, requires individuals to abide by the municipal by-laws and regulations and to take their neighbours into consideration when conducting certain activities on their properties. It occasionally happens that someone uses their property in a way that negatively affects the use and enjoyment of someone living nearby. Such behaviour could potentially constitute a “nuisance”.

One definition or description of **“nuisance”** (and may include **“noise nuisance”**) is that it is an occurrence where a person occupying land creates a state of affairs, or allows such state of affairs to exist, that unreasonably, unfairly and materially disturbs or annoys a person occupying another piece of land. The test for determining whether or not a nuisance constitutes an actionable nuisance which the aggrieved person can legally act against, is an **objective test.** The test is whether or not a normal person of sound and liberal tastes and habits will regard it as a nuisance. The standard applied is **not** that of a **“perverse, particular or over-scrupulous person”** because a person must be willing to endure some discomfort or inconvenience emanating from the use of a neighbouring property. The infringement of one’s right to the reasonable enjoyment of one’s property (i.e., the nuisance) **must furthermore be persistent and continual** in order for such infringement to be actionable.

The following might be defence/defences available to a **defendant** in a nuisance matter:

- The act was done in the due and reasonable exercise of the defendant’s property rights;
 - No reasonably practicable steps could have been taken to prevent the disturbance;
 - The act was authorised by statute and could not be done without causing the disturbance or prejudice complained of;
 - The defendant has, through prescription, obtained the right to perform the act. = not applicable to the current discussion.
- The defendant will usually bear the onus to prove the abovementioned defences.

What the above in essence means is that there **is** (and not **“must be”**) a:

“reciprocal obligation on neighbouring landowners and users to tolerate a reasonable level of interference emanating from the reasonable (and lawful) use of neighbouring properties and such an interference may become unlawful if it exceeds the level of what neighbours could reasonably be expected (or are required by statute) to tolerate.” (Kotze and Boggenpoel: *Living together as Neighbours PER/PELJ 2021*).

I agree with the authors referred to above that what the exercise entails is:

“...a weighing up of various factors dependent on the prevailing circumstances, rights, interests, values and obligations of the neighbours and the community”

and that it is a question of:

“give and take”

and:

“live and let live”

and that:

“Whether a particular infringement emanating from neighbouring properties in the form of smoke, unpleasant smells, fumes...or noise, is unreasonable is an entirely contextual question”

From the information placed at my disposal it was scientifically determined by means of a “Noise Impact Assessment” that what the Applicant has applied for at the Brewery will not pass muster re the applicable Noise Regulations and the general legal position no matter what it does to try and mitigate same and in view of this will not be able to rely on points 1- 3 of the “defences” above should it come to that. This point of view is supported by the **Design Manual of the Hemel & Aarde Village HOA** of which the Applicant forms a part of that **noise activities** are not permitted on any erven. Furthermore, I concur with the opinion of the Town Planner’s **2nd bullet at the heading: Departure for Place of Entertainment** (page not numbered).

In view of the above I am of the opinion that it cannot be said that even one of the objectors fall into the category of **“perverse, particular or over-scrupulous”** people – there are simply too many of them who hold the same opinions especially with regard to the **noise** factor with the result that they can **only** be considered people of **“sound and liberal tastes and habits”**. In addition, there is no evidence of **collusion** between the objectors against the Applicants’ application or the Applicant **per se** and can their objections therefore **not** summarily be dismissed as invalid or frivolous or overly sensitive, but legitimate because they have actually experienced the impact of live music emanating from the premises of the Applicant.

What is important from the above is that the objectors **have never, and will in all probability never or be able to infringe even if they wanted to on any of rights of the Applicant** so where does it leave the **Applicant** re the **“reciprocal”** requirement and duty it has to respect the rights of the objectors?

The above was aptly put in the case:

GIEN V GIEN 1979 2 SA 1113 (T)

where the learned judge held:

“The right of ownership is the most comprehensive real right that a person can have in respect of a thing. The point of departure is that a person can, in respect of immovable property, do with and on his property, as he pleases. This apparently unfettered freedom is, however, a half-truth. The absolute power of an owner is limited by the restrictions imposed thereupon by the law”

In other words, **“ownership”** of immovable property (in the context of this discussion) is not absolute and can be limited. This applies to both the Applicant and the objecting neighbours.

5. Another important consideration and what the objectors are afraid of is the **traffic congestion** that will increase when such events are hosted because it would appear that the road and parking infrastructure is already at a breaking point with no solution in sight. **Glen Fruin** residential area for example only has 1 (one) servitude road of access and egress for pedestrian and vehicular traffic to and from it and does this without a doubt constitute a valid concern and objection.
6. From the municipality’s point of view the Building Department, Fire Department, Engineering Services, Waste Management and Local Tourism have for various reasons no objections to the application, but significantly Town Planning is not in favour of it mainly because the staging of such events as the Applicant is applying for is not **“desirable”** in and at this **specific** venue / setting.

Although nobody is denying that Hermanus is a preferred tourist destination and that events such as live music shows are or can be draw cards for many people, this does not mean that the rights of other people may in the process be ignored and simply rejected for the sake of rejection. The objectors have addressed real concerns and objections.

Andre Olivier
Legal Advisor
Overstrand Municipality
6 September 2022"

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

The application is in line with the planning objectives applicable to this application as set out below.

The objectives relating to:

Spatial Justice

The application will not perpetuate spatial injustices.

Spatial sustainability

The application is located within the urban edge and thus will not lead to urban sprawl. No natural habitat is impacted upon, and it will have no negative influence on the natural environment.

Efficiency

If approved, the application will optimize the use of the property in terms of municipal services and infrastructure.

Spatial resilience

If approved, the application will ensure that the existing resource (land) is used to its maximum in an affordable manner and is in line with the Overstrand Municipality's forward planning documents.

Good administration

The application followed the required planning procedures, and a good public participation process has been followed.

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

Same as Point 10.2 above.

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

Inconsistent with the applicable Zoning Scheme, but consistent with the Spatial Development Framework and the Overstrand Municipal Spatial Growth Management Strategy.

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

N/A

10.6 Impact on Municipal engineering services

The Engineering Department supports the application and indicated that existing services are available, but should additional services be required, the owner will be responsible for the payment of bulk services levies.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The application is in line with the Overstrand Spatial documents.

10.9 Additional Planning Motivation For Removal of Restrictive Conditions

N/A

The financial or other value of the rights

N/A

The personal benefits which will accrue to the holder of rights and/or to the person seeking the removal

N/A

The social benefit of the restrictive condition remaining in place, and/or being removed/amended

N/A

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

N/A

11. THE DESIRABILITY OF THE PROPOSAL**Events**

It is important to elaborate on events per se since most commenters also raised concerns relating to the events that are being held from/on the property. The 2015 Overstrand Land Use Scheme, as well as the By-Law on Land Use Planning made provision for land use applications for “occasional uses” like events (live-music festivals, etcetera).

At the time, the Events Policy of the Municipality was not in place yet. With the revision of the Land Use Scheme and the said By-Law during 2020, “occasional uses” was written out of the said legislation since an approved Events Policy was approved by the Council in the period in-between. At some stage it was argued whether events on private properties fall under the ambit of the Events Policy or is only permitted to purpose-built venues.

The latter was taken up with Legal Services Events who indicated that events do fall under the ambit of the Events Policy. Events are regarded as being in line with the primary rights of the properties within the Village since it is associated with tourism activities, but it is still subject to compliance with the Events Policy. Further reasons for omitting occasional uses from the relevant planning legislation was to ensure fast-tracking of the administrative procedures for this type of uses, thus reducing red tape. The Events Committee has a fast-tracking process in place to consider events applications speedily. However, should amplified human noise or alike forms part of an event, then application also needs to be made for a noise permit at the Municipality that must accompany the event's approval. Further in terms of the Events Policy, events may not be advertised in any manner prior to the necessary events approvals being in place.

The owner/s of The Brewery have conducted numerous events without any events approvals and conducted live-music after it was formally notified various times that such events are illegal without the required Municipal approvals.

Departure for place of entertainment

The application for departure must also be read in conjunction with the planner's applicable responses on the comments received. The most important factors why the application cannot be supporting, are motivated as follows:

Significant noise impacts

- ✚ The Noise Impact Assessment (NIA) indicates that the maximum allowable noise levels during night-time will be exceeded with 3dBA and that noise mitigation for the venue will be impractical as it will affect the aesthetics of the venue and the location of the venue will require very high structures to provide sufficient noise control.
- ✚ In terms of the findings of NIA, the sound pressure level at the northern boundary of the property exceeds the maximum allowable night-time allowable noise level limit with 3dBA that is categorized/considered a "disturbing noise" in terms of the Western Cape Noise Regulations. In terms of the latter Regulations a "disturbing noise" excludes amplified human noise. Thus, if the measurements were taken when events and/or live music performances occur/ed, it would exceed the maximum allowable noise levels at night-times drastically. The report further states that noise levels were taken when events or amplified music did not occur on the property. In view of the applicant's statement that the venue can accommodate at least 350 patrons, it is on the other hand the opinion that much more patrons can be accommodated on the property and not necessarily restricted to the inside of the restaurant area due to its size of 3664m².
- ✚ It is common practice to hold live performances after working hours than during normal working hours when people are not at home. Thus, with people at their homes after working hours, together with residual noise, unamplified human noise, and the proposed amplified human noise, the proposal will have a significant negative noise impact on the surrounding residential developments that is regarded highly undesirable for the area.

- ✚ It is obvious that live music dBA levels would be extremely higher than the allowable dBA levels for the area because the NIA indicates that it would be impractical, thus difficult to implement proper noise mitigation measurements at the venue.
- ✚ The main objection that is levelled against the application pertains to the “**noise factor**” which most of the commenters/objectors seem to have experienced in the past when the applicant held live shows at the Brewery that will in all probability continue to be experienced should the departure be approved. Several complaints are on record that was lodged prior to the submission of the application - attached as Annexure I.

Contravention of the Design Manual and the Scheme Regulations of Hemel & Aarde Village

- ✚ The contents of paragraph 5.1.1 of the approved Design Manual of the Hemel & Aarde Village development (Annexure H) is hereby quoted (only the applicable section is quoted):

“5. SITE USE

5.1 COMMERCIAL ACTIVITIES

5.1.1 *The type of commercial activity carried out on the site shall be governed by its environmental acceptability. No activities will be permitted which give rise to any form of (own underlining) pollution including smoke, noxious fumes, noise, (own underlining)...”*

In view of the above it is evident that the noise emanating from live music or alike that is conducted from the property will be in contravention with the Design Manual of the HOA should the application be approved. The clause is written in such a manner that not even the HOA may not support such an activity. Thus, it can only do so should if it formally amends the document in terms of the criteria as set out in its approved constitution.

- ✚ A section of paragraph 5.b of the approved Scheme Regulations of the Village (Annexure H) is hereby quoted:

“All new development proposals and land uses will also be referred to the Hemel & Aarde Home Owners Association for their approval (own underlining).”

In terms of a wide-spread legal opinion of Legal Services regarding similar applications where Home Owners’ Associations (HOA) exist, the opinion, amongst others, states that where such an Association objects to a town planning application within its development, the Municipality must be very cautious when deciding on such an application and should rather not make a positive decision or ignore an association’s a constitution.

The reason being that it would be an illegal administrative act by the Municipality that could lead to unwarranted high financial costs for the Municipality since it would probably trigger the Promotion of Administrative Justice Act (PAJA) that will result in the matter being taken up with the higher court to set aside such decision.

In view of the above, a positive decision can therefore not be made on the application since it would be in contravention with the said contents of the Design Manual of the HOA and the fact that the HOA objected to the application. It could/would therefore result in an illegal decision with legal implications.

Parking problems and impact on internal private road

- ✚ The Hemel & Aarde Village development was approved as Special Zone and its Scheme Regulations was approved with specific uses to encourage the tourism trade and uses which are related to the tourism trade that include amongst others, restaurants, guesthouses, guestrooms, winery, souvenir shops, antique shops, arts and craft shops, and art galleries. The development only consists of seventeen Special Zone erven and is, in view of the above, regarded as a unique tourism hub for the area. (See copy of the Hemel & Aarde Village Scheme Regulations and Design Manual [attached as Annexure H].) It is the responsibility of the HOA to see to inhouse issues like maintaining the internal road since the road is a private road that is registered in the name of the HOA.

However, and regardless the abovesaid, it is important to note that the relevant zoning scheme of the Village requires that one parking bay be provided for every 25m² of the total floor space provided on the property. The applicant indicates that the development of the property requires 28 parking bays, but that 49 parking bays are provided being a surplus of 21 parking bays. Although the applicable Zoning Scheme does not make provision for a “place of entertainment” resulting in the application for a temporary departure for 10 years, the fact of the matter is that an additional land use right is being applied for that is regarded a land use that is inconsistent with the land uses in this tourism hub with specific land uses. Although the applicant indicated that it complies with the parking ratio as set out in the relevant Zoning Scheme the said parking requirement is not appropriate for the proposed activity. The Overstrand Land Use Scheme requires one parking bay for every four seats at an entertainment venue. Having had regard that the applicant states that the number of patrons would be restricted to 350, the opinion is held that parking would become more and more problematic in future as the tourism industry expands and more tourists visit the venue should the application be approved. In terms of the Overstrand Land Use Scheme at least 88 parking bays are required for an entertainment venue with 350 patrons (1 bay for every 4 seats). In the matter at hand there would technically be a shortfall of 39 parking bays which is problematic should the application be approved since it would eventually lead to motorists parking on adjacent properties and the already very narrow road reserve that is undesirable.

- ✚ The fact further remains that the internal road being too narrow results that it cannot even accommodate the traffic of the existing developments it serves. During various site visits by author at various times during the day it was observed that the parking bays at the venue are already nearly fully occupied and more specifically in the afternoons when events occur. Should the application be successful it would attract even more motorists to the venue that will subsequently worsen the current problems experienced by the landowners within the developments which is undesirable and unasked for.

- ✚ The more than 49 comments/objections are well-motivated objections as opposed to the comments in favour of the application, although summarized, it is the opinion that it lacks in detail and substance.
- ✚ The application for departure to allow for live music on the subject property is regarded as undesirable from a town planning perspective since it would be out of character and the spirit within which the Hemel & Aarde Village development was approved.

General

The applicant did not apply for any contravening structures on the property, other than the departure application under consideration. However, the building inspector for the area conducted a site inspection during February 2022 and its findings are attached as Annexure F. If the landowners did not address the findings of the building inspector satisfactorily at the time of submission of the required building plans, any contraventions will be addressed in accordance with the provisions of the Planning By-Law.

In view of the above the recommendation as set out below should be supported.

12. RECOMMENDATION

1. that the application for departure in terms of Section 16(2)(c) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), applicable to Erf 4156, Onrustvriër ("The Brewery") to utilize the property for live music ("place of entertainment"), **not be approved** in terms of Section 61 of the By-Law; and
2. that the applicant and the commenters be notified of their respective appeal rights in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decision.

13. REASONS FOR RECOMMENDATIONS

- ❖ The Noise Impact Assessment (NIA) indicates that the maximum allowable noise levels during night-time will be exceeded with 3dBA.
- ❖ The Hemel & Aarde Village Homeowners' Association opposes the application and an internal legal opinion from Legal Services advised not to make positive decisions in cases like these since it would be an illegal administrative act by the Municipality that will probably trigger the Promotion of Administrative Justice Act (PAJA) that could lead to unwarranted high financial legal costs for the Municipality.
- ❖ In terms of paragraph 5.1.1 of the approved Design Manual of Hemel & Aarde Village, site uses such as noise activities are not permitted on any erven. A positive decision can therefore not be made against the contents of the Design Manual since it is a formally approved document that has legal status.
- ❖ In terms of the formally approved Scheme Regulations of the Village (paragraph 5.b) all land uses must be referred to the HOA for its approval. The HOA does not support the application and therefore the application can also not be supported by the Municipality.
- ❖ The fact remains that the internal road is too narrow to even accommodate the traffic of the existing developments it serves.

- ❖ Should the application be successful it would attract even more motorists to the venue that will subsequently worsen the current problems experienced by the landowners since motorists will be forced to park on adjacent properties and the narrow road reserve is undesirable and unasked for.
- ❖ The vacant property (Erf 4155) adjacent to the subject property has recently been sold and the new owner already indicated that it wants to develop the property to its full extent that will result in even more motorists using the road that will intensify the current problems experienced with the road.
- ❖ The Hemel & Aarde Village development was approved as a Special Zone and its Scheme Regulations was approved with specific uses to encourage the tourism trade and uses which are related to the tourism trade that include amongst others, restaurants, guesthouses, guestrooms, winery, souvenir shops, antique shops, arts and craft shops, and art galleries and the development is therefore regarded as a unique tourism hub for the area.
- ❖ The application for departure to allow for live and amplified music is regarded as undesirable from a town planning perspective since it would be out of character and the spirit within which the Hemel & Aarde Village tourism hub development was approved.
- ❖ Numerous comments/objections were received from surrounding landowners.

14. Annexures

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Objections received
Annexure E:	Services Report
Annexure F:	Comments: Building Inspector
Annexure G:	Comments: Provincial Dept of Transport and Public Works
Annexure H:	Hemel & Aarde Village Scheme Regulations and Design Guide
Annexure I:	Complaints received
Annexure J:	Internal Memo to the Municipal Manager re non-compliance
Annexure K:	Noise Impact Assess Report

SIGNATURES

REGISTERED PLANNER:

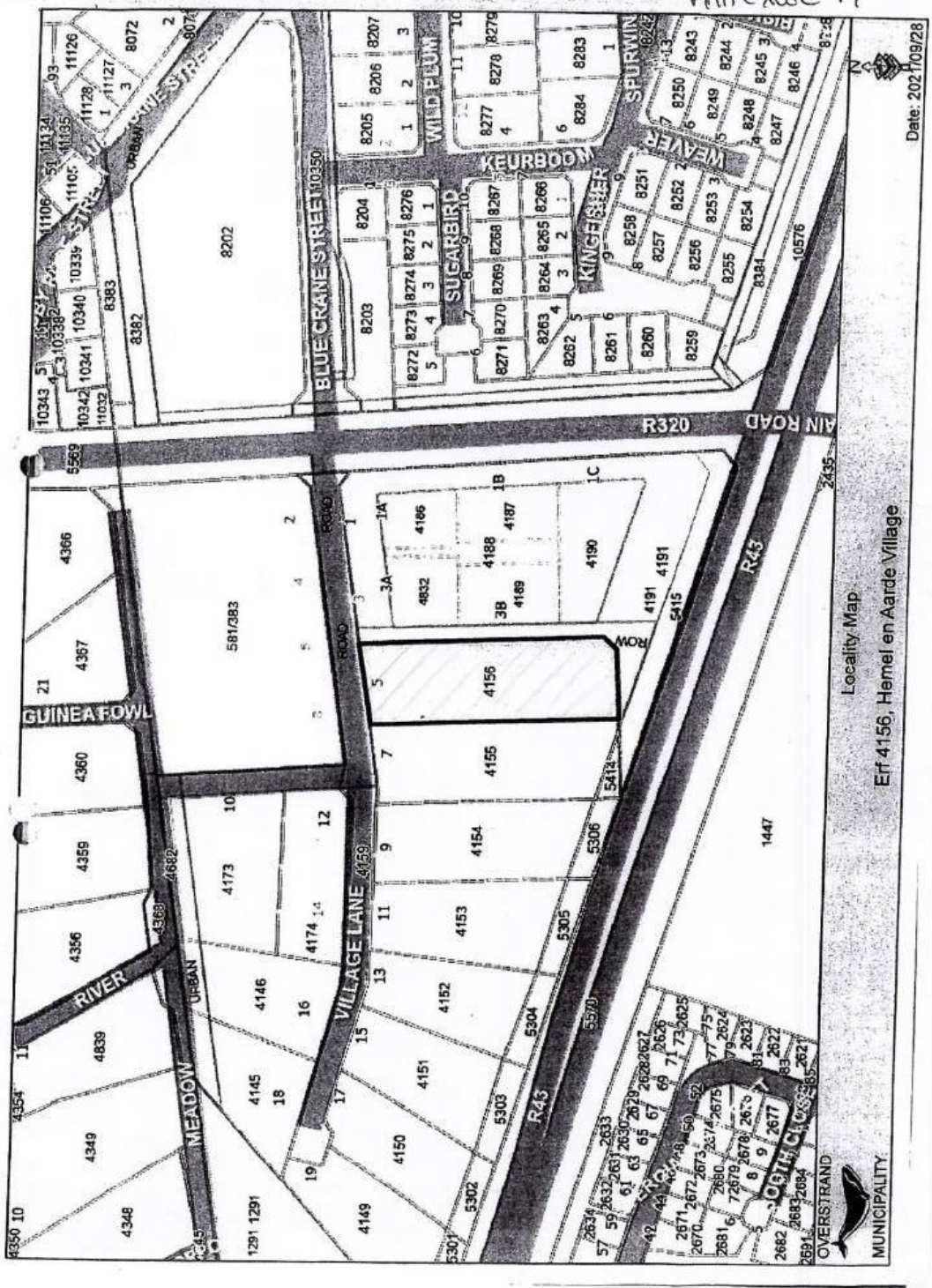
Name: **H VAN DER STOEP**

SACPLAN Reg No: **A/1708/2013**

Signature: _____

Date: _____

Annexure A

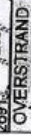


Date: 2021/09/28

Locality Map

Erf 4156, Hemel en Aarde Village

MUNICIPALITY

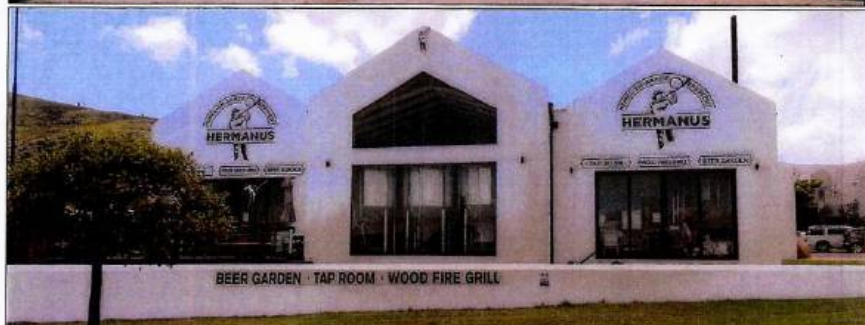


OVERSTRAND



**ERF 4156 HEMEL
& AARDE VILLAGE**
Unit 5, Village Lane, Hemel
& Aarde Village

**Application: Departure for a place of
entertainment**



Andre Wiehahn Pr Pln A/927/1996
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September 2021

29 OCT 2021

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Notes

1. Introduction	
a. Brief Refer to Annexure B for the Power of Attorney.	Interactive Town and Regional Planning was appointed by Susana Murray on behalf of the owner of the property Hermanus Microbrewery Pty Ltd to prepare and submit an application for a departure for a Place of Entertainment for Erf 4156, Hemel & Aarde Village in terms of the relevant legislation.
b. Background	<p>Hermanus Microbrewery Pty Ltd. trading as The Brewery Hemel-en-Aarde ('The Brewery') was founded in December 2018 with the intent to fill a gap in the hospitality market in the Overberg.</p> <p>The owners vision was to create a winery styled brewery that would create an inviting environment that makes guests want to linger and socialise.</p> <p>The application site is located at the north-western corner of the well-known Sandbaai intersection giving access to the Hemel-and-Aarde Valley as well as the main access from Cape Town to Hermanus.</p> <p>The character of The Brewery, situated at the base of the Hemel-en-Aarde wine valley, is intended to emulate the style and character of the valley. The Cape styled building contributed to a unique landmark facility at this prominent intersection in Hermanus.</p> <p>The existing restaurant offers a beer garden, taproom, a wood fire grill restaurant with facilities for on-site brewed craft beers, a play area, outside pizza oven and accommodates functions and events. The functions and events provides for a healthy competitive advantage within the local restaurant industry through inter alia the drawing of music enthusiasts and consumers seeking new and exciting entertainment activities. The Brewery also serves as platform for some local and regional events contributing to the local economy of the area.</p> <p>The restaurant accommodate 250 seats in an area of approximately 500m².</p> <p>The restaurant employs 30 staff members and 8 internships and also accommodates community youth development programs as well as integrating training and placement for people with disabilities.</p> <p>In summary, The Brewery strives to create an elegant dining experience that caters to people desiring quality food and beverages in a welcoming and friendly atmosphere. This atmosphere has, in a relatively short time, contributed to becoming a destination with an eccentric vibe for the local community as well as for visitors to the area.</p>

c. **Development Objective & Application Proposal**

The **development objective** is to apply for a departure for Place of Entertainment to allow for live performances on the property.

The live entertainment is intended to occur in and/or outdoors depending on the weather and circumstances of the event.

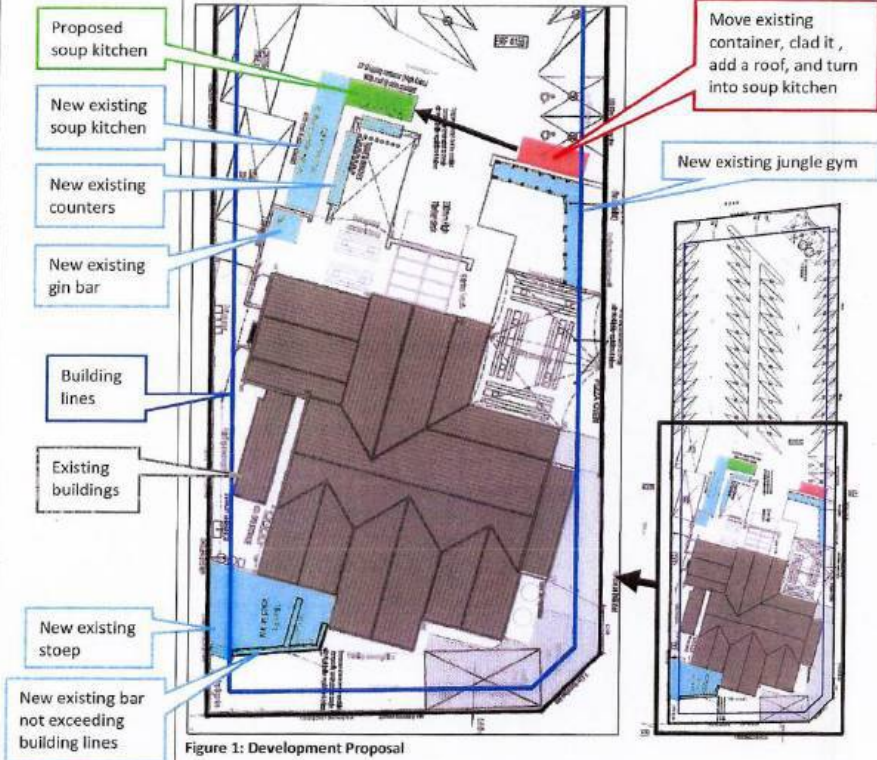
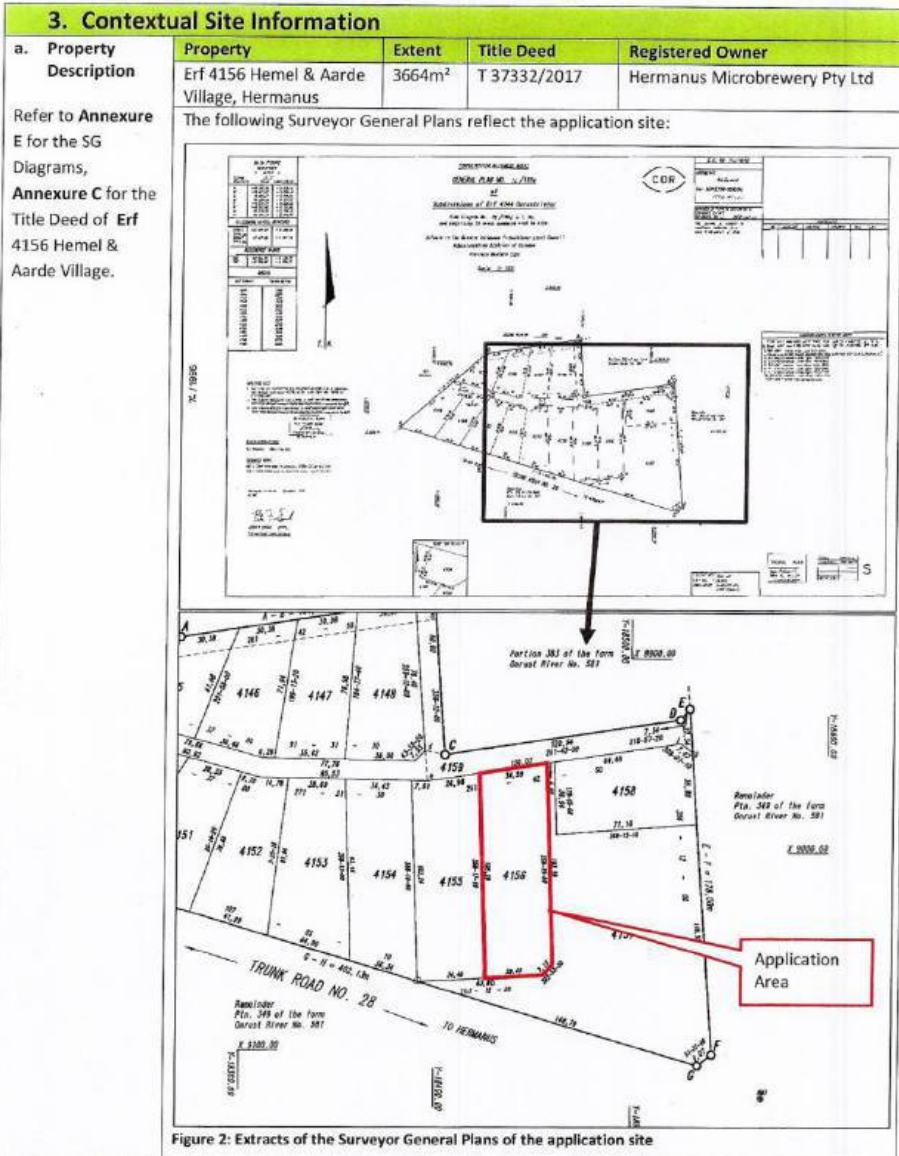


Figure 1: Development Proposal

Subsequently the **application proposal** is for:

- a departure for a Place of Entertainment

2. The Application					
<p>a. Analysis: Title Deed Refer to Annexure D for the Conveyancer Certificate.</p>	<p>The Conveyancer Monica Korf issued a certificate confirming that a restrictive title deed condition exist against the proposal on Erf 4156 Hermanus pertaining to a liquor licence, but that a liquor licence can be obtained with the consent of the relevant authority.</p>				
<p>b. Analysis: Development Criteria:</p> <p>The development parameters for Erf 4156 Hermanus as per the Overstrand Municipality Land use Scheme, 2020 are summarised as follows:</p>	Parameters	Existing Zoning:	Proposal:	Comments	
	Zoning	Special Zone	Special Zone	Consistent	
	Primary Uses	Tourism Business, Cottage Industry & Dwelling House	Tourism Business (Restaurant, Microbrewery & Place of Entertainment.)	Application is for a departure for a Place of Entertainment	
	Departure	Flats			
	Coverage	50%	26%	Consistent	
	Floor Factor	0.75	0.18	Consistent	
	Height	8m	Less than 8m	Consistent	
	Building lines	Street	4.5m 40m along Trunk Road 28 measured from the centre of the existing road as permitted by the district engineer. 22.5m along Main Road 269, which relates to a 10m building line if the road is 12.5m from the centre of the road.	4.5m Trunk Road 28 N/A (Trunk Road 28 = 45m wide)	Consistent
		Common	2m	2m	Consistent
Parking	4 bays per 100m ² floor space	26 bays required 49 bays provided	Consistent		
Definitions	<p>Scheme Regulations: Hemel & Aarde Village</p> <p>“Tourism Business” means the utilisation of a site, and / or the buildings on the site for business activities, such as deemed by the Council as important to encourage the tourism trade and seen as relevant to the tourism trade and which are related to the tourism trade and includes restaurants, guesthouses, guestrooms, winery, souvenir shops, tourist information centres, antique shops, art & crafts shops, art galleries, interior decorators, travel bureau’s, conference facilities.</p> <p>“Place of Entertainment” means a place used for commercial entertainment which may attract large numbers of people, operates outside normal business hours or generates noise from music or revelry on a regular basis and includes a cinema theatre, an amusement park, a dance hall or a night club and gambling and live music.</p>				
<p>c. Application:</p> <p>The application form is attached as Annexure A.</p>	<p>Application is subsequently made in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:</p> <ul style="list-style-type: none"> • <u>Departure from the Hemel & Aarde Village Scheme Regulations to allow for a Place of Entertainment</u> in terms of Chapter IV, Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020. 				



b. Location:
For the Locality Plans refer to Annexure F

Regional Context:

Within the regional context, the application area is located within Hemel & Aarde Village a tourism business hub at the intersection of the R43 & R320 as well as at the entrance to Sandbaai residential suburb and Hemel and Aarde Estate. Hemel & Aarde Village is part of Onrustriver.



Figure 3: Locality Plan – Regional Context

Local Context:

Within the local context the application area consists of a residential erf within Hemel & Aarde Village. The application area is located at number 27 Luke's Avenue.



Figure 4: Locality Plan – Local Context

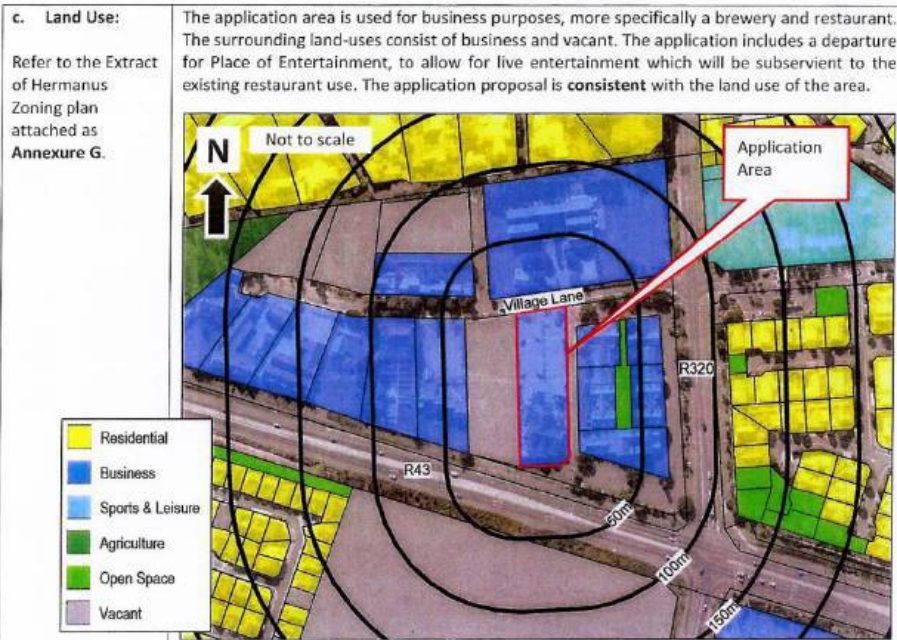


Figure 5: Google Image illustrating the residential land-use activities of the application area and surrounding properties

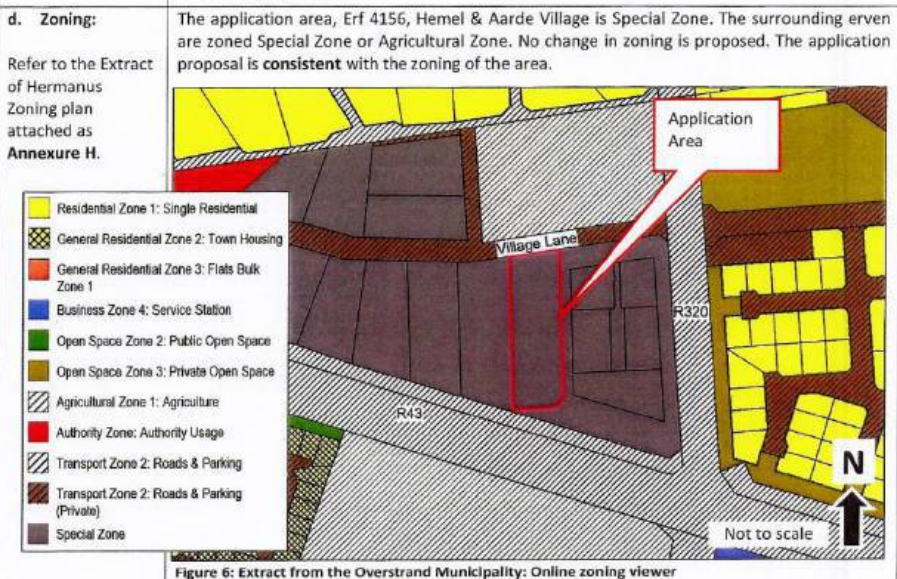


Figure 6: Extract from the Overstrand Municipality: Online zoning viewer

<p>e. Laws and policies relevant to the consideration of the application and forward planning and land use documents</p>	<p>The following policy is applicable to the application area.</p> <p>I. Overstrand Municipal Spatial Development Framework, 2020</p> <p><u>3.5 Vibrant and exciting urban areas</u></p> <p><u>Description</u> Vibrancy in the context of settlement planning refers to areas that are full of variety and vitality, that are perceived to be lively and that provide a multitude of experience. Spatially, the levels of vibrancy in settlement are depended on the levels of pedestrian activity and the number of activities that take place within the settlements. Vibrant centres attract people, are accessible and provide comfortable and safe places to socialise in.</p> <p><u>Where we want to be in 2050</u> The current hierarchy of the Overstrand settlements' urban, suburban, neighbourhood and rural centres have been strengthened, enhancing their functionality. The centres successfully provide for people's social, economic and cultural needs by presenting a variety of retail, social, recreation and leisure facilities.</p> <p>Retail and other business function have successfully been accommodated within these centres as opposed to in newly developed facilities on the peripheries of settlements. This resulted in the transformation of less efficient centres into thriving economic hubs.</p> <p>The public spaces within these centres are often filled with people engaging in social, leisure and recreation activities.</p>			
	<table border="1"> <thead> <tr> <th data-bbox="502 817 813 851">OBJECTIVE</th> <th data-bbox="813 817 1236 851">POLICIES AND POLICY INFORMANTS</th> </tr> </thead> <tbody> <tr> <td data-bbox="502 851 813 1108"> VO 1*. The main urban, suburban and rural centres of the Overstrand's settlements continue to be the focal points of human activity and functions as social and economic hubs offering a variety of employment, retail, social and recreation opportunities and a range of community facilities. </td> <td data-bbox="813 851 1236 1108"> iv. Encourage the development and transformation of urban and rural centres into people orientated as opposed to function and production orientated places. vi. Encourage and facilitate urban regeneration and restoration of under-utilised or decayed existing centres. vii. Encourage the development and recognition of vibrant social, recreation, arts and culture precincts in urban and rural centres. </td> </tr> </tbody> </table>	OBJECTIVE	POLICIES AND POLICY INFORMANTS	VO 1*. The main urban, suburban and rural centres of the Overstrand's settlements continue to be the focal points of human activity and functions as social and economic hubs offering a variety of employment, retail, social and recreation opportunities and a range of community facilities.
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3.7 An Overstrand that enables a prosperous and diverse economy

Description
 Regions that are well integrated with its surrounding spatial entities, that consist of well preserved and high quality rural and natural environments and harbour well designed settlements with strong local identity and sense of place attract and retain people and investment, contributing to economic prosperity. In order to be a prosperous area, the Overstrand should value its rural and natural environments, tourist attractions and heritage resources and profit from these economic pillars. It should furthermore stimulate economic growth and improve stability by diversifying its economy by means of introducing new sectors and expanding existing sectors with growth potential.

The desirability of the greater area as well as its individual settlements to potential and current residents can significantly impact on the ability of the labour market to attract and retain skilled labour. This especially applies to the quaternary sector The application area falls within an existing Urban Development area, along a major road and within the Urban Edge including health and education where specialised individuals have a variety of options of where to find employment.

Strategic land-use planning can be used to increase business investment in an area by

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providing greater certainty of current and future spatial scenarios and in so doing, help guide the investment decisions of businesses and developers. The flexibility of planning in this context is important in order to create a platform that is adaptable to changing circumstances.

Where we want to be in 2050

The Overstrand builds on its reputation as being a world class tourism destination attracting increasing amounts of tourists to its prime locations and facilities. Tourists in addition to visitors and new skilled labourers are drawn to the Overstrand's unique natural, heritage and cultural attributes and well-designed built environment, providing a consistent economic influx to the area.

Businesses and organisations benefit from the opportunities of connecting to markets via quality transportation links and digital networks.

A diversity of agricultural, tourism, commercial and industrial activities occur in strategic locations throughout the Overstrand's rural and urban settlements, providing a range of local employment opportunities.

Business agglomeration is strengthened by locating similar businesses in attractive and visible locations and as result of the ease with which people can connect in person, or by means of communication technology.

OBJECTIVE	POLICIES AND POLICY INFORMANTS
ECO 1. Overstrand maintains and strengthens its tourism sector.	iii. Market the Overstrand as a world-class tourism destination.
ECO 3. Existing and new commercial and industrial areas exhibit sustainable growth and complement and strengthen one another.	i. Encourage decision making regarding the development and location of new business centers based on the principle of strengthening existing centers by means of creating productive co-existence.
ECO 6. Overstrand attracts and retains highly skilled labour and entrepreneurs.	Refer policies and actions related to A liveable Overstrand and Vibrant and Exciting Urban Areas.
ECO 8. Support the expansion and retention of the Overstrand's existing local businesses and generating new local economic / business opportunities.	<ul style="list-style-type: none"> i. Assist in creating marketing strategies for local business. ii. Making local markets work well by creating places and opportunities to match supply and demand. iii. Discover propagate and promote new business opportunities through identified economic spaces. iii. Discover propagate and promote new business opportunities through identified economic spaces. vii. Persuade local stakeholders to look for specific project ideas that are quickly implementable and can make a difference for local businesses. This can be partnered and facilitated with the Economic Development Partnership (EDP).

4.3.5 Initiate – Place Specific Key Economic Development Projects / Drivers

Strategy: Stimulate economic growth and development linked to the comparative locational advantage. Municipality must identify and actively facilitate key catalyst projects in conjunction with strategic partnerships with business/investors.

It is critical that these key economic development projects predominantly be located in the areas with the highest growth potential to sustain economic growth and provide employment.

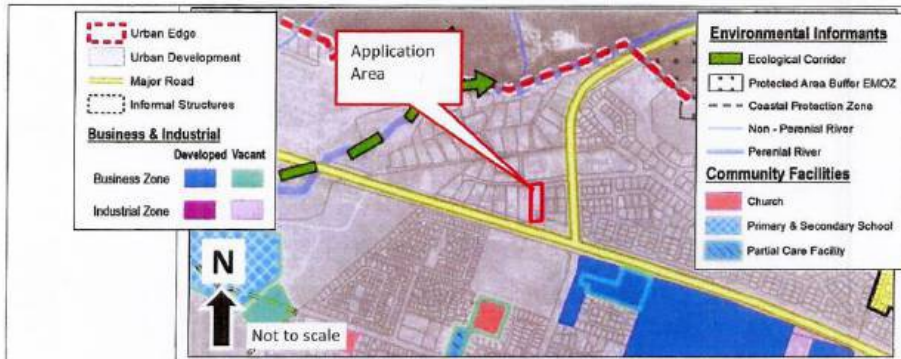


Figure 7: Spatial Development Framework 2020, Hermanus West Status Quo

Key policies directing future management and development (refer Plan 56)

ECO 1 (ii) Ensure that tourism destinations are accessible, safe and attractive by means of maintaining and developing new facilities.



Figure 8: Spatial Development Framework 2020, 2050 Spatial Proposal Hermanus West

The application is consistent with the Overstrand Municipal Spatial Development Framework, 2020.

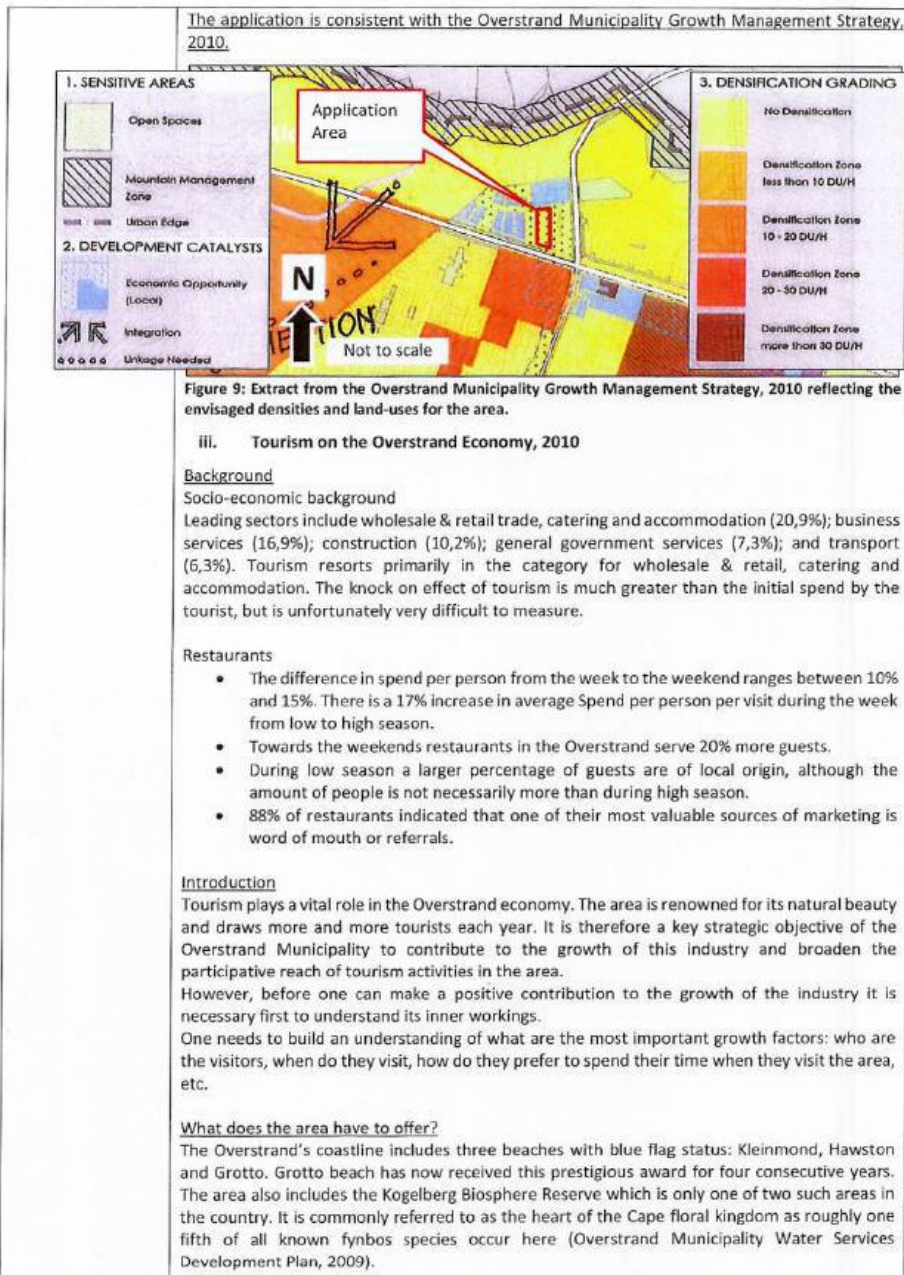
i. Overstrand Municipal Spatial Wide Development Framework, 2006

In section 5.5.5 (i) it is mentioned that the SDF is inter alia concerned with the optimum use of land. The clause further mentions the need to provide satisfactory residential environments and further that a full range of residential needs must be catered for.

The application is consistent with the Overstrand Municipal Spatial Wide Development Framework, 2006.

ii. Overstrand Municipality Growth Management Strategy, 2010

The application area is within an No Densification area. No further densification is applicable to this application. The application area is also within a Local Economic Opportunity area.



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One of the main tourist attractions of the area is the occurrence of the Southern Right Whale, frequenting the coastline between July and December. The Whale Festival, held each year during September, has been planned to coincide with the peak season for whale watching – an activity that is offered boat-based as well as land-based.

Shark cage diving has also increased in popularity, giving tourists the opportunity to see the great white shark up close and personal in the area near Dyer Island – off the coast at Gansbaai. Dolphins also frequent the Overstrand's waters and a penguin colony can be visited at Betty's Bay.

A wide range of activities are offered for nature and adventure lovers: hiking in the Harold Porter National Botanical Garden or the Fernkloof Nature Reserve; sea kayaking; canoeing and white water rafting in the Palmiet river near Kleinmond; boating, water skiing and wind surfing

on the Klein river lagoon; fishing; bird watching; mountain biking; and golfing at one of the beautiful golf courses in the area.

The Overstrand also offers many festivals throughout the year. Table 5 depicts the main festivals.

Month	Event	Event type	Town
January	Blue Flag Festival	Eco-attraction	Hermanus
January	Totalsports Challenge	Adventure/ Sport	Kleinmond
March	Cape Epic Mountain Bike Race	Adventure/ Sport	Hermanus/ Kleinmond
April	Hermanus Stanford Canoe Race	Adventure/ Sport	Hermanus/ Stanford
April	Hermanus Harbour Museum Seafood	Cultural/ Food	Hermanus
July	Hermanus Food & Wine Festival	Cultural/ Food	Hermanus
August	Kalfie fees	Cultural/ Food	Hermanus
September	Hermanus Whale Festival	Eco-attraction	Hermanus
September	Hermanus Half Marathon	Adventure/ Sport	Hermanus
October	Stanford Birding Festival	Eco-attraction	Stanford
November	Festival of the Gans	Eco-attraction	Gansbaai
December	Haswton Sea Festival	Cultural/ Food	Hawston

Seasonality

For the purpose of this report seasons were specified at the outset of the survey:

High season	December to February
Mid season	March – April; September – November
Low season	May – August

This categorisation was in line with the majority of respondents' personal experience. However, according to respondents the variance between mid and low seasons have decreased in recent years due to larger numbers of international visitors who spend longer periods of time in the Overstrand. The area used to be a very seasonal tourist destination whereas visitors are now attracted throughout the year – making seasonality less apparent, except for a large spike in visitor numbers over December.

The whale watching season brings a number of tourists to the Overstrand during the winter months. The large number of festivals being hosted in the area throughout the year also attracts more guests also during traditionally quieter months.

iv. Overstrand Local Economic Development Strategy.

Introduction

Local economic development is a collective mandate of government business and communities. It is a locally driven process by which the three stakeholder groupings work collectively to stimulate and transform the economy and create new job opportunities LED is not one specific project or programme; rather it is an approach that includes the sum total of the individual and collective contributions that build on opportunities and/or address economic development constraints The aim is to enhance the area and the community's ability to adapt to and cope changing economic conditions. A successful local economy is a prerequisite for the development of Overstrand. The particular focus of this initiative is thus on combining economic growth and poverty reduction at the local scale.

LED Goals

The proposed goals of the Overstrand economic development strategy are to:

- a. Increase economic growth to 6% per annum by 2014.
- d. Halve official unemployment by 2014 Indicator: Unemployment statistics municipal and business figures on the number of additional jobs created.

Strategic Interventions

The strategy comprises eight strategic interventions namely to:

- i. Facilitate the development of the priority economic sectors in Overstrand, by utilizing all resources at its disposal including sector development interventions being driven by other spheres of Government
- v. Create an enabling environment for business development and growth

Overstrand LED Priorities

The priorities for the local municipality are:

- 2. Putting in place an enabling policy environment that includes a spatial development framework denoting areas for economic development a sustainability strategy to protect the natural resources of the area and the reduction of red tape for businesses seeking rezoning or licenses
- 4. Creating opportunities and tools to develop businesses through procurement a partnership with Red Door and the development of a small business programme for the area
- 5. To develop a tourism strategy for the Overstrand area and a related destination marketing strategy and improve the Council's institutional capacity of the tourism bureaus

Private Sector

The key priorities for the private sector are:

- 1. Grow the key economic sectors and maximize job creation within this
- 2. Developing a tourism and destination marketing strategy with the Council and marketing of the area using these as a guideline

Enabling business environment

The trade and retail and business services sector are the backbone of the current economy along with tourism. All these businesses require an efficient municipality. In addition, small to medium businesses constitute the largest group of businesses in the Overstrand. The business development strategy needs to be cognizant of this and create opportunities appropriately. The two key projects agreed are:

- 18. Planning review to standardise zoning schemes and reduce red tape

v. Overstrand Municipality: Events By-Law

The Overstrand Municipality: Events By-Law allow for applications specific events and do not give general rights to have events at a venue from time to time.

1. Definitions

“Event Coordinator” is the area manager for the area in which the event will be held, and who will be responsible for the facilitation, coordination and approval or rejection of event applications;

“Event” –

- a sporting, recreational or entertainment event, including live acts, held outside the venue or building, or which by their nature, size or impact are considered outside the normal use parameters for the venue;
- ...

But excludes:

- events of fewer than 50 persons where there is no amplified sound or no temporary structures to be used;
- ...

6. Criteria

- (a) (a) The Event Coordinator must ensure that applications for staging events are considered in accordance with the following criteria, where applicable:
- (i) the type and size of an event;
 - (ii) impact of the event in terms of the strategic fit to the Events policy;
 - (iii) impact of the event on municipal services including services relating to noise control, traffic, parking, local amenities, public places, health and all incidental services affected by the holding of the event, logistical aspects, as well as marketing, economic, social and environmental objectives;
 - (iv) that the proposed use of the land complies with the applicable zoning scheme and any conditions applicable in terms thereof. This will include a proper investigation of the land use zones in any area where the proposed event is to be held;
 - (v) that the safety and security risk management of the event in respect of the event plan, logistics, location, site design and other activities taking place near or at the event venue and other threats to the event are in place. This risk management assessment will include, but not be limited to, obtaining details of the evacuation routes, emergency plans, site plans of access, and the inference of public open spaces;
 - (vi) the return on investment of the event, in cases where the event is sponsored fully or partly by the Overstrand Municipality; and
 - (vii) that the event complies with all applicable legislation;
 - (viii) the impact of the event on environmental protected areas.

Schedule 2: Event requirements listing

The requirement listing will depend on the size and risk profile of the event. The Municipality may request additional information as determined by the type, and profile of the event.

- (1) Description of event: including type, date, venue, locality, number and profile of participants.
- (2) Event Programme: full details and times, plus contact details of the person responsible for each aspect of the / an event.
- (3) Layout of event: including stages, marquees, catering, venue operations centre etc.
- (4) Zoning confirmation of the permitted land use or land use planning approval where necessary.
- (5) Transport and Traffic Management Plans, which may include, where applicable, proposed road closures, route plan, parking, optimal public transport utilization, and

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	<p>emergency access routes. The format of the Transport and Traffic Management Plans will be as prescribed by the Municipality.</p> <p>(6) Crowd Management Plan.</p> <p>(7) Emergency and Contingency Plans: including medical, security, emergency and facility evacuation.</p> <p>(8) Event Communication Plan: including ticket sales strategy and accreditation.</p> <p>(9) Community Participation Plan: including but not limited to contact with Councilor's; Community / Residents Organizations / Associations and Business Associations, advisory bodies, other organs of state, societies, and Overstrand Tourism. The level of engagement in terms of this plan will be dependent on the type, size, risk and locality of the event.</p> <p>(10) Environmental Management Plan, including a rehabilitation plan, financial guarantee, or any applicable environmental or heritage permission.</p> <p>(11) Integrated Waste Management Plan (including immediate precinct).</p> <p>(12) Vendors / Caterers: list of details, and use of liquid petroleum gas.</p> <p>(13) Health requirements including: certificates of acceptability, vendor licenses, ablution facilities or mobile toilets.</p> <p>(14) Completed application forms for: noise exemption and amplified sound (including public participation) and erection of stages / marquees.</p> <p>(15) Sound Engineer's Report.</p> <p>(16) Proof of submission of an application for a liquor licence's, fireworks application, and / or civil aviation application as per the specifics of the type of event.</p> <p>(17) Overstrand Municipality's services requirements: including electricity, water, waste management plan (during and after the event), transport, roads and storm water.</p> <p>(18) Indemnity forms and public liability insurance confirmation.</p> <p>(19) Written approval from venue owner / venue manager to the applicant authorizing the event organizer to the use of the facility / venue to host the event.</p> <p>(20) An assessment by the Fire Chief relating to the fire risks associated with the event.</p> <p>3. Submission of applications for approval to hold or stage events</p> <p>(b) A formal application to stage an event must be prepared by the Event Organizer and submitted to the Events Coordinator:</p> <ul style="list-style-type: none"> (i) by a person that is at least 18 years old or older; (ii) in a form and manner prescribed by the Events Coordinator; (iii) by or on behalf of a person with the necessary means and resources; (iv) within the time frames prescribed in Schedule 1 of this by-law. <p>4. Requirements and conditions</p> <p>(a) No person may hold or stage any event without obtaining a permit referred to in section 5(c) save as provided herein;</p> <p>(e) The Event Coordinator must satisfy him or herself by written documentation that relevant land use zoning regulations, environmental legislation and all health and safety regulations are complied with; that adequate public liability insurance cover and appropriate indemnity cover is obtained for an event by the Event Organizer. Similarly where an activity which may put the public at risk will be triggered, proof of appropriate specialized risk insurance, blanket liability or work cover must be provided to the Events Coordinator by the Event Organizer;</p> <p>PURPOSE AND OBJECTIVE</p> <p>WHEREAS the Overstrand Municipality recognizes that the hosting of events is a significant part of its competitive strategy and acknowledges that events have an important role to play in enhancing cultural and social cohesion in communities, supporting urban rejuvenation and economic growth;</p>
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	<p>vi. Events Policy, 2018</p> <p>1. PREAMBLE</p> <p>The hosting of events is a significant part of the Overstrand Municipality's competitiveness strategy. Events in our area play an important role to enhance cultural and social cohesion in communities, and support economic growth. Events also have a close connection to other sectors within our economy, including tourism, and addresses seasonality and sustainability challenges and imperatives. Communities are central in making events successful.</p> <p>18. NOISE CONTROL</p> <p>(a) If the events committee has reason to believe that a proposed event could cause a disturbing noise or noise nuisance, it may instruct the person intending to host the event in writing to apply for an exemption in terms of regulation (12)(a)(ii) of the Western Cape Noise control regulations.</p> <p>(b) The Applicant needs to set out full reasons for the application, and the events coordinator will further have to invite potential interested and affected parties to submit their representations and then allow the applicant to comment on the representations.</p> <p>(c) The Events Coordinator needs to consider the application, and is entitled to make the exemption application subject to certain conditions.</p> <p>(d) The Events Coordinator may grant an exemption, subject to certain conditions, including that the Events Organiser provides a noise impact assessment in terms of SANS 10328 before making a decision. One of the conditions may further limit the date and time for which the exemption applies and whether noise levels must be monitored, and if so how, and that a record of such levels must be kept. One of the key considerations the Events Coordinator must consider is whether the event is likely to adversely affect the rights of interested and affected parties.</p> <p>(e) Before the Events Coordinator takes a decision it can call upon the applicant to submit a noise impact assessment by an accredited sound engineer. If the events coordinator with the input from the events committee is satisfied that the noise will not create a public nuisance or otherwise exceed certain levels, an exemption may be granted, subject to certain conditions.</p> <p>vii. Western Cape Noise control regulations, 2013</p> <p>1. Definitions</p> <p>"disturbing noise" means a noise, excluding the unamplified human voice, which-</p> <p>(a) exceeds the rating level by 7 dBA;</p> <p>(b) exceeds the residual noise level where the residual noise level is higher than the rating level;</p> <p>(c) exceeds the residual noise level by 3 dBA where the residual noise level is lower than the rating level; or</p> <p>(d) in the case of a low-frequency noise, exceeds the level specified in Annex B of SANS 10103;</p> <p>"noise nuisance" means any sound which impairs or may impair the convenience or peace of a reasonable person;</p> <p>"rating level" means the applicable outdoor equivalent continuous rating level indicated in Table 2 of SANS 10103;</p> <p>2. Prohibition of disturbing noise</p> <p>A person may not-</p> <p>(a) cause a disturbing noise; or</p> <p>(b) allow a disturbing noise to be caused by any person, animal, machine, device, apparatus, vehicle, vessel or model aircraft, or any combination thereof.</p> <p>3. Prohibition of noise nuisance</p> <p>In so far as it causes or is likely to cause a noise nuisance, a person may not-</p>
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	<p>(a) operate or play, or allow to be operated or played, a radio, television set, gramophone, recording device, drum, musical instrument, sound amplifier, or loudspeaker system, or any similar device producing, reproducing or amplifying sound;</p> <p>(b) market or advertise any article or service for sale;</p> <p>(c) allow an animal to make noise;</p> <p>(d) discharge fireworks in a manner that does not comply with the local authority's requirements;</p> <p>(e) build, make, construct, repair, rebuild, modify, operate or test a vehicle, vessel, aircraft, model aircraft or any other object, or allow it to be built, made, constructed, repaired, rebuilt, modified, operated or tested, in or near a residential area;</p> <p>(f) use or discharge any explosive, firearm or similar device that emits any sound impulse, or allow it to be used or discharged, without the written permission of the local authority;</p> <p>(g) except in an emergency, emit a sound, or cause a sound to be emitted, by means of a bell, carillon, siren, hooter, static alarm, whistle, loudspeaker or similar device;</p> <p>(h) operate any machinery, power tool, lawnmower, power garden tool or similar device or allow it to be operated;</p> <p>(i) load, unload, open, shut or in any other way handle a crate, box, container, building material, rubbish container or any other article, or allow it to be loaded, unloaded, opened, shut or handled;</p> <p>(j) drive or operate a vehicle, vessel or model aircraft or allow it to be driven or operated; or</p> <p>(k) make any other noise not indicated in paragraphs (a)-(j).</p> <p>4. Land use</p> <p>(1) The local authority, or any other authority responsible for considering an application for a building plan approval, business licence approval, planning approval or environmental authorisation, may instruct the applicant to conduct and submit, as part of the application-</p> <p>(a) a noise impact assessment in accordance with SANS 10328 to establish whether the noise impact rating of the proposed land use or activity exceeds the appropriate rating level for a particular district as indicated in SANS 10103; or</p> <p>(b) where the noise level measurements cannot be determined, an assessment, to the satisfaction of the local authority, of the noise level of the proposed land use or activity</p> <p>(2)</p> <p>(a) A person may not construct, erect, upgrade, change the use of or expand any building that will house a noise-sensitive activity in a predominantly commercial or industrial area, unless he or she insulates the building sufficiently against external noise so that the sound levels inside the building will not exceed the appropriate maximum rating levels for indoor ambient noise specified in SANS 10103.</p> <p>(b) The owner of a building referred to in paragraph (a) must inform prospective tenants or buyers in writing of the extent to which the insulation measures contemplated in that paragraph will mitigate noise impact during the normal use of the building.</p> <p>(c) Paragraph (a) does not apply when the use of the building is not changed.</p> <p>(3) Where the results of an assessment undertaken in terms of sub-regulation (1) indicate that the applicable noise rating levels referred to in that sub-regulation will likely be exceeded, or will not be exceeded but will likely exceed the existing residual noise levels by 5 dB A or more-</p> <p>(a) the applicant must provide a noise management plan, clearly specifying appropriate mitigation measures to the satisfaction of the local authority, before the application is decided; and</p> <p>(b) implementation of those mitigation measures may be imposed as a condition of approval of the application.</p>
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	<p>(4) Where an applicant has not implemented the noise management plan as contemplated in sub-regulation (3), the local authority may instruct the applicant in writing to -</p> <ol style="list-style-type: none"> (a) cease any activity that does not comply with that plan; or (b) reduce the noise levels to an acceptable level to the satisfaction of the local authority. <p><u>5. Noise from machinery in residential areas</u> A person may not use a pool pump, irrigation pump, refrigeration unit, or any heating, ventilation or air-conditioning equipment, or any similar device, in a residential area if the noise on the property projection plane exceeds 50 dBA or exceeds the residual noise level by more than 5 dB A, except if authorised by the local authority or in an emergency.</p> <p><u>6. Places of late-night entertainment</u></p> <ol style="list-style-type: none"> (1) A person may not conduct the business of a nightclub, or any similar late-night entertainment involving amplified sound, on or from any premises, unless the premises are soundproofed sufficiently so that a disturbing noise will not be caused outside the property projection plane of the premises. (2) The local authority may require a person referred to in sub-regulation (1) to provide proof of the soundproofing or may require access to the premises to assess the efficacy of the soundproofing. (3) A person who conducts a business referred to in sub-regulation (1) on the date of publication of these regulations is exempted from the application of that subsection for a period of six months after that date. <p><u>7. Events</u></p> <ol style="list-style-type: none"> (1) A person may not stage a public event without a written exemption issued by the local authority in terms of regulation 12. (2) Subject to sub-regulation (4) and the applicable provisions of any other law, the local authority may seize any instrument or equipment used to generate music or amplify sound at a public event if- <ol style="list-style-type: none"> (a) an exemption in terms of regulation 12 has not been issued for that event; or (b) the conditions imposed in such an exemption have not been met. (3) An instrument or equipment seized under sub-regulation (2) must be kept in safe custody by the local authority which seized it. (4) A local authority must return an instrument or equipment seized in terms of sub-regulation (2) upon recovery of reasonable expenses incurred by it for the purposes of sub-regulations (2) and (3). (5) If a local authority has reason to believe that a proposed event, other than a public event, could cause a disturbing noise or noise nuisance, it may instruct the person intending to host the event in writing to apply for an exemption in terms of regulation 12(1)(b). (6) A person may not stage an event in respect of which a local authority has given an instruction contemplated in sub-regulation (5) without a written exemption issued by the local authority in terms of regulation 12. <p><u>9. Designation of employees by local authorities to perform noise control functions</u> A local authority must within a year of the publication of these regulations-</p> <ol style="list-style-type: none"> (a) designate an employee of the local authority with the necessary competencies who must be responsible for the administration of these regulations within the area of jurisdiction of the local authority; (b) designate an employee of the local authority with appropriate knowledge and skills for conducting noise control or acoustic measurement, and who is registered with a science, engineering or health-related professional body, who must be responsible for- <ol style="list-style-type: none"> (i) analysing, evaluating, approving and advising on noise impact assessments and noise management plans; (ii) approving sound mitigation measures; (iii) conducting noise impact measurements and calculating sound levels; and (iv) scrutinising sound modelling and techniques; and
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- (c) if it cannot designate an employee as contemplated in paragraph (b)-
- (i) by agreement with another local authority, appoint an official of the other local authority to fulfil the duties of such an employee; or
 - (ii) appoint a professional consultant who is qualified in noise control and competent to fulfil the duties of such an employee, when necessary.

11. General powers of local authorities and authorised persons

- (1) A local authority may-
- (a) impose conditions when granting any permission or exemption in terms of these regulations; and
 - (b) subject to the applicable provisions of any other law, place sound-level measuring instruments or similar devices, and road traffic sign or notices related to noise, at any place within its area of jurisdiction.
- (2) An authorised person may, in respect of a complaint of a noise nuisance or a disturbing noise, enter any premises to conduct any appropriate examination, inquiry or inspection subject to sub-regulation (3).
- (3) An authorised person may not enter residential premises for the purposes of sub-regulation (2) except-
- (a) with the consent of the owner or person in charge of the premises; or
 - (b) on the authority of a warrant issued by a magistrate after the magistrate has been satisfied that reasonable grounds exist to justify the warrant.

12. Exemptions

- (1) A local authority may exempt any person or venue or type of venue from any provision of these regulations-
- (a) on its own initiative; or
 - (b) on application by any person.
- (2) The applicant referred to in sub-regulation 1(b) must-
- (a) provide full reasons for the application; and
 - (b) in a manner determined by the local authority, solicit written comment regarding the application.
- (3) The process referred to in sub-regulation (2) must afford an opportunity to potential interested and affected parties to submit written representations on the proposed exemption, and the applicant may comment in writing on any representations received.
- (4) A local authority must in writing, after considering an application or a proposal for the granting of an exemption, where applicable in accordance with the principles of environmental management under NEMA-
- (a) grant an exemption and set out the conditions, if any, in terms of which the exemption is granted;
 - (b) refuse to grant an exemption and upon request provide reasons for the refusal; or
 - (c) require a noise impact assessment in terms of SANS 10328 before making a decision referred to in paragraph (a) or (b).
- (5) The conditions referred to in sub-regulation (4)(a) may include, where applicable-
- (a) the period for which the exemption is granted, including the times and days when acts that may cause noise are exempted;
 - (b) whether a notice as set out in Annexure 1 must be placed, in a clearly visible position at each public entrance to the premises;
 - (c) whether noise levels must be monitored and, if so, the manner in which it must be done and how records must be kept for inspection; and
 - (d) any other conditions of the exemption.
- (6) The local authority may amend an exemption or condition granted or imposed by it under sub-regulation 4(a)-
- (a) on its own initiative; or
 - (b) on application by the holder of the exemption.
- (7) An application in terms of sub-regulation (5)(b) must be in writing and accompanied by a motivation for the amendment.

<p>f. Noise impact assessment</p> <p>Refer to Noise Impact Assessment attached as Annexure K</p>	<p>A noise impact assessment was done for the application area by Machoy - Mackenzie Hoy Consulting Acoustics Engineers.</p> <p>Sound measurements at various points were done with a 95db source sound pressure level at the application area on the 13th and 14th of May 2021.</p> <p>4.5.1 With the source sound pressure level set at 95 dBA, the measured sound pressure level at the receiver (M2) is 55.0 dBA.</p> <ul style="list-style-type: none"> a. The measured sound pressure level at the plot boundary (M2) with the source sound pressure level set at 95 dBA does not exceed the maximum allowable day-time noise level limit. d. Evaluation of Noise Emission during Events <ul style="list-style-type: none"> i. According to the Western Cape Noise Control Regulations, 2013, the unamplified human voice is not considered as a 'disturbing noise'. Therefore all events that are hosted at Hemel-en-Aarde Brewery which do not have amplified human voice or music are not in contravention of the Western Cape Noise Control Regulations, 2013. ii. Preliminary calculations show that all outdoor events to be held (at night 22h00 – 06h00) at Hemel-en-Aarde Brewery with event (live bands/dj's) sound pressure levels below 92 dBA, will not be in contravention of the Western Cape Noise Control Regulations, 2013 insofar as the predicted noise level on the Hemel-en-Aarde Brewery plot boundary will not exceed the maximum allowable rating level according to the Western Cape Noise Control Regulations, 2013. <p>5. Recommendations</p> <p>The following is recommended to ensure that Hemel-en-Aarde Brewery does not cause a disturbing noise in terms of the Western Cape Noise Control Regulations, 2013:</p> <ul style="list-style-type: none"> a. Hemel-en-Aarde must take the necessary steps to reduce the noise level at the venue to 92 dBA. b. The specific mitigation measures are undertaken by the business owners.
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4. Motivation

Motivation for the application:

Refer to **Annexure I** for the Building Plan

a. Introduction and Background

Hermanus Microbrewery Pty Ltd. trading as The Brewery Hemel-en-Aarde ('The Brewery') is in operation since December 2018.

The prominent located application site at the Sandbaai/ Main Road intersection has become an iconic gathering place (restaurant) for the young and old of the town and also a drawcard for many visitors to the Hermanus area. Live entertainment was offered until recently, but had to be terminated on instruction of the local authority.

From a business perspective, the provision of live entertainment proved to enhance the income streams to ensure survival of the business - hence the reason for the application.

The restaurant accommodate 250 seats and 30 staff members in an area of approximately 500m².

The activities offered on the current application site also contributes to a remarkable tourist attraction by inter alia hosting a number of local and regional events and thereby contributing to the local economy of the area. These events include the Lighthouse to Lighthouse, Walker Bay Extreme, the 85km Brewery to Brewery MTB Classic and other events.

b. Proposal

The **development objective** is to apply for a departure for Place of Entertainment to allow for live performances on the property.

The specific request for a departure is to allow live music and events on the property. The proposal involves to restrict these live entertainment events strictly to between 7h00 and 22h00 with a maximum of 2 hours per evening for music and 4 hours during day time for events.

The proposal is thus for a departure to accommodate a place of entertainment on the application site.

The application area currently accommodates a container that will be moved, clad and be used as a soup kitchen.

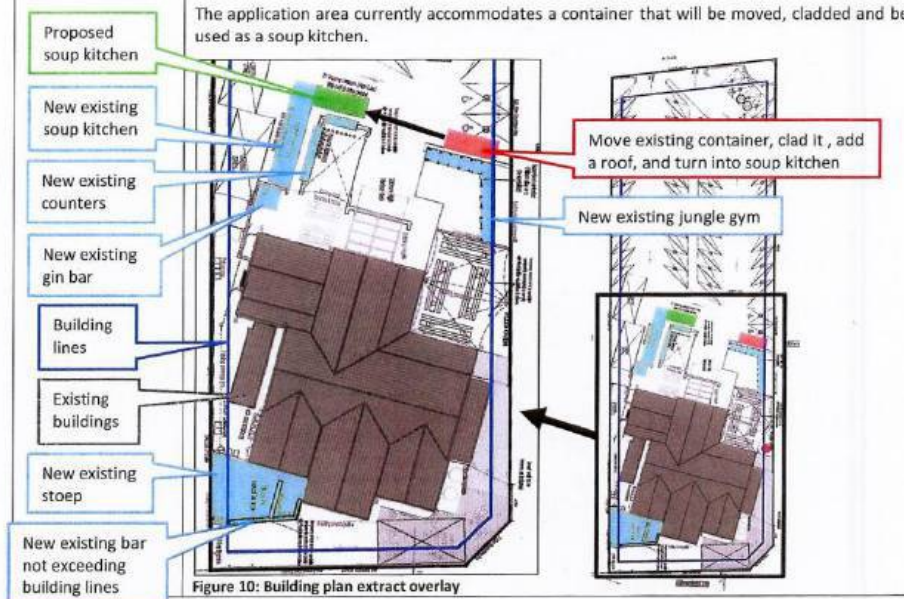


Figure 10: Building plan extract overlay

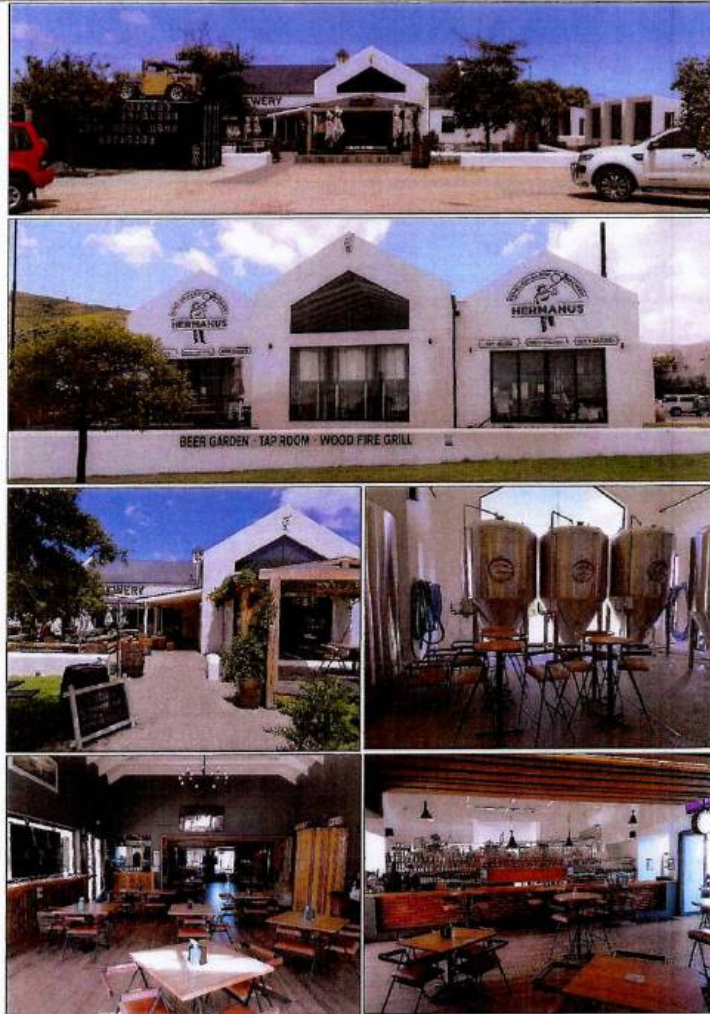


Figure 11: Photographs of the facilities on the application site

c. Desirability

The Departure Application for a Place of Entertainment

When the application is evaluated cognisance should be taken that the application site is located in a node of a variety of activities consisting of inter alia the Hemel-en-Aarde Centre (accommodating the well-known Wine Village, chef school, cycle shop etc.), Wooden Ways and Incanda furniture stores, a nursery with a tea room, the famous Hermanuspietersfontein and Whalehaven wineries as well as the Biga restaurant. Regular markets are held over weekends at the Hermanuspietersfontein winery attracting relatively large numbers of people.

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This node being at the R43 and Hemel-and-Aarde intersection is subjected to substantial traffic and road noise. Diagonally opposite the application site another activity node is thriving with the Engen Garage with a number of fast food outlets, Wonderland nursery, Agrimark and the Whale Coast Mall shopping centre. The vacant portion of land directly south and opposite of the application area is planned for more retail facilities. It is thus clear that the application site is part and parcel of the R43 / Hemel-and-Aarde intersection activity node and hub.



Most of the existing businesses within this activity node are day-time businesses with the application site which attracts activity after-hours as well. As per the definition of a place of entertainment, the application site is

- A place used for commercial entertainment
- Attracting large number of people
- Operating outside normal business hours
- Generate noise from music and live music

Based on these criteria for a place of entertainment, the application area is a well-managed and controlled business playing an important role in the hospitality and tourism industry in Hermanus.

A place used for commercial entertainment:

The proposal of The Brewery is to accommodate commercial entertainment predominantly in the form of music and live music inside and outside the building which can accommodate approximately 250 people.

The application site offers large premises of almost 3700m² surrounded by erven of similar sizes which accommodates the number of guests comfortably. On the application site almost double the number of parking required is provided. Furthermore, the open and accessible character of the area, allows visitors also to use the parking of the adjacent properties after hours when those businesses are not in operation, resulting to the suitability of the application site for a place of entertainment and to accommodate large events.

<p>Due to the character of the area of large erven, with surrounding buildings and existing traffic noise from the R43 and Hemel-and-Aarde intersection, together with the management of limited live music and operating hours until latest 23h00 (mitigating measures), the proposal for the place of entertainment is considered most suitable in terms of location in Hermanus.</p> <p><u>Attracting large numbers of people:</u></p> <p>The restaurant can comfortably accommodate 250 people inside as well as outside of the building. The numbers are accordingly limited as part of the management of the business and also in respect of the cooking facilities as well as on-site parking (even though guests can park on adjacent parking areas) resulting that that the application site does remain within manageable numbers and control.</p> <p><u>Operating outside business hours:</u></p> <p>The restaurant operates from 8h00 to 22h00 on weekdays and over weekends between 8h00 and 00h00. The live music is restricted to 22h00. The fact that most of the other businesses only operate during normal business hours and the open accessible character with the large erven surrounding the application site contribute thereto that limited disturbances are caused from the application site outside business hours.</p> <p><u>Generate noise from music and live music:</u></p> <p>The noise generated from the application site is within acceptable levels as determined by the respected and competent Machoy - Mackenzie Hoy Consulting Acoustics Engineers.</p> <p>The tests conducted involve noise sensitive receivers considering the residential development to the north and east being at the closest point 100m away from the centre of the application area.</p> <p>The noise levels to consider in such an application are the residual and ambient noise levels. These are defined in the Western Cape Noise Control Regulations, 2013 (WCNCR) as follows:</p> <p>“ambient noise” means the all-encompassing sound in a given situation at a given time, measured as the reading on an integrated impulse sound level for a period of at least 10 minutes;</p> <p>“residual noise” means the all-encompassing sound in a given situation at a given time, measured as the reading on an integrated impulse of sound level meter for a total period of 10 minutes, excluding noise alleged to be causing a noise nuisance or disturbing noise.</p> <p>It was determined that the measured sound pressure level at the erf boundary (M2) with the source sound pressure level set at 95 dBA does not exceed the maximum allowable day-time noise level limit. Furthermore, the Evaluation of Noise Emission during Events found that based on the Western Cape Noise Control Regulations, 2013, the unamplified human voice is not considered as a ‘disturbing noise’. Therefore all events that are hosted at Hemel-en-Aarde Brewery which do not have amplified human voice or music are not in contravention of the Western Cape Noise Control Regulations, 2013.</p> <p>The evaluation compiled by Machoy - Mackenzie Hoy Consulting Acoustics Engineers Preliminary calculations show that all outdoor events to be held (at night 22h00 – 06h00) at Hemel-en-Aarde Brewery with event (live bands/dj’s) sound pressure levels below 92 dBA, will not be in contravention of the Western Cape Noise Control Regulations, 2013 insofar as the predicted noise level on the Hemel-en-Aarde Brewery plot boundary and will not exceed the maximum allowable rating level according to the Western Cape Noise Control Regulations, 2013.</p> <p>However, the live music is limited to maximum at 22h00 in the evenings and the noise levels will be measured and managed by the owners of the facility.</p>
--

	<p><u>Conclusion:</u></p> <p>The application for a place of entertainment on the application site, given the character of the area (large even mostly operated during office hours, ample accessible parking on-site as well as off-site) positively contribute towards to the much needed tourism and hospitality sectors of the Overstrand and agglomeration effect along with the other businesses in the area and also serving as catalyst for business and economic growth in the respective business sectors without compromising on the non-business land-uses in the vicinity of the application area.</p> <p>d. Planning Principles</p> <p>In terms of Chapter VI of the Spatial Planning and Land Use Management Act, 2013 the following Planning Principles have been applied to the application site:</p> <ol style="list-style-type: none"> 1) Spatial Justice which refers to the need for redressing the past apartheid spatial development imbalances and aims for equity in the provision of access opportunities, facilities, services and land. <p>Possible results of the development</p> <p>The application for the departure to accommodate a place of entertainment creates the opportunity for access to community facilities for everyone and thus positively addressing past apartheid spatial development imbalances and contributing towards equity.</p> <p>The application proposal is consistent with spatial justice.</p> 2) Spatial Sustainability which refers to the fact that a spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl. <p>Possible results of the development</p> <p>The use of the property for contributes to the optimal use of the existing property and facility, providing employment, but also ensuring entertainment for the local and tourist community and thereby ensuring the protection of valuable agricultural, sensitive environmental and biodiversity rich areas.</p> <p>The application proposal can thus be deemed to be spatially sustainable.</p> 3) Efficiency which refers to the manner in which settlements themselves are designed to function in such a way that there will be a minimum need to travel long distances to access services, facilities and opportunities. <p>Possible results of the development</p> <p>The application site is located at the most prominent and central activity nodes within Hermanus resulting to the minimal need to travel long distances to enjoy the functions and recreation offered on the premises.</p> <p>The application proposal is consistent with the efficiency principle.</p> 4) Spatial Resilience which, in the context of land use planning, refers to spatial plans, policies and land use management systems which should enable communities to be able to resist, absorb and accommodate any economic and environmental shocks which might occur in a timely and efficient manner. <p>Possible results of the development</p> <p>The application site is aligned and consistent with the spatial land-use policies of the Overstrand Municipality which has proved during the current economic challenging times to resist, absorb and accommodate such economic shocks. This application for the a place of entertainment serves as additional measure to be more resilient from spatial point of view.</p> <p>The application proposal is consistent with the principle of spatial resilience.</p>
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Good Administration which, in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure that a joint planning approach is pursued.

Possible results of the development

Consultative practices are being followed in this application as it is done in consultation with the Planning Department of the Municipality who will also advertise the application in such a manner as to enable the Government and the general public to participate in the eventual decision-making process.

The application proposal is **consistent** with the principle of **good administration**.

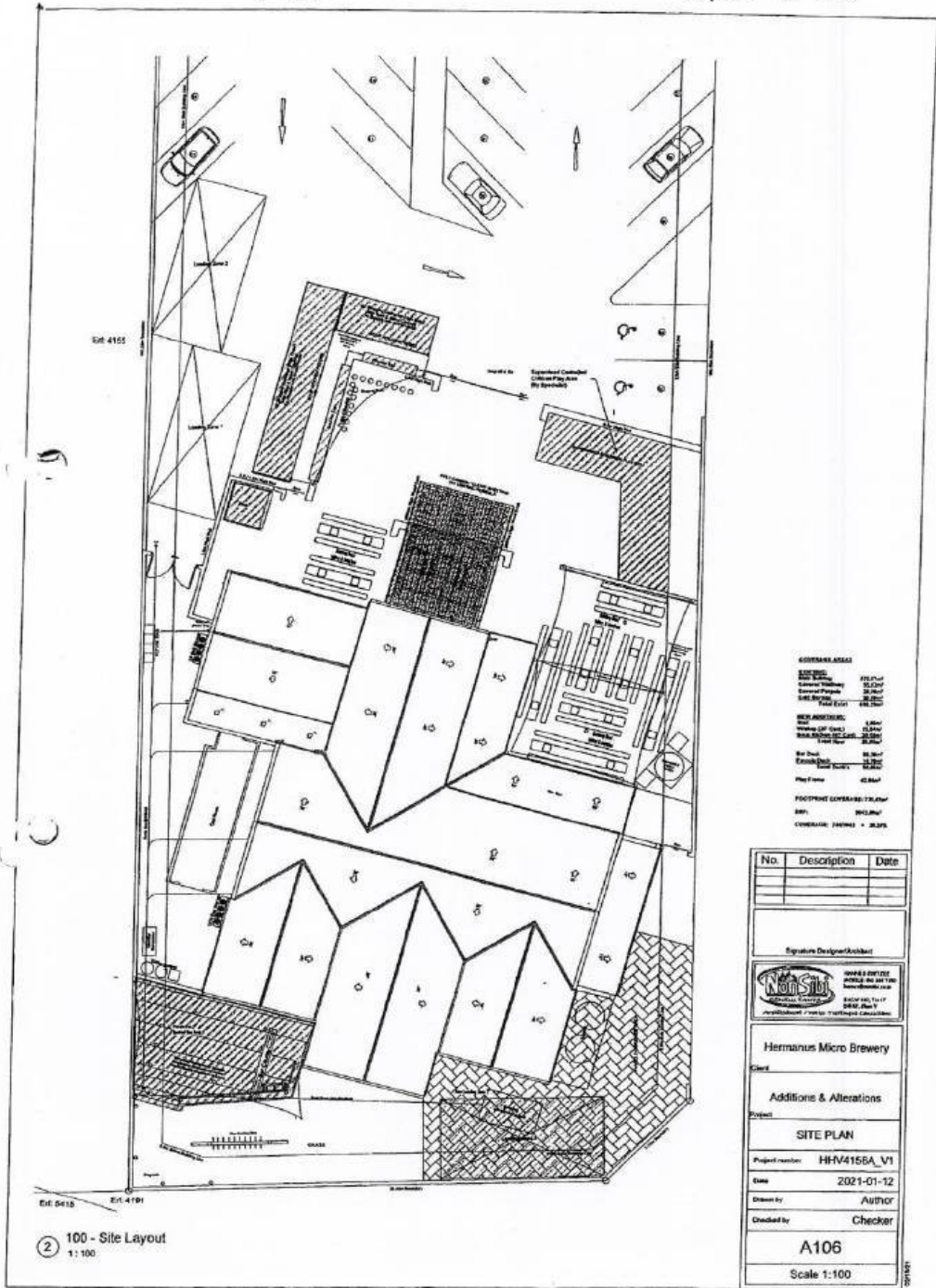
5. Conclusion

The application as motivated in this report is regarded **desirable** within its local context and well-integrated within the existing community land-use activities. Furthermore, the application proposal is considered to strike an efficient balance between the optimal use of the application area to provide a place of entertainment which creates the opportunity for access to community facilities for everyone and which benefits the local economy, without causing a detrimental impact on the environment.

It is therefore recommended that the application **be approved** for the following:

- Departure from the Hemel & Aarde Village Scheme Regulations to allow for a Place of Entertainment in terms of Chapter IV, Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020.

Annexure C1/B
 Copies of 13



100 - Site Layout
 1:100

LOT/TRACT AREA

Lot 4155	42,271.70
Lot 4191	32,207.00
Lot 4192	30,207.00
Lot 4193	42,207.00

NET AREA:

Net Area	146,892.70
Net Area (Lot 4155)	42,271.70
Net Area (Lot 4191)	32,207.00
Net Area (Lot 4192)	30,207.00
Net Area (Lot 4193)	42,207.00

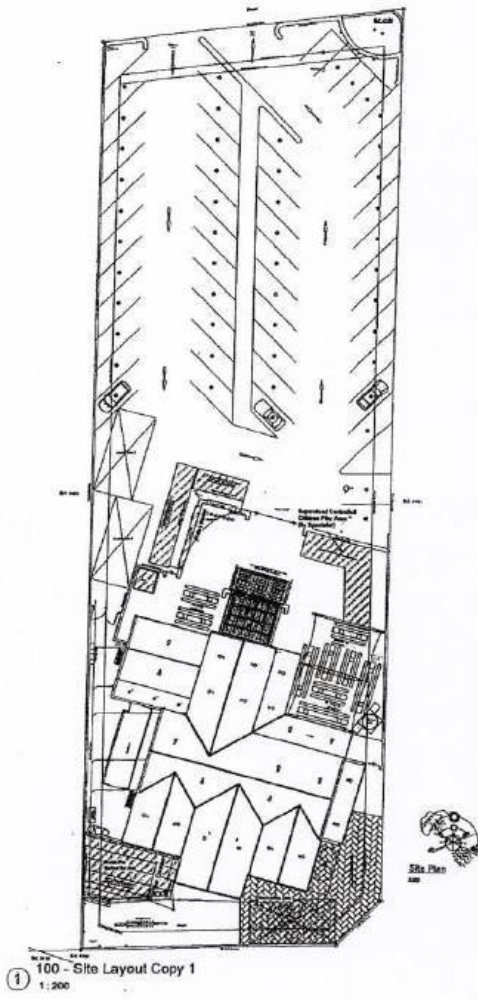
FOOTPRINT COVERAGE: 17.45%

IMP: 20.00%

COVERAGE (IMP): 34.85%

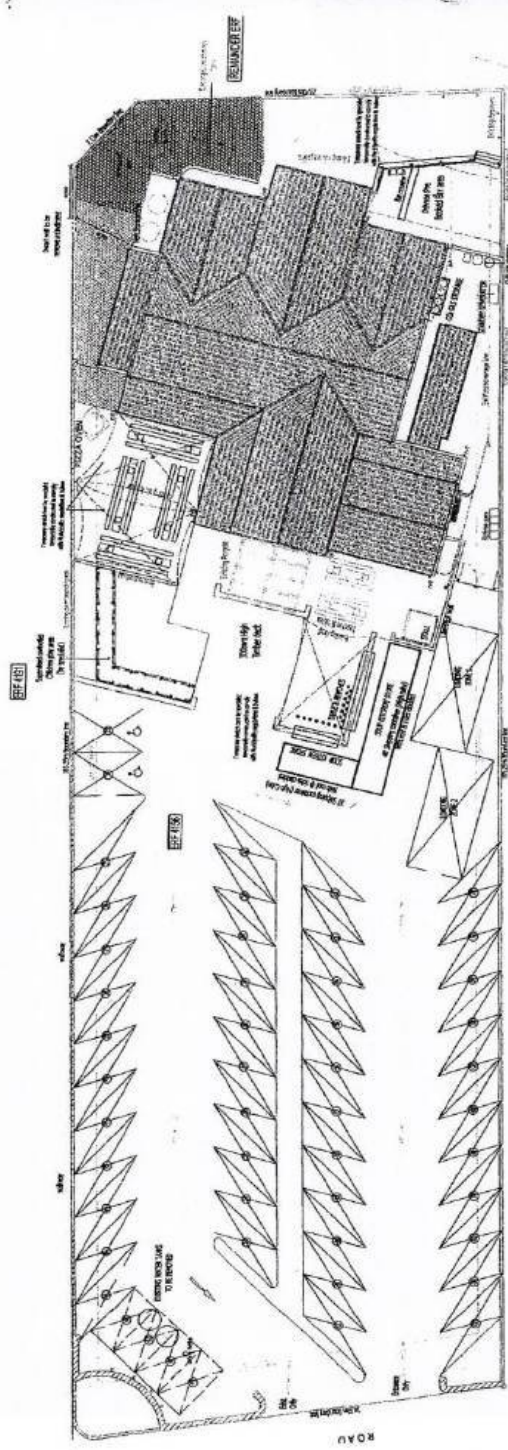
No.	Description	Date
Signature Designer/Architect		
HERMANUS MICRO BREWERY Client Additions & Alterations Project SITE PLAN Project number: HHV4156A_V1 Date: 2021-01-12 Drawn by: Author Checked by: Checker A106 Scale 1:100		

2/3



100 - Site Layout Copy 1
1:200

No.	Description	Date
Signature Design/Website		
		
Hermanus Micro Brewery		
Additions & Alterations		
SITE LAYOUT		
Project number	HHW4156A_V1	
Date	2021-01-12	
Drawn by	HC	
Checked by	SJ	
A107		
Scale 1:100		



PARKING REQUIREMENTS
 PER 15.06.010 - 4.5 SPACES PER 1000 SF
 REQUIRED/100 = 4.5 (7.4 = 28 BAYS)
 PROVIDED : 49 BAYS

TOWN PLANNING REQUIREMENTS	REQUIREMENTS		NEW	EXISTING	COVERAGE
	NEW	EXISTING			
MAIN BUILDING	185,324	603,314	185,324	603,314	974,332
COLD STORAGE	41,712	41,712	41,712	41,712	83,424
COVERED WALKWAY	41,712	41,712	41,712	41,712	83,424
TRUCKER DECK	41,712	41,712	41,712	41,712	83,424
ENTRANCE DECK AREA	41,712	41,712	41,712	41,712	83,424
DRIVE COURT	41,712	41,712	41,712	41,712	83,424
TOTAL	185,324	603,314	185,324	603,314	974,332
TRIP SITE	306,342				26%

Annexure D 1/214

The Municipal Manager
Overstrand Municipality
Email: mm@overstrand.gov.za

TP. N. (heerl
(i.d. Olivia)



CC:
Executive Mayor: annelierabie@overstrand.gov.za
Ward 7 Councillor: hlombard@overstrand.gov.za
Town Planning Application: Erf 4156 The Brewery

FILE NO:	Erf 4156
CAN NO:	1. d. N. Village Owners
	22
LABORATOR NO:	1634245

We wish to refer to the advertisement that appeared in the local media in December 2021 regarding the above mentioned application.

A copy of the advertisement was forwarded to the Chairperson of the Hemel-en-Aarde Home Owners' Association Trustee Committee on 23 December 2021 by one of the persons associated with the application. The notice was circulated to the other members of our Trustee Committee. None of them had any idea of what the application entailed.

Subsequently, it came to light that the application involves the hosting of large music concerts that would generate disturbing noise to surrounding residential areas. This became evident when some of our residents, stretching to more than halfway across the length of the Estate, complained about the booming music at one of their concerts

I therefore wish to bring the following facts to your attention:

- i) As far as our information goes, none of our residents received a formal notification of the application and their rights to comment or object to the said town planning land use application.
- ii) The nature of the application which involves the generation of high sound volume cannot be compared with a normal retail or service providing business that would require only the immediately adjoining owners be served with notices of the application.
- iii) The advertisement regarding the application was placed during the peak holiday season when many residents are away on holiday and would not have the opportunity to exercise their rights to comment on or object to the application. The timing of the placement of the notice in the media already raises red flags.
- iv) When comparing the notice regarding the proposed housing development on the eastern side of the Estate on Portion 8 of Erf 243 Hermanus, every property owner immediately on that boundary of the Estate, was served with a

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notice of the intended project. As you are aware that a number of meetings were held between the municipality and the residents of the Estate which culminated in an amicable solution.

The residents of the Home Owners Association, who are represented by the Trustee Committee, hereby formally request that extension of time be given to afford them the opportunity to study the contents of the application thoroughly so that they are in a position to exercise their right to comment or object. As no formal notification was sent to any member of our Estate, it is requested that at least 21- 30 days extension be granted for this purpose.

In fact, there is already talk that the Home Owners will be requesting a presentation of the intended land use to our residents before the expiry of the extended date.

Your kind yet urgent attention to the matter will be appreciated. Kindly respond to Mr Floris Klinck via email at floris.klinck@gmail.com.

Yours faithfully

Hemel-en-Aarde Estate Trustee Committee

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Hemel en Aarde Homeowners Association

Registration Number: 33316 2004



20 December 2021

As Trustees of the Hemel en Aarde Village Homeowners Association, we:

- Paul du Toit, Erf no. 4187 | 082 820 3331
- Pieter van Asperen, Erf no. 4153 | 082 806 3561
- Christine Henderson, Erf no. 4149 | 082 922 381
- Gerrie Heyneke, Erf no. 4150 | 083 648 9250

TP. N. (heart)
(I. Oliver)

oppose application for departure from land use planning and departure from the Hemel en Aarde Village Scheme Regulations to allow for a place of entertainment on Erf no. 4156, number 5 Village Lane, Hermanus Micro Brewery (Pty) Ltd.

1. We reject the application for an entertainment license which requires the additional, unapproved, temporary structures which do not comply with the Hemel en Aarde Design Guidelines and Scheme Regulations, inter alia, the:

- proposed kitchen
- new existing kitchen
- new existing counters
- new existing gin bar
- new existing stoep
- new existing bar
- new existing jungle gym (health and safety danger)
- new soup kitchen housed in three shipping containers

The Hemel en Aarde Village Scheme Regulation, approved by Overstrand Municipality #178536 dated 2005-07-11 stipulates:

- All developments are subject to the approval of a site development plan by council indicating all existing and proposed structures and use.
- All structures will comply with the Hemel en Aarde approved design manual and approved by the appointed overseeing architect.
- All new development proposals and land uses will be referred to the Hemel en Aarde Home Owners Association for approval.

The above do not comply, nor were these presented for the necessary approvals and should be removed.

2. We reject the application for Departure from the Hemel en Aarde Village Scheme Regulation to allow for a Place of Entertainment as it substantially deviates from the original prime use of land inter alia:

FILE NO:	Of 1156 v Hemel & Aarde
SCAN NO:	
COLLABORATOR NO:	1619428

1/2...

Trustees: G Heyneke, Chairman - P du Toit - C Henderson - P van Asperen

TP

28 DEC 2021

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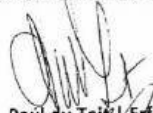
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Hemel en Aarde Homeowners Association

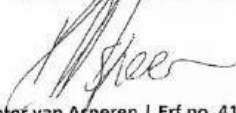
Registration Number: 35316 2003

- I. the establishment of a soup kitchen does not comply with the standard, activities, personality and character of the Village environment and
- II. pursuance of a jungle gym is not conducive in an environment where alcohol is consumed and presents a health and safety risk.
- III. to condone an override of the Hemel en Aarde Scheme Regulations will set a bad precedent for future development applications.
- IV. no business or property owner has the right, nor may take it upon themselves to independently override, or endeavour to change, the Hemel en Aarde Scheme Regulations and Guidelines which were developed and agreed with the objective to organise, manage and control the architectural design qualities and style in personality and character and the Village environment as a whole.

Signed on behalf of the member owners of the Hemel and Aarde Homeowners Association.



Paul du Toit | Erf no. 4187 Hemel en Aarde Village | 082 820 3331



Pieter van Asperen | Erf no. 4153 Hemel en Aarde Village | 082 806 3561



Christine Henderson | Erf no. 4149 Hemel en Aarde Village | 082 922 381



Gerrie Heyneke | Erf no. 4150 Hemel en Aarde Village | 083 648 9250

Yours sincerely,

Trustees | Hemel en Aarde Village Association.

Trustees: G. Heyneke, Chairman, P. du Toit, C. Henderson, P. van Asperen



KIDBROOKE PLACE

P.O. BOX 801, HERMANUS, 7200
 Cnr Chantclair Ave & R43, ONRUS RIVIER 7201
 WESTERN CAPE, SOUTH AFRICA
 OFFICE Phone: +27(0)28 316-2361 Fax: +27(0)28 316-1307
 Email: manager@kidbrooke.co.za
 SALES Phone: +27(0)28 316-1127 Fax: +27(0) 28 316-1307
 Email: sales@kidbrooke.co.za
 CARE CENTRE Phone: +27(0)28 316-1142 Fax: +27(0) 28 316-1148
 Email: caremanager@kidbrooke.co.za

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TP. N. Heath
 (M. Oliver)

28 January 2022

ATTENTION: Loretta Gillion (Loretta@overstrand.gov.za)

- Please acknowledge receipt of this document

cc: Mr. H Boshoff, Town Planner (hboshoff@overstrand.gov.za)

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER:
 APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL
 PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD ("The Brewery"))

OBJECTION

1) Name of Body and Persons Concerned

Body: Kidbrooke Place Retirement Village

Name: Ms Caroline Gibbs

Position: **Manager**, Hudd Trust (Registered owner of Kidbrooke Place)

Name: Mr Keith McClarty

Position: **Chairman**, Kidbrooke Place Residents Management Committee

Contact details at which notices will be accepted: manager@huddtrust.co.za

FILE NO:	Erf 4156
1	H & N Village Onus
SCAN NO:	21
LABORATOR NO:	1634236

2) Declaration of Interest:

This is to advise you that we represent interested and affected parties to the above application. We represent the property owners (Hudd Trust) and residents of Kidbrooke Place Retirement Village.

Kidbrooke Place is on farmland Erf 362/581 adjoining Erf 4179

The Hudd Trust was established in 1987 and then developed Kidbrooke Place Retirement Village over a 5-year period during the 1990's. The retirement village is for residents over the age of 60 and includes a frail care center. The Village was established on an old protea farm to provide a tranquil environment conducive to peaceful retirement. This facility has now been operational in this environment for more than 30 years.

3) Reason for Objection:

The reason for the objection is that the proposed permanent departure from the provision of the zoning scheme will allow for a place of entertainment on Erf 4156

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31 JAN 2022

b) 214

which permanently and irrevocably alter the environment in the vicinity where Kidbrooke Place was established more than 30 years ago.

The details of the objection (the facts and circumstances which explains the objection), are provided in the rest of this document. In this document we will:

- a) indicate the facts and circumstances which explains the objection;
- b) demonstrate the undesirable effect which the application will have on the area; and
- c) demonstrate any aspect of the application which is not considered consistent with applicable policy.

4) Location:

4.1 The locality of the ERF 4156 is shown at the centre of the circles in **Figure 1** below. The small red circle indicates an approximate distance of 150m from the Brewery and the big red circle indicates an approximate distance of 500m.

4.2 The following is an extract from the Application:

A place used for commercial entertainment:

Due to the character of the area of large erven, with surrounding buildings and existing traffic noise from the R43 and Hemel-and-Aarde intersection, together with the management of limited live music and operating hours until latest 23h00 (mitigating measures), the proposal for the place of entertainment is considered most suitable in terms of location in Hermanus.



Figure 1: Locality Map

4.3 The following is of importance:

- Three significant **residential areas** are within 100m-150m from ERF 4156
 - A: Sundew Village;
 - B: Hemel and Aarde Estate;
 - C: Glenfruin Meadows Estate)
- Kidbrooke Place **Retirement Village** (F),
 - Kidbrooke Place **Frail Care Centre** (F) and
 - **future expansion** (E) are indicated on the map.

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4.4 The proposal notes that:

This node being at the R43 and Hemel-and-Aarde intersection is subjected to substantial traffic and road noise. Diagonally opposite the application site another activity node is thriving with the Engen Garage with a number of fast food outlets, Wonderland nursery, Agrimark and the Whale Coast Mall shopping centre. The vacant portion of land directly south and opposite of the application area is planned for more retail facilities. It is thus clear that the application site is part and parcel of the R43 / Hemel-and-Aarde intersection activity node and hub.

4.5 The fact is that the road noise is not nearly as polluting as amplified sound, particularly during the night. It is also not clear yet that the area directly south will be used for more retail facilities. These any event do not generate significant noise pollution.

5) Noise Impact:

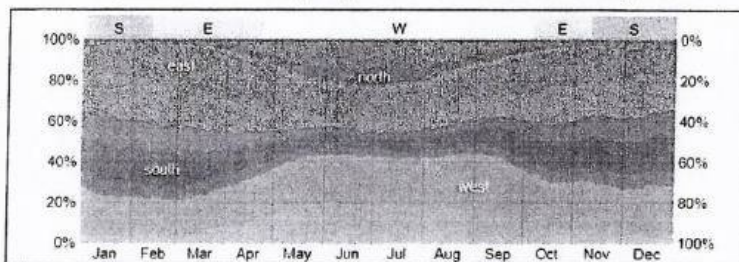
5.1 In the application no mention is made of these noise sensitive areas that have been in existence for many years.

5.2 While it appears that Kidbrooke Place is a significant distance away from the point of live amplified music, the following **factors** play a large roll in exacerbating the disturbance that the amplified music creates:

- **Wind direction and duration:** Figures 2 and 3 illustrates the predominant wind direction throughout the year. During the summer months when the proposed outdoor facility will be mostly in use, the wind will carry the amplified music in the following directions:

- ±35% From the east to the west (green) – to Kidbrooke Place
- ±35% From the south to the north (red) – to Glenfruin Meadows Estate,
- ±30% From the west to the east (pink) – to Hemel and Aarde Estate,

It is therefore very clear that all the surrounding residential areas will suffer from the amplified noise carried by the predominant winds into their living areas.



Figure

2: Wind direction per month (© WeatherSpark.com)

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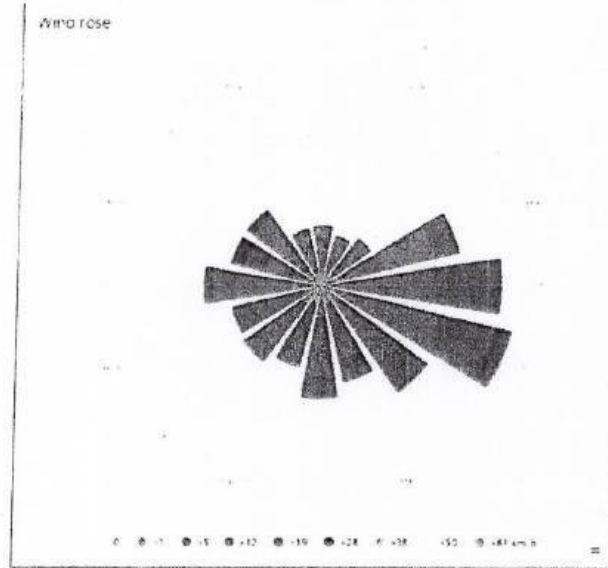


Figure 3: Wind direction all year

Figure 3 illustrates that the E/ESE wind direction from ERF 4156 towards Kidbrooke is predominant (>1 000 hours) throughout the year.

The effect of wind on sound downwind is well documented in literature. The wind can help "carry" sound downwind. For long distances, the wind can cause the sound signal to bend: the sound is refracted. When the wind is blowing in the same direction as the sound, the sound is refracted towards the ground: the conditions are, therefore, favourable for sound propagation. (*softdb*, 14 May 2019, *General acoustics*)

In addition, due to temperature inversion and sound refraction towards the ground, sound is also diverted back to the ground at further distances from the source at night when colder temperatures are experienced in the Onrus valley making **amplified sound events at night** even more of an disturbance. See illustration below.

Refraction of sound waves, why you can hear your neighbors across the lake better at night. (Copyright 2019 KEYC)

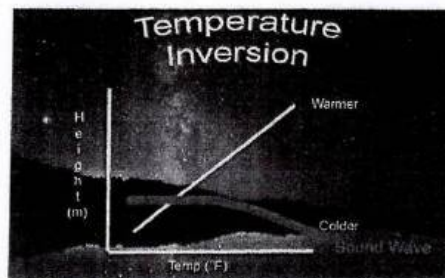


Figure 4: Example of Sound Refraction

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References of literature can be provided if required.

This would explain the significant noise levels of noise disturbance experienced by residents of Kidbrooke from recent amplified sound events at ERF 4156. This will happen in the future again, even though theoretical sound regulations may have been complied with.

- **Topography:**

Figure 5 illustrates the topography of the area. This shows that the location of Kidbrooke Place is situated against the Onrus mountains opposite the Onrus river valley. The result is that the mountain behind Kidbrooke forms a natural amphitheater for any sounds generated.

This location higher against the mountain and the surrounding topography, together with the impact of the wind and its predominant direction makes the level of disturbance due to amplified sound originating from ERF 4156 very significant, even at a distance of 500m from the source.

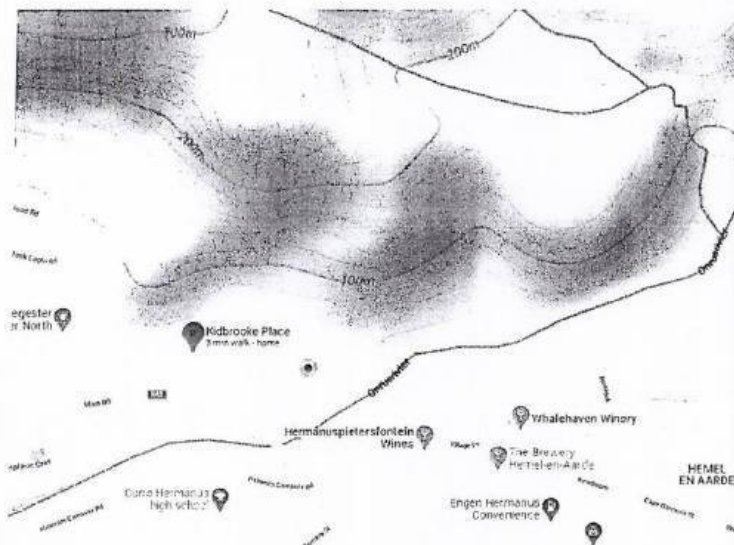


Figure 5: Topography of the area

6) Noise Impact Assessment

6.1 Noise measurements by Machoy - Mackenzie Hoy Consulting Acoustics Engineers. The presentation of the noise measurements provides no assessment of the effect of the direction of the predominant winds, the topography and the night time events (with their particular sound refraction impacts) on the surrounding properties and residents.

6.2 The noise survey from an environmental noise point of view has to be done during the day and the night (environmental noise) at the different noise measuring points. This will have to be done to get the baseline noise data and to determine the noise increase when the amplified music is generated. This will be required to determine the noise intrusion levels and to compare with the Noise Control Regulations, 1999 and SANS

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10103:2008 (recommended levels for residential areas). More information can be provided if required.

6.3 The following is an extract from SANS 10103:2008:

The values given in columns 2 to 4 of table 2 are typical rating levels that should not be exceeded outdoors in the different districts given in column 1. Outdoor ambient noise exceeding these levels **will be considered to be annoying to the community** (see 4.5.4).

Table A 4 SANS 10103:2008, Table 2 – Typical Rating for Noise in Districts

Type of district	Equivalent continuous rating level (LReq,T) for noise, dBA					
	Outdoors			Indoors, with open windows		
	Day-night LR,dna	Day-time LReq,db	Night-time LReq,nb	Day-night LR,dna	Day-time LReq,db	Night-time LReq,nb
a) Rural districts	45	45	35	35	35	25
b) Suburban districts with little road traffic	50	50	40	40	40	30
c) Urban districts	55	55	45	45	45	35
d) Urban districts with one or more of the following: workshops; business premises; and main roads	60	60	50	50	50	40
e) Central business districts	65	65	55	55	55	45
f) Industrial districts	70	70	60	60	60	50

NOTE 6 on Table2: The noise from individual noise sources produced, or caused to be produced, by humans within natural quiet spaces such as national parks, wilderness areas and bird sanctuaries should not exceed a maximum A-weighted sound pressure level of 50 dBA at a distance of 15 m from each individual source.

Table A 5 SANS 10103:2008, Table 5 – Categories of Community/Group Response

Excess (Δ LReq,T) a dBA	Estimated community/group response	
	Category	Description
0 – 10	Little	Sporadic complaints
5 – 15	Medium	Widespread complaints
10 – 20	Strong	Threats of community/group action
>15	Very strong	Vigorous community/group action

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6.3 The following is an extract from Provincial Gazette Extraordinary 7141:

Places of late-night entertainment

6. (1) A person may not conduct the business of a nightclub, or any similar late-night entertainment **involving amplified sound**, on or from any premises, **unless the premises are soundproofed sufficiently so that a disturbing noise will not be caused outside the property projection plane of the premises.**

(2) The local authority may require a person referred to in subregulation (1) to **provide proof of the soundproofing**, or may require access to the premises to assess the efficacy of the soundproofing.

6.4 The proposal by the applicant does not provide any proof that the above and other requirements have been assessed and/or will be complied with if approval is granted.

7) Impact on Property Environment and Values

7.1 The establishment and location of Kidbrooke Place Retirement Village was specifically chosen by the original farm owner (Hudd family) for the rural peace and tranquility within a farmland between the Onrus river and Onrus River mountain range

7.2 The Kidbrooke Place Retirement Village (and possibly some of other surrounding properties) are marketed and sold as located in a peaceful and tranquil farmland type environment against the Onrus Mountain.

7.3 The Hemel & Aarde Village was proposed and established under Rural Zone 3: Agri-Village (R3) which specifically does not allow for a place of entertainment. The Special Zoning of ERF 4156 does not allow for a departure of this nature as proposed, and it is not in keeping with the promise of a tranquil 'country lifestyle' envisaged and marketed originally.

7.4 The establishment of an outdoor entertainment area with amplified sound systems within the sound area of Kidbrooke will have a major undesirable impact and negatively affect the value of the Hudd Trust investments and quality of life for the residents.

7.5 It is definitely not acceptable to the Hudd Trust and residents of Kidbrooke Place.

8) Historic Sound Events at ERF 4156:

8.1 Numerous amplified sound events have recently taken place at Erf 4156 without proper licences in place and in contravention of legal notices served on it. We have not lodged complaints as we are aware that attempts by owners of neighboring properties to prevent or mitigate these were without success.

8.2 The Applicant states in his application that:

"the live music is limited to maximum at 22h00 in the evenings and the noise levels will be measured and managed by the owners of the facility."

"Based on these criteria for a place of entertainment, the application area is a well-managed and controlled business playing an important role in the hospitality and tourism industry in Hermanus."

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- 8.3 The applicant may be of the opinion that the business is well managed and controlled. The residents in the area do not agree with regards to many aspects of the impact on their lives. In addition, if another operator takes the premises over it may even become worse if there is no effective control over the sound pollution and other related matters.
- 8.4 It is clear that the owners of the Brewery have not taken their legal requirements and noise sensitivity of the area (and its residents) seriously in the past. There is also no reason to believe that they will alter their behaviour in the future.

9) Business Hours

9.1 The Proposal indicates:

The restaurant operates from 8h00 to 22h00 on weekdays and over weekends between 8h00 and 00h00. The live music is restricted to 22h00. The fact that most of the other businesses only operate during normal business hours and the open accessible character with the large erven surrounding the application site contribute thereto that limited disturbances are caused from the application site outside business hours.

- 9.2 This statement is **totally misleading**. The noise pollution will have very little to do with the other businesses. It will have overwhelmingly to do with the residence that live in what has been and is supposed to be a relatively tranquil environment.
- 9.3 The Proposal also indicates that on any day of the week, amplified outdoor music may be heard through:

"live entertainment events strictly to between 7h00 and 22h00 with a maximum of 2 hours per evening and 4 hours during the daytime for events".

- 9.3 These conditions are completely unacceptable to our community.

10) Stakeholder Engagement

- 10.1 There is no indication of any stakeholder engagement with the residents on the surrounding residential properties. The actual experiences of the recent past must be taken into account in making a decision on the acceptability of the proposals to the interested and affected parties.
- 10.2 We have no record of any Stakeholder Engagement w.r.t. this to residents of our areas. It warrants discussion and the involvement of the residents in the area.

11) Conclusion

11.1 The proposal concludes:

*Furthermore, the application proposal is considered to strike an efficient balance between the optimal use of the application area to provide a place of entertainment which creates the opportunity for access to community facilities for everyone and which benefits the local economy, **without causing a detrimental impact on the environment**.*

13/214

11.2 The objection (only looking at the noise pollution factor, excluding the other impacts for adjoining properties), concludes that the above goal will not be achievable and the residents of the area will be impacted very negatively as a result of the approval of this proposal.

12) Mitigating Measures

If the application should be approved – at least the following measures, should be implemented to mitigate the impact;

- 12.1 Appoint an industry expert in the acoustic and environmental field to undertake a comprehensive Noise Impact Assessment taking into account the geographical and wind factors relating to sound amplification in the area.
- 12.2 Initiate a stakeholder process with property owners in the area of the Erf 4156 for assessment of the impact of this application before making a decision on this application.
- 12.3 Limit the number of events allowed that amplified live or reproduced music will be allowed.
- 12.4 Limit the hours for live / amplified music to not exceed certain times and hours.
- 12.5 Restrict amplified music systems to indoors with adequate acoustic measures to limit sound.
- 12.6 The Local Authority must have effective equipment and qualified staff to monitor and enforce the regulations in terms of noise control.
- 12.7 An undertaking from the Hermanus Municipality to implement the conditions of the departure application with no relaxation - in particularly for noise.

Yours faithfully,



Ms C Gibbs

**Manager Hudd Trust
Manco**

Date: 28 January 2022



Mr K McClarty

Chairman Kidbrooke Place

Date: 28 January 2022

14/214



Enquiries: A.J. Möhr
Date: 26 January 2022

Office of the Director Infrastructure and Planning, Town Planning
Overstrand Municipality
Hermanus

TP-A Theart
(Holivier)

Send by Email

Attention: Loretta Gillon

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER: APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD ("The Brewery"))

In reference to the above, and your request today that the email sent today must be on a formal Glenfruin Meadows Homeowners Association letterhead.

This letter serves comply to your request and endeavour to summarise objection correspondences I believe you received from owners of Glenfruin Meadows, regarding the application for Departure stated in the heading above.

In this instance is the HOA purely acting in an administrative capacity, and I will appreciate if you could keep us updated with the process, while the HOA will endeavour to keep the members of Glenfruin Meadows informed of the situation.

Glenfruin Meadows consist of 27 erven of which 2 erven is co-owned by the owners of the 25 residential erven. Glenfruin Meadows also rents the equestrian property from the Overstrand Municipality.

It is my understanding that more than 75% of the members (Owners) in Glenfruin Meadows objected to this application for a departure. I am aware of 8% of the members that stated on social media that they support the application but am not aware that they formally informed the Municipality as such.

The objections to my knowledge includes, but are not limited to:

- Access challenges for Municipal Services, Fire, Police, Medical and General Safety due to probable congestion;
- Congestion challenges due to insufficient formal parking stated in the application;
- Access challenges into and out of Glenfruin Meadows due to probable congestion;
- Access challenges onto and from the R320 due to probable congestion;
- Unacceptable noise impact;
- The negative influence on the tranquillity bought into, when purchasing land in Glenfruin Meadows;
- The negative influence on property values;

FILE NO:	EL 4156 ✓
PLAN NO:	Hemel & Aarde
LABORATOR NO:	Glenfruin
	1632430

27 JAN 2022

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- Setting a precedent for other adjacent and nearby business to also apply for entertainment licence departures
- The wider meaning, allowable use and resultant effect on the surrounding community of a property with a entertainment licence.

I trust that the Overstrand Municipality will consider all comments, and will provide further information on how the concerns stated by directly affected parties will be addressed.

Kind Regards



Dolf Möhr (Chairman)



TP-A Theart
(Hollivier)



L Gillion

From: Adolf Mohr < >
Sent: Tuesday, 25 January 2022 17:01
To: L Gillion
Cc: 'Glenfruin Meadows HOA'; HPM Admin; gmail.com;
 /gmail.com; 'Gerda Mohr'
Subject: Erf 4156 Hemel & Aarde Village (Brewery)
Importance: High

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER: APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD ("The Brewery"))

Good day Loretta

In reference to the above, this email serves to summarise objection correspondences I believe you received from owners of Glenfruin Meadows, regarding the application for Departure.

In this instance is the HOA purely acting in a administrative capacity, and I will appreciate if you could keep us updated with the process, while the HOA will endeavour to keep the members of Glenfruin Meadows informed of the situation.

Glenfruin Meadows consist of 27 erven of which 2 erven is co-owned by the owners of the 25 residential erven. Glenfruin Meadows also rents the equestrian property from the Overstrand Municipality.

It is my understanding that more than 75% of the members (Owners) in Glenfruin Meadows objected to this application for a departure, and I am aware of 8% of the members that stated on social media that they support the application, but am not aware that they formally informed the Municipality.

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- Congestion challenges due to insufficient formal parking stated in the application;
- Access challenges into and out of Glenfruin Meadows due to probable congestion;
- Access challenges onto and from the R320 due to probable congestion;
- Unacceptable noise impact;
- The negative influence on the tranquillity bought into, when purchasing land in Glenfruin Meadows;
- The negative influence on property values;
- Setting a precedent for other adjacent and nearby business to also apply for entertainment licence departures
- The wider meaning, allowable use and resultant effect on the surrounding community of a property with a entertainment licence.

I trust that the Overstrand Municipality will consider all comments, and will provide further information on how the concerns stated by directly affected parties will be addressed.

Kind Regards

Dolf Möhr

FILE NO: EL 4156
Hemel & Aarde
CAN NO:
07
LABORATOR NO: 1631740

26 JAN 2022

17/214

L Gillion

From: Adolf Mohr < >
Sent: Wednesday, 26 January 2022 17:43
To: L Gillion
Cc: 'Glenfruin Meadows HOA'; HPM Admin; gert.dp.pretorius@gmail.com; Lawsonsmitjames@gmail.com; 'Gerda Mohr'
Subject: ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER: APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD ("The Brewery"))
Attachments: scan.pdf
Importance: High

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER: APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD ("The Brewery"))

Dear Loretta

With reference to the email trail below. I confirm that you telephonically clarified that you do not require all the individual objections through the Homeowners Association as was understood from your email below. You only require the email, that is in the email trail below, transferred to a formal letterhead.

The attachment comply to that request.

I will appreciate that you also email responses to the formal email address glenfruin.meadows@gmail.com

The postal service cannot be relied upon as the HOA still has not received the registered letter from the Municipality.

Thank you for your quick and kind assistance thus far.

Kind Regards

Dolf Möhr



From: L Gillion <loretta@overstrand.gov.za>
Sent: Wednesday, 26 January 2022 08:24
To: Adolf Mohr < >
Subject: RE: Erf 4156 Hemel & Aarde Village (Brewery)

Dear Mr Mohr

Receipt is hereby acknowledged of your email.

Kindly provide the Homeowners' objections/comments on a formal letterhead with the relevant your postal address indicated.

Regards



18/214
TP-A Theart
(Hollivier)
25 January 2022

To whom it may concern,

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER.
APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING (obo
HERMANUS MICROBREWERY (PTY) LTD ("The Brewery"))

Introduction

I address you in the following capacity:

My name is Mrs Lesley Hanson-Moore, owner of Erf 4359, Swallows Loft Guest house at Erf 4359, number 19 Glenfruin Meadows, Onrus River.

I am a Part Owner of erf 4368 and erf 4362, Onrus River (Glenfruin Meadows common age).

My email addresses for notices and serving of documents is

I have lived permanently at 19 Glenfruin Meadows for 19 years. My late husband John Hanson-Moore and I invested in the property and did major improvements in setting up a guest house on this quiet and tranquil estate and started the business 17 years ago. I continue to operate my 4 star luxury self catering villa on my own and have regular local and international visitors.

The guest house brings me my primary source of income and I invest a large amount of personal time and energy into its operations.

My residence and guest house is approximately 110 meters from the applicant site, hereinafter referred to as The Brewery, and as a Glenfruin Meadows property owner, my property has a servitude right of way to traverse through H&A Village and past The Brewery to get to my property. Glenfruin Meadows, developed in 1995, is a peaceful, country style private estate with common age areas including river frontage, bridle trails and an equestrian centre which serves as a community facility for outsiders too.

Having the H&A Village on my doorstep should be a boon to me and my business as long as its nature and character remains as intended in its Scheme Regulations. I expect the Municipality to uphold the Scheme Regulations in their entirety and not allow this departure for a "place of entertainment". I have already experienced numerous incidences since The Brewery opened its doors in 2018 where the outdoor live music and PA systems have impacted severely on the enjoyment of my property by both myself and my paying guests.

1. The Application

It is noted that according to the Town Planning Application Form completed by the applicant, the application is for:

Permanent Departure from the provisions of the zoning scheme;

Consent use provided for in the zoning scheme – Section 16(2)(o); and

the Determination of an administrative penalty – Section 16(2)(q).

The application is for a "place of entertainment" which means a place used for commercial entertainment which may attract large numbers of people, operates outside normal business hours or generates noise from music or revelry on a regular basis and includes a cinema, a theatre, an amusement park, a dance hall or a night club and gambling and live music". (Overstrand Municipality Land Use Scheme, 2020).

As per the application on page 20, "the specific request for a departure is to allow live music and events on the property".

An "event" is defined as:

(a) a sporting, cultural or entertainment event, including live acts, held outside the venue or building, or which by their nature, size or impact are considered outside the normal use parameters for the venue;" (Overstrand Municipality: Events By-Law).

2. Location in H&A Village which is a Special Zone with its own Scheme Regulations

The Brewery is located in H&A Village which has a municipal zoning of "Special Zone".

25 JAN 2022

FILE NO: EL 4156 ✓
Hemel & Aarde
CAN NO:
Lesley
APPLICATOR NO:
1631423

(9)214

Their unique Scheme Regulations define their properties' primary use as "Tourism Business/Cottage Industry & Dwelling House" with the only additional consent use being for flats. It is clear from the Scheme Regulations as well as the Design Manual that a calm country environment was intended with site use including activities such as restaurants, guest houses, guest rooms, winery, souvenir shops, tourist information centres, antique shops, arts & crafts shops, art galleries, interior decorators, travel bureau, conference facilities, manufacture of pottery and art and dwelling houses which could be attached to a tourism business or cottage industry concern. This, in general, could be referred to as the whole ethos of the H&A Village when originally contemplated and given Special Zoning status. It is to be noted that Glenfruin Meadows was also proclaimed around a similar time and that a logical assumption of the compatibility with the H&A Village and surrounds would have been made by the developers and subsequent owners of residential erven.

The Brewery is applying for a land use departure for an additional land use that the specific zoning scheme does not provide for. The specific zoning of the property does not have a place of entertainment as a primary right or a consent use, so a departure would be required. Not all departures are undesirable – but in my view this one is - and it needs to be considered in terms of the elements of desirability or not, which are numerous.

I believe it sensible that all purchasers of a property investigate what is allowed and not allowed prior to purchasing any property and can only believe the owners of erf 4156, The Brewery, who are now asking for a departure, did their homework beforehand. In other words, they knew what they were buying into and what was allowed under the Special Zoning status. If the applicant wanted to establish a place of entertainment, they should have done so in an area suitably zoned as such i.e. with consent use possibilities of which there are a number in the Overstrand.

It must be noted that the change in use from the current zoning would be an extreme change, unwanted by the nearby properties, and which will severely and negatively influence not just the lives of the property owners but also the value of the property they own.

An application for a departure such as this is therefore out of the ordinary and it is to be noted that, at the outset, this land use was clearly never the intention of the H&A Village developers i.e. to accommodate a place of entertainment in the H&A Village. It will have a negative effect on all the surrounding property owners.

For this and other reasons the departure is undesirable.

3. Access road and traffic

It is the clear intention of The Brewery to draw large additional crowds of people to the venue during not only current normal operations (which is their right) but potentially thousands of additional people and extensive additional vehicular traffic when hosting or participating with neighbouring properties in holding big events.

The access road into H&A Village intersects with the main road to Caledon (R320) and is situated directly opposite the large Hemel en Aarde Estate entrance. The traffic light on the main road to Hermanus (R43) as well as the first bend in the road towards Caledon are both approximately 150 meters away from the stop street, making access onto the R320 difficult, even under normal traffic situations. The application is also not supported by a Traffic Impact Assessment (TIA) assessing the suitability of the venue to host events.

The approach to Glenfruin Meadows is over a servitude area in H&A Village (Erf 4159) which comprises a single lane road (no road markings) coming off the R320 and runs past the H&A Village retail and office area and The Brewery on the south side of the road and Whalehaven Winery on the north side.

It is to be noted that this is a very narrow road of less than 6.0m overall width in most places, and that it is the only access and egress for numerous properties that include the following:

The H&A Village Shopping Centre, The Brewery, Whalehaven Winery, the balance of the businesses and residential areas in the H&A Village, Glenfruin Meadows, various smallholdings across the Onrus River and farmland in excess of 200ha.

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It must be noted that large areas of the H&A Village are not yet developed - 13 properties in total and at least 4 that are not developed as of yet. Many of the developed properties located therein are not at their maximum bulk and therefore there is scope for significant additional commercial development and additional traffic.

There are 2 undeveloped properties within Glenfruin Meadows and significant scope for new and additional development of properties across the river which could well include full scale agricultural activities as is their primary zoning rights.

There is no roadside parking on this servitude road (erf 4159) and there are no stopping areas for vehicles.

Despite the very significant foot traffic of workers and other members of the general public and the fact that this is the only access to all the properties referred to above, there is no pedestrian access nor pedestrian walkways provided, other than by walking along the road or through what are essentially private properties that could be fenced off at any given time.

This area is also the access to the very popular Hermanus Mountain Bike and walking trails.

The ground immediately adjacent to the road has large rocks, trees, signs, electricity boxes, street lamps etc. on either side. There is often insufficient space for a motorcar and truck to pass each other safely in opposite directions and it is often necessary for vehicles to move off the road to make way for each other.

The road is unmarked and badly maintained and at times poses a danger to motorists, pedestrians and cyclists (of which there are a number). The traffic authorities have no jurisdiction or control over this road as, although it is a public roadway, it is located on private property and they will not police the area by issuing fines, towing vehicles away when illegally parked etc.

The roadway currently carries a voluminous amount of traffic including large delivery vehicles servicing the various businesses including, bakeries, including the two wineries, nursery and furniture/décor businesses and whatever else is still to come.

The road network is probably already inadequate or the bare minimum necessary to support the normal existing traffic.

In this sense all vehicles that come in must be able to exit on the same roadway.

Granting this departure would enable The Brewery to draw large additional crowds and traffic to H&A Village on a regular basis.

For reasons cited above, the venue is not suited to hold events where larger than normal traffic flows are to be generated without going through the necessary applications and being under the control of the excellent Events Policy of the local authority.

For these and other reasons the departure is undesirable.

4. Noise Impact of Place of Entertainment

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis, both in the normal course of providing live entertainment on a regular basis, and when hosting even larger events.

The noise nuisance generated by The Brewery by holding heavily amplified live and reproduced music outdoors is disturbing, a noise nuisance and impairs the convenience and peace that my family, guests and I, as reasonable people, are entitled to enjoy on our own properties as well as when walking in the common areas of Glenfruin Meadows of which I am part owner and in which we share, which include beautiful country lanes, riverside walks, equestrian areas and the like.

The distance from the applicant property to erf 4368, one of the properties of which I am part owner, is approximately 90 meters.

As a matter of interest, the stables mentioned above are approximately 210 meters from The Brewery and in direct line of sight. The impact on the horses and pets has been significant during the events held illegally over the past year.

Attempting to sleep during live events is challenging and it must be further noted that many of us have a home office, more so since COVID, and attempting to work and concentrate during live events is difficult.

For these and other reasons the departure is undesirable.

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5. Noise Impact Assessment (NIA)

Neither I, nor other interested and affected parties with whom we are acquainted, were afforded the opportunity to participate in any way in the scoping and reference of the NIA and accordingly the objectivity of the (NIA) included in support of the application is questionable.

I understand that, as will be pointed out in comments submitted from other interested and affected parties, the lack of participation, the methodology, findings and therefore the permissible noise levels identified therein are to be challenged.

As the live entertainment is to be predominantly outdoors, it is also to be noted that the NIA and the application in general do not indicate any attempts whatsoever to limit or mitigate the disturbing noise pollution and nuisance posed despite the long history of complaints by fellow property owners of which I am aware.

The NIA findings indicate that maximum noise levels are exceeded. The application does not contain or propose any noise mitigation factors that the applicant should or is willing to undertake and this is unacceptable.

If the venue is to be limited to certain maximum sound levels, how will the sound levels be managed with regard to the different musicians and sound systems used?

In addition, who will ensure that these noise levels are enforced?

Would I and other affected property owners have to complain to the authorities every time that we perceive the noise to be a nuisance? Is this a fair burden to be placing on us? Will this not in itself affect our rights to enjoy our peace and quiet?

In this regard it is to be noted that our Municipality does not have the measuring instruments or professional qualifications to ensure compliance with regard to decibel levels.

Are members of our community going to be forced to spend copious amounts of money bringing in experts when they/we experience problems?

The application has numerous plans, pictures and diagrams but is silent as to the location of the stage for musicians or sound/PA system, which direction it would face and whether it would have any noise barriers or sound controls.

The departure applied for is not provided for in the Special Zoning Scheme that applies to the applicant property and in addition, is in close proximity to extensive residential areas many of which are largish country properties where nature and peace and quiet without the disturbing noise of loud music and the noise nuisance that it represents is a reasonable expectation.

From the above we consider that the noise issue has not been dealt with satisfactorily in the application and given that this is probably one of the key aspects of the operation of a place of entertainment where amplified music is to be played outdoors, potentially 7 days a week, we find this unacceptable and that at the very least this aspect needs to be re-visited.

For these and other reasons the departure is undesirable.

6. Business Hours

It is proposed that the applicant is to be permitted to have "live entertainment events strictly to between 7h00 and 22h00 with a maximum of 2 hours per evening and 4 hours during the daytime for events" on any day of the week. In addition, any number of additional hours of PA systems amplifying voices and reproducing music would be permissible.

For these and other reasons the departure is undesirable.

7. Insufficient Parking

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis.

It is to be noted that there is no public or municipal parking servicing the H&A Village at all.

As there is no contemplation of a "place of entertainment" in the Scheme Regulations of H&A Village, there is no mention of parking requirements for such and it follows that the Overstrand Zoning Scheme Regulations 2020 apply.

This states that a "place of entertainment" needs to have 1 off street parking bay per 4 seats. As per the application, the restaurant site can seat approximately 250 people. If patrons are only limited to

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this number, then 62.5 parking bays would need to be provided i.e., a shortfall of at least 13.5 bays on those proposed in the application (49 bays).

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total? If 500, then 76 additional parking bays would be required which would entail the applicant having to purchase another property nearby. The site is fully developed and there is no viable space for any additional parking.

With respect, it is highly unlikely that the applicant would limit patrons during the normal course of operations to 250 people in total and therefore the parking requirement is grossly understated.

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis and application states "guests can park on adjacent parking areas" (page 23).

It must be noted that adjacent erven are all private property and house commercial enterprises or are undeveloped as yet. The assumption that these areas can be used indefinitely for parking cannot be made. During daytime particularly, neighbouring businesses need their parking for their own staff and customers. Most trade on weekends too.

Access to this additional off-site parking is not a given and unless specifically noted on title deeds as inalienable rights attaching to the applicant property in perpetuity, things can and will change as circumstances and further development and expansion takes place in H&A Village.

For these and other reasons the departure is undesirable.

8. Attracting large numbers of people

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis.

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Again, is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total?

Further on page 23 under "Attracting large numbers of people" it is stated that "The numbers are accordingly limited as part of the management of the business and also in respect of the cooking facilities as well as on-site parking (even though guests can park on adjacent parking areas) resulting that the application site does remain within manageable numbers and control."

Most places of entertainment do not provide a seat for each reveller and the applicant does not always require that patrons eat (and even if they did, this could change at any time), therefore the reference to 250 seats is a misnomer both as regards to controlling numbers, limitations posed by cooking facilities and importantly parking.

In the case of events, there is no consideration with regard to providing a seat for every person nor sufficient parking.

Previous activities have shown that unauthorised events and concerts on the site have drawn large numbers of people with little to no real control over the numbers.

With regard to "numbers are accordingly limited as part of the management of the business", the site has numerous pedestrian entrances on all sides of the property for patrons to enter. There are no gates and where there are walls, they are approximately knee high.

Currently, live music events are free and do not necessarily require a booking or a ticket (refer to social media advertisements).

There is no guarantee that management will control the number - the business is profit driven, meaning the more people attending, the better the profit for the business.

Considering the above, how is it possible to control the numbers?

For these and other reasons the departure is undesirable.

9. Setting of a Precedent

If the application is successful in any form, this will set a precedent for businesses already in the H&A Village - many of whom have illegally held large, very loud, live music events, weddings etc.

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in the past - to apply for place of entertainment departures. (herewith refer to, as recently as 27 Dec 2021, Bottomless Coffee Band at Hermanuspietersfontein Winery as an example).

In addition, this departure may encourage similar businesses to be attracted to the H&A Village and for them to apply for similar departures.

Many of the properties have not been developed to their full extent.... yet, and there are 4 that have not yet been developed or commissioned.

Two of the undeveloped erven border Glenfruin Meadows and the Equestrian Centre/horse stables and pose a huge threat of a ripple of applications for departures to operate as places of entertainment.

It is **highly likely** that the H&A Village HOA, and therefore most of their property owners, are in support of this application. In other words, it is possible that they would condone, support and perhaps encourage other/similar applications for land use departures in the future, in the belief that this opens the door for similar departures on their own properties and perhaps adding to their market value.

A "place of entertainment" opens the door to just that. Nothing will stop a business owner from next starting a nightclub, strip club, installing slot machines or the like.

For these and other reasons the departure is undesirable.

10. Fire and Safety

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis and this would pose serious threats to the safety and well-being of the properties, patrons and occupants within H&A Village as well as those that have the road as their only form of access and egress.

The agricultural land and mountains above the urban edge of the residential developments accessed through the H&A Village are regarded by the authorities as an extremely high fire risk zone for wildfires and for this reason access for fire fighters and other emergency vehicles is critical at all times, particularly during fire season (Dec- Apr) which coincides with the summer holiday/festive season.

Historically where events have been held in the H&A Village, vehicles have completely blocked the roads and have parked everywhere including in no-stopping zones, the middle of the road and on occasion, even blocking access or egress from the residential and agricultural properties.

We believe that this will be well documented along with photographic evidence in other comment by interested and affected parties and we refer thereto.

For these and other reasons the departure is undesirable.

11. Mitigating Measures

In the alternative in that the application is considered favourable in any way, mitigating measures should be imposed that for inter alia include:

- Limit the place of entertainment and all amplified sound/music/PA systems to the inside of the building or new buildings which are suitably soundproofed.
- Require that windows and doors are closed when holding live entertainment after certain hours.
- Limit the hours as in how many hours between x and y times during the day and how many hours between x and y times at night that noise can be made.
- Limit the number of days per week/month/year that amplified live or reproduced music is permitted.
- Require the installation of sealed and regularly calibrated sound receptors at various points where nearby residential areas are affected, that enable the constant monitoring of noise and the recording of values for subsequent analysis etc.
- Specifically regulate that no part of the designated parking area and requirement on the applicant property, may be used for any purpose other than parking i.e., no stage, dance floor, tent, gazebo, marquee to accommodate performers, event participants, patrons or exhibitors may be erected in the parking area.
- Require commitment that crowd control measures are undertaken by the applicant to keep within "manageable numbers and control".

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- Require the presence of meaningful security to protect members of the general public as well as owners and occupiers of adjacent properties.
- Require qualified parking attendants with authority to be appointed during times of high attendance so as to prevent blocking/congestion of the narrow access roads and unlawful parking (traffic authorities have no jurisdiction over the roads in H&A Village).
- Require the upgrade of access roads to the H&A Village as a condition of the departure as well as the securing of a binding commitment by the applicant and H&A Village HOA to facilitate negotiations with the relevant parties to the registered Servitude Agreements to attend to the upgrading and ongoing maintenance of the road and infrastructure.
- Require that the local authority Event By-Law be applied on an individual application basis for the staging of any event that exceeds the capacity of The Brewery on an event by event basis so as to ensure that events are managed safely and effectively in terms of the By-Law.

Kind Regards
Lesley Hanson-Moore

25/214

L Gillion

From: Francois Barnard <
Sent: Wednesday, 26 January 2022 12:56
To: L Gillion
Subject: Fwd: Brewery Application



TP-A Theart
(Hollivier)

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSRIVER :APPLICATION FOR DEPARTURE:
INTERACTIVE TOWN AND REGIONAL PLANNING . (HERMANUS MICROBREWERY (PTY) LTD)
- OBJECTION TO APPLICATION

Dear Loretta

I hereby wish to record my objection to the application as an intrested and affected part to the application for a departure to operate as a 'place of entertainment on erf 4156.

Francois Barnard
Owner erf 4352 Onrusriver.

I wish to make the following points regarding this proposal.

1. **The infrastructure** of the Hemel and Aarde Village are currently at breaking point already, namely the road structure, parking facilities and sewage disposal capacity.
2. **The increase in traffic** brought about by larger crowds attending music festivals will undoubtedly result in even worse congestion and frustration for the other users of these facilities, namely the residents of Glenfruin and Glenfruin Farm and the other members of the Hemel and Aarde Village.
3. **Precedent:** to allow an "entertainment license" on that property would open the door to Casinos and NightClubs. I believe if the owners of the property want to operate a place of entertainment then a semi-industrial area would be more suitable. If this were permitted and the precedent was set for the Hemel and Aarde Village to become amenable to 'places of entertainment!' there could be devastating ramifications for surrounding businesses and residents nearby.
4. **Safety and fire,** the narrow road access and exit from Glenfruin, Glenfruin Farm and the other properties within Hemel and Aarde Village could be exacerbated if there was a large function on erf 4156 with its patrons spilling onto verges and blocking the only exit to the R320.

I value the Brewery as a restaurant in close proximity to my home and enjoy frequenting it on occasion, I feel however that if they are permitted the departure to be a "place of entertainment" it would negatively impact property owners in the area.
Kind regards

Francois Barnard

FILE NO: EL 4156 ✓
Hemel & Aarde
CAN NO: Barnard
LABORATOR NO: 1632384

27 JAN 2022

26/214

L Gillion

From:
Sent: Friday, 21 January 2022 11:35
To: L Gillion
Cc: Adrian de Koker; Hemel-en-Aarde Estate Trustees
Subject: Re: ERF 4156



Importance: High

TP - A Theart
(H Olivier)

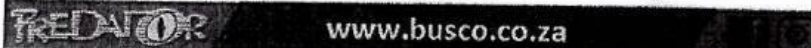
Dear Mr H Boshoff,

I am the owner in Hemel en Aarde Estate stand 8092, 2 Rock Kestrel. Based on this change required of the states of "Stand 4156" I strongly object to this as the noisy created will eco into the mountain and with my house being high we will not be able to sleep when we are at home. The reason why we have our holiday home is for the nice quit area this has been. As a person paying 12 months rates and taxes to have a on average six weeks in Hermanus of peace and tranquility we cannot allow this noisy party place.

I trust there are more objections to this required change.

Kind Regards,
Willie van Zyl | Managing Member

Tel: +27
Cell: +27
Email:



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FILE NO: EL 4156
Hemel & Aarde
CAN NO:
05
LABORATOR NO: 1631734

25 JAN 2022

TP-A Theart
(Hollister)



McArthur Family

Date : 21-01-2021

To whom it may concern,

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER.
APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL
PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD ("The Brewery"))

Property Owner : Sean Ellett McArthur

Property Owner Erf No : 4361, part owner of Erf 4368 & Erf 4362

We the affected party, purchased the property in GlenFruin Meadows in July 2018. The reason for purchasing in Glen Fruin was for the Country estate feel. A quiet relaxing environment to bring up children.

The property is located 250m from the brewery

1. The Application

FILE NO: EL 4156 ✓
Hemel & Aarde
SCAN NO:
MCARTHUR
LABORATOR NO:
1630646

It is noted that according to the Town Planning Application Form completed by the applicant, the application is for:

Permanent Departure from the provisions of the zoning scheme;

24 JAN 2022

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Consent use provided for in the zoning scheme – Section 16(2)(o); and
the Determination of an administrative penalty – Section 16(2)(q).

The application is for a "place of entertainment" which means a place used for commercial entertainment which may attract large numbers of people, operates outside normal business hours or generates noise from music or revelry on a regular basis and includes a cinema, a theatre, an amusement park, a dance hall or a night club and gambling and live music". (Overstrand Municipality Land Use Scheme, 2020).

As per the application on page 20, "the specific request for a departure is to allow live music and events on the property".

Historic Complaints

If you have communicated with The Brewery, the Municipality, Law Enforcement, SAPS or anyone else, it will be advantageous to provide details.

2. Location in H&A Village which is a Special Zone with it's own Scheme Regulations

The Brewery is located in H&A Village which has a municipal zoning of "Special Zone".

Their unique Scheme Regulations define their properties' primary use as "Tourism Business/Cottage Industry & Dwelling House" with the only additional consent use being for flats.

It is clear from the Scheme Regulations as well as the Design Manual that a calm country environment was intended with site use including activities such as restaurants, guesthouses, guestrooms, winery, souvenir shops, tourist information centres, antique

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shops, arts & crafts shops, art galleries, interior decorators, travel bureau, conference facilities, manufacture of pottery and art and dwelling houses which could be attached to a tourism business or cottage industry concern.

This, in general, could be referred to as the whole ethos of the H&A Village when originally contemplated and given Special Zoning status. It is to be noted that Glenfruin Meadows was also proclaimed around a similar time and that a logical assumption of the compatibility with the H&A Village and surrounds would have been made by the developers and subsequent owners of residential erven.

The Brewery is applying for a land use departure for an additional land use that the specific zoning scheme does not provide for. The specific zoning of the property does not have a place of entertainment as a primary right or a consent use, so a departure would be required. Not all departures are undesirable – but in my view this one is - and it needs to be considered in terms of the elements of desirability or not, which are numerous.

I believe it sensible that all purchasers of a property investigate what is allowed and not allowed prior to purchasing any property and can only believe the owners of erf 4156, The Brewery, who are now asking for a departure, did their homework beforehand. In other words, they knew what they were buying into and what was allowed under the Special Zoning status. If the applicant wanted to establish a place of entertainment, they should have done so in an area suitably zoned as such i.e. with consent use possibilities of which there are a number in the Overstrand.

It must be noted that the change in use from the current zoning would be an extreme change, unwanted by the nearby properties, and which will severely and negatively influence not just the lives of the property owners but also the value of the property they own.

An application for a departure such as this is therefore out of the ordinary and it is to be noted that, at the outset, this land use was clearly never the intention of the H&A Village developers i.e. to accommodate a place of entertainment in the H&A Village. It will have a negative effect on all the surrounding property owners.

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For this and other reasons the departure is undesirable.

3. Access road and traffic

It is the clear intention of The Brewery to draw large additional crowds of people to the venue during not only current normal operations (which is their right) but potentially thousands of additional people and extensive additional vehicular traffic when hosting or participating with neighbouring properties in holding big events.

The access road into H&A Village intersects with the main road to Caledon (R320) and is situated directly opposite the large Hemel en Aarde Estate entrance. The traffic light on the main road to Hermanus (R43) as well as the first bend in the road towards Caledon are both approximately 150 meters away from the stop street, making access onto the R320 difficult, even under normal traffic situations. The application is also not supported by a Traffic Impact Assessment (TIA) assessing the suitability of the venue to host events.

The approach to Glenfruin Meadows is over a servitude area in H&A Village (Erf 4159) which comprises a single lane road (no road markings) coming off the R320 and runs past the H&A Village retail and office area and The Brewery on the south side of the road and Whalehaven Winery on the north side.

It is to be noted that this is a very narrow road of less than 6.0m overall width in most places, and that it is the only access and egress for numerous properties that include the following:

The H&A Village Shopping Centre, The Brewery, Whalehaven Winery, the balance of the businesses and residential areas in the H&A Village, Glenfruin Meadows, various smallholdings across the Onrus River and farmland in excess of 200ha.

It must be noted that large areas of the H&A Village are not yet developed - 13 properties in total and at least 4 that are not developed as of yet. Many of the developed properties located therein are not at their maximum bulk and therefore there is scope for significant additional commercial development and additional traffic.

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There are 2 undeveloped properties within Glenfruin Meadows and significant scope for new and additional development of properties across the river which could well include full scale agricultural activities as is their primary zoning rights.

There is no roadside parking on this servitude road (erf 4159) and there are no stopping areas for vehicles.

Despite the very significant foot traffic of workers and other members of the general public and the fact that this is the only access to all the properties referred to above, there is no pedestrian access nor pedestrian walkways provided, other than by walking along the road or through what are essentially private properties that could be fenced off at any given time.

This area is also the access to the very popular Hermanus Mountain Bike and walking trails.

The ground immediately adjacent to the road has large rocks, trees, signs, electricity boxes, streetlamps etc. on either side. There is often insufficient space for a motorcar and truck to pass each other safely in opposite directions and it is often necessary for vehicles to move off the road to make way for each other.

The road is unmarked and badly maintained and at times poses a danger to motorists, pedestrians and cyclists (of which there are a number). The traffic authorities have no jurisdiction or control over this road as, although it is a public roadway, it is located on private property and they will not police the area by issuing fines, towing vehicles away when illegally parked etc.

The roadway currently carries a voluminous amount of traffic including large delivery vehicles servicing the various businesses including, bakeries, including the two wineries, nursery and furniture/décor businesses and whatever else is still to come.

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The road network is probably already inadequate or the bare minimum necessary to support the normal existing traffic.

In this sense all vehicles that come in must be able to exit on the same roadway.

Granting this departure would enable The Brewery to draw large additional crowds and traffic to H&A Village on a regular basis.

For reasons cited above, the venue is not suited to hold events where larger than normal traffic flows are to be generated without going through the necessary applications and being under the control of the excellent Events Policy of the local authority.

For these and other reasons the departure is undesirable.

4. Noise Impact of Place of Entertainment

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis, both in the normal course of providing live entertainment on a regular basis, and when hosting even larger events.

The noise nuisance generated by The Brewery by holding heavily amplified live and reproduced music outdoors is disturbing, a noise nuisance and impairs the convenience and peace that my family, guests and I, as reasonable people, are entitled to enjoy on our own properties as well as when walking in the common areas of Glenfruin Meadows of which I am part owner and in which we share, which include beautiful country lanes, riverside walks, equestrian areas and the like.

The distance from the applicant property to erf 4368, one of the properties of which I am part owner, is approximately 90 meters.

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As a matter of interest, the stables mentioned above are approximately 210 meters from The Brewery and in direct line of sight. The impact on the horses and pets has been significant during the events held illegally over the past year.

Attempting to sleep during live events is challenging and it must be further noted that many of us have a home office, more so since COVID, and attempting to work and concentrate during live events is difficult.

We personally have small children that go to sleep between 8am and 8:30m. the noise levels create issues trying to get children to sleep, not to mention study during exam times

For these and other reasons the departure is undesirable.

5. Noise Impact Assessment (NIA)

Neither I, nor other interested and affected parties with whom we are acquainted, were afforded the opportunity to participate in any way in the scoping and reference of the NIA and accordingly the objectivity of the (NIA) included in support of the application is questionable.

I understand that, as will be pointed out in comments submitted from other interested and affected parties, the lack of participation, the methodology, findings and therefore the permissible noise levels identified therein are to be challenged.

As the live entertainment is to be predominantly outdoors, it is also to be noted that the NIA and the application in general do not indicate any attempts whatsoever to limit or mitigate the disturbing noise pollution and nuisance posed despite the long history of complaints by fellow property owners of which I am aware.

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The NIA findings indicate that maximum noise levels are exceeded. The application does not contain or propose any noise mitigation factors that the applicant should or is willing to undertake and this is unacceptable.

If the venue is to be limited to certain maximum sound levels, how will the sound levels be managed with regard to the different musicians and sound systems used?

In addition, who will ensure that these noise levels are enforced?

Would I and other affected property owners have to complain to the authorities every time that we perceive the noise to be a nuisance? Is this a fair burden to be placing on us? Will this not in itself affect our rights to enjoy our peace and quiet?

In this regard it is to be noted that our Municipality does not have the measuring instruments or professional qualifications to ensure compliance with regard to decibel levels.

Are members of our community going to be forced to spend copious amounts of money bringing in experts when they/we experience problems?

The application has numerous plans, pictures and diagrams but is silent as to the location of the stage for musicians or sound/PA system, which direction it would face and whether it would have any noise barriers or sound controls.

The departure applied for is not provided for in the Special Zoning Scheme that applies to the applicant property and in addition, is in close proximity to extensive residential areas many of which are largish country properties where nature and peace and quiet without the disturbing noise of loud music and the noise nuisance that it represents is a reasonable expectation.

From the above we consider that the noise issue has not been dealt with satisfactorily in the application and given that this is probably one of the key aspects of the operation of a place of entertainment where amplified music is to be played outdoors, potentially 7

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days a week, we find this unacceptable and that at the very least this aspect needs to be re-visited.

For these and other reasons the departure is undesirable.

6. Business Hours

It is proposed that the applicant is to be permitted to have "live entertainment events strictly to between 7h00 and 22h00 with a maximum of 2 hours per evening and 4 hours during the daytime for events" on any day of the week. In addition, any number of additional hours of PA systems amplifying voices and reproducing music would be permissible.

For these and other reasons the departure is undesirable.

7. Insufficient Parking

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis.

It is to be noted that there is no public or municipal parking servicing the H&A Village at all.

As there is no contemplation of a "place of entertainment" in the Scheme Regulations of H&A Village, there is no mention of parking requirements for such and it follows that the Overstrand Zoning Scheme Regulations 2020 apply.

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This states that a "place of entertainment" needs to have 1 off street parking bay per 4 seats. As per the application, the restaurant site can seat approximately 250 people. If patrons are only limited to this number, then 62.5 parking bays would need to be provided i.e., a shortfall of at least 13.5 bays on those proposed in the application (49 bays).

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total? If 500, then 76 additional parking bays would be required which would entail the applicant having to purchase another property nearby. The site is fully developed and there is no viable space for any additional parkings.

With respect, it is highly unlikely that the applicant would limit patrons during the normal course of operations to 250 people in total and therefore the parking requirement is grossly understated.

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis and application states "guests can park on adjacent parking areas" (page 23).

It must be noted that adjacent erven are all private property and house commercial enterprises or are undeveloped as yet. The assumption that these areas can be used indefinitely for parking cannot be made. During daytime particularly, neighbouring businesses need their parking for their own staff and customers. Most trade on weekends too.

Access to this additional off-site parking is not a given and unless specifically noted on title deeds as inalienable rights attaching to the applicant property in perpetuity, things can and will change as circumstances and further development and expansion takes place in H&A Village.

For these and other reasons the departure is undesirable.

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8. Attracting large numbers of people

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis.

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Again, is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total?

Further on page 23 under "Attracting large numbers of people" it is stated that "The numbers are accordingly limited as part of the management of the business and also in respect of the cooking facilities as well as on-site parking (even though guests can park on adjacent parking areas) resulting that the application site does remain within manageable numbers and control."

Most places of entertainment do not provide a seat for each reveler and the applicant does not always require that patrons eat (and even if they did, this could change at any time), therefore the reference to 250 seats is a misnomer both as regards to controlling numbers, limitations posed by cooking facilities and importantly parking.

In the case of events, there is no consideration with regard to providing a seat for every person nor sufficient parking.

Previous activities have shown that unauthorised events and concerts on the site have drawn large numbers of people with little to no real control over the numbers.

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With regard to "numbers are accordingly limited as part of the management of the business", the site has numerous pedestrian entrances on all sides of the property for patrons to enter. There are no gates and where there are walls, they are approximately knee high.

Currently, live music events are free and do not necessarily require a booking or a ticket (refer to social media advertisements).

There is no guarantee that management will control the number - the business is profit driven, meaning the more people attending, the better the profit for the business.

Considering the above, how is it possible to control the numbers?

For these and other reasons the departure is undesirable.

9. Setting of a Precedent

If the application is successful in any form, this will set a precedent for businesses already in the H&A Village - many of whom have illegally held large, very loud, live music events, weddings etc. in the past - to apply for place of entertainment departures. (herewith refer to, as recently as 27 Dec 2021, Bottomless Coffee Band at Hermanuspietersfontein Winery as an example).

In addition, this departure may encourage similar businesses to be attracted to the H&A Village and for them to apply for similar departures.

Many of the properties have not been developed to their full extent.... yet, and there are 4 that have not yet been developed or commissioned.

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Two of the undeveloped even border Glenfruin Meadows and the Equestrian Centre/horse stables and pose a huge threat of a ripple of applications for departures to operate as places of entertainment.

It is **highly likely** that the H&A Village HOA, and therefore most of their property owners, are in support of this application. In other words, it is possible that they would condone, support and perhaps encourage other/similar applications for land use departures in the future, in the belief that this opens the door for similar departures on their own properties and perhaps adding to their market value.

A "place of entertainment" opens the door to just that. Nothing will stop a business owner from next starting a nightclub, strip club, installing slot machines or the like.

For these and other reasons the departure is undesirable.

10. Fire and Safety

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis and this would pose serious threats to the safety and well-being of the properties, patrons and occupants within H&A Village as well as those that have the road as their only form of access and egress.

The agricultural land and mountains above the urban edge of the residential developments accessed through the H&A Village are regarded by the authorities as an extremely high fire risk zone for wildfires and for this reason access for fire fighters and other emergency vehicles is critical at all times, particularly during fire season (Dec-Apr) which coincides with the summer holiday/festive season.

Historically where events have been held in the H&A Village, vehicles have completely blocked the roads and have parked everywhere including in no-stopping zones, the middle of the road and on occasion, even blocking access or egress from the residential and agricultural properties.

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We believe that this will be well documented along with photographic evidence in other comment by interested and affected parties and we refer thereto.

For these and other reasons the departure is undesirable.

11. Mitigating Measures

In the alternative in that the application is considered favourable in any way, mitigating measures should be imposed that for inter alia include:

- Limit the place of entertainment and all amplified sound/music/PA systems to the inside of the building or new buildings which are suitably soundproofed.
- Require that windows and doors are closed when holding live entertainment after certain hours.
- Limit the hours as in how many hours between x and y times during the day and how many hours between x and y times at night that noise can be made.
- Limit the number of days per week/month/year that amplified live or reproduced music is permitted.
- Require the installation of sealed and regularly calibrated sound receptors at various points where nearby residential areas are affected, that enable the constant monitoring of noise and the recording of values for subsequent analysis etc.
- Specifically regulate that no part of the designated parking area and requirement on the applicant property, may be used for any purpose other than parking i.e., no stage, dance floor, tent, gazebo, marquee to accommodate performers, event participants, patrons or exhibitors may be erected in the parking area.
- Require commitment that crowd control measures are undertaken by the applicant to keep within "manageable numbers and control".
- Require the presence of meaningful security to protect members of the general public as well as owners and occupiers of adjacent properties.

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- Require qualified parking attendants with authority to be appointed during times of high attendance so as to prevent blocking/congestion of the narrow access roads and unlawful parking (traffic authorities have no jurisdiction over the roads in H&A Village).
- Require the upgrade of access roads to the H&A Village as a condition of the departure as well as the securing of a binding commitment by the applicant and H&A Village HOA to facilitate negotiations with the relevant parties to the registered Servitude Agreements to attend to the upgrading and ongoing maintenance of the road and infrastructure.
- Require that the local authority Event By-Law be applied on an individual application basis for the staging of any event that exceeds the capacity of The Brewery on an event by event basis so as to ensure that events are managed safely and effectively in terms of the By-Law

Should you need to contact me then i can be reached on either

Email : _____ or

Cell no:

Kind regards



Sean McArthur

TP-A Theart
(H Olivier)



ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER:
APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL
PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD ("The Brewery"))

My name is:- Marion Roux

All Notices / documents in regard to the above must please be served to e-mail address

I am an interested and affected party in regard to the abovementioned ("The Brewery": application for departure)

I am a property owner in the Glenfruin Meadows Estate which is within 100 meters of "The Brewery"

My Address is **No 14 Glenfruin Meadows, Onrus, Hermanus** and my erf no. is **4353 Onrus River**. I am also a part owner of erf 4368 and erf 4362 Onrus River

I have specifically purchased a property in Glenfruin Meadows because of the "country environment" and the quiet "farm like" ambience that prevails. This ambience obviously comes at an increased price to normal properties. In addition the house rules of the estate specifically addresses "Noise" with a rule that requires that no person shall make or cause to make any unacceptable disturbance or excessive or undue noise which constitutes a nuisance to other neighbours or persons. We have thus paid a premium to be in a place where noise is never a problem.

1. The Application

It is noted that according to the Town Planning Application Form completed by the applicant, the application is for:

Permanent Departure from the provisions of the zoning scheme;

Consent use provided for in the zoning scheme – Section 16(2)(o); and

the Determination of an administrative penalty – Section 16(2)(q).

The application is for a "place of entertainment" which means a place used for commercial entertainment which may attract large numbers of people, operates outside normal business hours or generates noise from music or revelry on a regular basis and includes a cinema, a theatre, an amusement park, a dance hall or a night club and gambling and live music". (Overstrand Municipality Land Use Scheme, 2020).

24 JAN 2022

FILE NO:	EL 4156 ✓
	Hemel & Aarde
OWN NO:	Roux
LABORATOR NO:	1630842

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As per the application on page 20, "the specific request for a departure is to allow live music and events on the property".

2. Location in the Hemel & Aarde Village which is a Special Zone with it's own Scheme Regulations

The Brewery is located in the Hemel and Aarde Village which has a municipal zoning of "Special Zone".

Their unique Scheme Regulations define their properties' primary use as "Tourism Business/Cottage Industry & Dwelling House" with the only additional consent use being for flats.

It is clear from the Scheme Regulations as well as the Design Manual that a calm country environment was intended with site use including activities such as restaurants, guesthouses, guestrooms, winery, souvenir shops, tourist information centres, antique shops, arts & crafts shops, art galleries, interior decorators, travel bureau, conference facilities, manufacture of pottery and art and dwelling houses which could be attached to a tourism business or cottage industry concern.

This, in general, could be referred to as the whole ethos of the H&A Village when originally contemplated and given Special Zoning status. It is to be noted that Glenfruin Meadows was also proclaimed around a similar time and that a logical assumption of the compatibility with the H&A Village and surrounds would have been made by the developers and subsequent owners of residential erven.

The Brewery is applying for a land use departure for an additional land use that the specific zoning scheme does not provide for. The specific zoning of the property does not have a place of entertainment as a primary right or a consent use, so a departure would be required. Not all departures are undesirable – but in our view this one is - and it needs to be considered in terms of the elements of desirability or not, which are numerous.

Any sensible purchaser of a property would investigate what is allowed and not allowed prior to purchasing any property and we can only believe the owners of erf 4156, The Brewery, who are now asking for a departure, did their homework beforehand. In other words, they knew what they were buying into and what was allowed under the Special Zoning status. If the applicant wanted to establish a place of entertainment, they should have done so in an area suitably zoned as such ie. with consent use possibilities of which there are a number in the Overstrand.

It must be noted that the change in use from the current zoning would be an extreme change, unwanted by the nearby properties, and which will severely and negatively influence not just the lives of the property owners but also the value of the property they own.

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An application for a departure such as this is therefore out of the ordinary and it is to be noted that, at the outset, this land use was clearly never the intention of the H&A Village developers i.e. to accommodate a place of entertainment in the H&A Village. It will have a negative effect on all the surrounding property owners.

For this and other reasons the departure is highly undesirable.

3. Access road and traffic

It is the clear intention of The Brewery to draw large additional crowds of people to the venue during not only current normal operations (which is their right) but potentially thousands of additional people and extensive additional vehicular traffic when hosting or participating with neighbouring properties in holding big events.

The access road into H&A Village intersects with the main road to Caledon (R320) and is situated directly opposite the large Hemel en Aarde Estate entrance. The traffic light on the main road to Hermanus (R43) as well as the first bend in the road towards Caledon are both approximately 150 meters away from the stop street, making access onto the R320 difficult, even under normal traffic situations. The application is also not supported by a Traffic Impact Assessment (TIA) assessing the suitability of the venue to host events.

The approach to Glenfruin Meadows is over a servitude area in H&A Village (Erf 4159) which comprises a single lane road (no road markings) coming off the R320 and runs past the H&A Village retail and office area and The Brewery on the south side of the road and Whalehaven Winery on the north side.

It is to be noted that this is a very narrow road of less than 6.0mt overall width in most places, and that it is the only access and egress for numerous properties that include the following:

The H&A Village Shopping Centre, The Brewery, Whalehaven Winery, the balance of the businesses and residential areas in the H&A Village, Glenfruin Meadows, various smallholdings across the Onrus River and farmland in excess of 200ha.

It must be noted that large areas of the H&A Village are not yet developed - 13 properties in total and at least 4 that are not developed as of yet. Many of the developed properties located therein are not at their maximum bulk and therefore there is scope for significant additional commercial development and additional traffic.

There are 2 undeveloped properties within Glenfruin Meadows and significant scope for new and additional development of properties across the river which could well include full scale agricultural activities as is their primary zoning rights.

There is no roadside parking on this servitude road (erf 4159) and there are no stopping areas for vehicles.

45/214

Despite the very significant foot traffic of workers and other members of the general public and the fact that this is the only access to all the properties referred to above, there is no pedestrian access nor pedestrian walkways provided, other than by walking along the road or through what are essentially private properties that could be fenced off at any given time.

This area is also the access to the very popular Hermanus Mountain Bike and walking trails.

The ground immediately adjacent to the road has large rocks, trees, signs, electricity boxes, streetlamps etc. on either side. There is often insufficient space for a motorcar and truck to pass each other safely in opposite directions and it is often necessary for vehicles to move off the road to make way for each other.

The road is unmarked and badly maintained and at times poses a danger to motorists, pedestrians and cyclists (of which there are a number). The traffic authorities have no jurisdiction or control over this road as, although it is a public roadway, it is located on private property and they will not police the area by issuing fines, towing vehicles away when illegally parked etc.

The roadway currently carries a voluminous amount of traffic including large delivery vehicles servicing the various businesses including, bakeries, including the two wineries, nursery and furniture/décor businesses and whatever else is still to come.

The road network is probably already inadequate or the bare minimum necessary to support the normal existing traffic.

In this sense all vehicles that come in must be able to exit on the same roadway.

Granting this departure would enable The Brewery to draw large additional crowds and traffic to H&A Village on a regular basis.

For reasons cited above, the venue is not suited to hold events where larger than normal traffic flows are to be generated without going through the necessary applications and being under the control of the excellent Events Policy of the local authority.

For these and other reasons the departure is undesirable.

4. Noise Impact of Place of Entertainment

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis, both in the normal course of providing live entertainment on a regular basis, and when hosting even larger events.

4/24

The noise nuisance generated by The Brewery by holding heavily amplified live and reproduced music outdoors is disturbing, a noise nuisance and impairs the convenience and peace that my family, guests and I, as reasonable people, are entitled to enjoy on our own properties as well as when walking in the common areas of Glenfruin Meadows of which I am part owner and in which we share, which include beautiful country lanes, riverside walks, equestrian areas and the like.

The distance from the applicant property to erf 4353, one of the properties of which I am part owner, is around a 100 meters.

As a matter of interest, the stables mentioned above are approximately 210 meters from The Brewery and in direct line of sight. The impact on the horses and pets has been significant during the events held illegally over the past year.

Attempting to sleep during live events is challenging and it must be further noted that many of us have a home office, more so since COVID, and attempting to work and concentrate during live events is difficult.

For these and other reasons the departure is undesirable.

5. Noise Impact Assessment (NIA)

Neither I, nor other interested and affected parties with whom we are acquainted, were afforded the opportunity to participate in any way in the scoping and reference of the NIA and accordingly the objectivity of the (NIA) included in support of the application is questionable.

I understand that, as will be pointed out in comments submitted from other interested and affected parties, the lack of participation, the methodology, findings and therefore the permissible noise levels identified therein are to be challenged.

As the live entertainment is to be predominantly outdoors, it is also to be noted that the NIA and the application in general do not indicate any attempts whatsoever to limit or mitigate the disturbing noise pollution and nuisance posed despite the long history of complaints by fellow property owners of which I am aware.

The NIA findings indicate that maximum noise levels are exceeded. The application does not contain or propose any noise mitigation factors that the applicant should or is willing to undertake and this is unacceptable.

If the venue is to be limited to certain maximum sound levels, how will the sound levels be managed with regard to the different musicians and sound systems used?

In addition, who will ensure that these noise levels are enforced?

47/214

Would I and other affected property owners have to complain to the authorities every time that we perceive the noise to be a nuisance? Is this a fair burden to be placing on us? Will this not in itself affect our rights to enjoy our peace and quiet?

In this regard it is to be noted that our Municipality does not have the measuring instruments or professional qualifications to ensure compliance with regard to decibel levels.

Are members of our community going to be forced to spend copious amounts of money bringing in experts when they/we experience problems?

The application has numerous plans, pictures and diagrams but is silent as to the location of the stage for musicians or sound/PA system, which direction it would face and whether it would have any noise barriers or sound controls.

The departure applied for is not provided for in the Special Zoning Scheme that applies to the applicant property and in addition, is in close proximity to extensive residential areas many of which are largish country properties where nature and peace and quiet without the disturbing noise of loud music and the noise nuisance that it represents is a reasonable expectation.

From the above we consider that the noise issue has not been dealt with satisfactorily in the application and given that this is probably one of the key aspects of the operation of a place of entertainment where amplified music is to be played outdoors, potentially 7 days a week, we find this unacceptable and that at the very least this aspect needs to be re-visited.

For these and other reasons the departure is undesirable.

6. Business Hours

It is proposed that the applicant is to be permitted to have "live entertainment events strictly to between 7h00 and 22h00 with a maximum of 2 hours per evening and 4 hours during the daytime for events" on any day of the week. In addition, any number of additional hours of PA systems amplifying voices and reproducing music would be permissible.

For these and other reasons the departure is undesirable.

7. Insufficient Parking

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis.

48/214

It is to be noted that there is no public or municipal parking servicing the H&A Village at all.

As there is no contemplation of a "place of entertainment" in the Scheme Regulations of H&A Village, there is no mention of parking requirements for such and it follows that the Overstrand Zoning Scheme Regulations 2020 apply.

This states that a "place of entertainment" needs to have 1 off street parking bay per 4 seats. As per the application, the restaurant site can seat approximately 250 people. If patrons are only limited to this number, then 62.5 parking bays would need to be provided i.e., a shortfall of at least 13.5 bays on those proposed in the application (49 bays).

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total? If 500, then 76 additional parking bays would be required which would entail the applicant having to purchase another property nearby. The site is fully developed and there is no viable space for any additional parkings.

With respect, it is highly unlikely that the applicant would limit patrons during the normal course of operations to 250 people in total and therefore the parking requirement is grossly understated.

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis and application states "guests can park on adjacent parking areas" (page 23).

It must be noted that adjacent erven are all private property and house commercial enterprises or are undeveloped as yet. The assumption that these areas can be used indefinitely for parking cannot be made. During daytime particularly, neighbouring businesses need their parking for their own staff and customers. Most trade on weekends too.

Access to this additional off-site parking is not a given and unless specifically noted on title deeds as inalienable rights attaching to the applicant property in perpetuity, things can and will change as circumstances and further development and expansion takes place in H&A Village.

For these and other reasons the departure is undesirable.

44/214

8. Attracting large numbers of people

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis.

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Again, is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total?

Further on page 23 under "Attracting large numbers of people" it is stated that "The numbers are accordingly limited as part of the management of the business and also in respect of the cooking facilities as well as on-site parking (even though guests can park on adjacent parking areas) resulting that the application site does remain within manageable numbers and control."

Most places of entertainment do not provide a seat for each reveler and the applicant does not always require that patrons eat (and even if they did, this could change at any time), therefore the reference to 250 seats is a misnomer both as regards to controlling numbers, limitations posed by cooking facilities and importantly parking.

In the case of events, there is no consideration with regard to providing a seat for every person nor sufficient parking.

Previous activities have shown that unauthorised events and concerts on the site have drawn large numbers of people with little to no real control over the numbers.

With regard to "numbers are accordingly limited as part of the management of the business", the site has numerous pedestrian entrances on all sides of the property for patrons to enter. There are no gates and where there are walls, they are approximately knee high.

Currently, live music events are free and do not necessarily require a booking or a ticket (refer to social media advertisements).

There is no guarantee that management will control the number - the business is profit driven, meaning the more people attending, the better the profit for the business.

Considering the above, how is it possible to control the numbers?

For these and other reasons the departure is undesirable.

9. Setting of a Precedent

If the application is successful in any form, this will set a precedent for businesses already in the H&A Village - many of whom have illegally held large, very loud, live music events, weddings etc. in the past - to apply for place of entertainment departures. (herewith refer to, as recently as 27 Dec 2021, Bottomless Coffee Band at Hermanuspietersfontein Winery as an example).

In addition, this departure may encourage similar businesses to be attracted to the H&A Village and for them to apply for similar departures.

Many of the properties have not been developed to their full extent.... yet, and there are 4 that have not yet been developed or commissioned.

Two of the undeveloped erven border Glenfruin Meadows and the Equestrian Centre/horse stables and pose a huge threat of a ripple of applications for departures to operate as places of entertainment.

It is **highly likely** that the H&A Village HOA, and therefore most of their property owners, are in support of this application. In other words, it is possible that they would condone, support and perhaps encourage other/similar applications for land use departures in the future, in the belief that this opens the door for similar departures on their own properties and perhaps adding to their market value.

A "place of entertainment" opens the door to just that. Nothing will stop a business owner from next starting a nightclub, strip club, installing slot machines or the like.

For these and other reasons the departure is undesirable.

10. Fire and Safety

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis and this would pose serious threats to the safety and well-being of the properties, patrons and occupants within H&A Village as well as those that have the road as their only form of access and egress.

The agricultural land and mountains above the urban edge of the residential developments accessed through the H&A Village are regarded by the authorities as an extremely high fire risk zone for wildfires and for this reason access for fire fighters and other emergency vehicles is critical at all times, particularly during fire season (Dec-Apr) which coincides with the summer holiday/festive season.

Historically where events have been held in the H&A Village, vehicles have completely blocked the roads and have parked everywhere including in no-stopping zones, the middle of the road and on occasion, even blocking access or egress from the residential and agricultural properties.

51/214

We believe that this will be well documented along with photographic evidence in other comment by interested and affected parties and we refer thereto.

For these and other reasons the departure is undesirable.

11. Mitigating Measures

In the alternative in that the application is considered favourable in any way, mitigating measures should be imposed that for inter alia include:

- Limit the place of entertainment and all amplified sound/music/PA systems to the inside of the building or new buildings which are suitably soundproofed.
- Require that windows and doors are closed when holding live entertainment after certain hours.
- Limit the hours as in how many hours between x and y times during the day and how many hours between x and y times at night that noise can be made.
- Limit the number of days per week/month/year that amplified live or reproduced music is permitted.
- Require the installation of sealed and regularly calibrated sound receptors at various points where nearby residential areas are affected, that enable the constant monitoring of noise and the recording of values for subsequent analysis etc.
- Specifically regulate that no part of the designated parking area and requirement on the applicant property, may be used for any purpose other than parking i.e., no stage, dance floor, tent, gazebo, marquee to accommodate performers, event participants, patrons or exhibitors may be erected in the parking area.
- Require commitment that crowd control measures are undertaken by the applicant to keep within "manageable numbers and control".
- Require the presence of meaningful security to protect members of the general public as well as owners and occupiers of adjacent properties.
- Require qualified parking attendants with authority to be appointed during times of high attendance so as to prevent blocking/congestion of the narrow access roads and unlawful parking (traffic authorities have no jurisdiction over the roads in H&A Village).
- Require the upgrade of access roads to the H&A Village as a condition of the departure as well as the securing of a binding commitment by the applicant and H&A Village HOA to facilitate negotiations with the relevant parties to the registered Servitude Agreements to attend to the upgrading and ongoing maintenance of the road and infrastructure.

52/214

- Require that the local authority Event By-Law be applied on an individual application basis for the staging of any event that exceeds the capacity of The Brewery on an event by event basis so as to ensure that events are managed safely and effectively in terms of the By-Law.

TP n/thead
(H. Olivier)

53/214

L Gillion

From: de Villiers < >
Sent: Tuesday, 28 December 2021 14:27
To: L Gillion
Cc: gleanfruin.meadows@gmail.co.; 'Charles de Villiers'
Subject: Departure



ERF 4156 Application for Departure (Brewery)

Good day,

I am the owner of properties 4358 and 4347 Glen Fruin Meadows .

My concerns to the departure are as follows,

The access road into Hemel en Aarde is not adequate to carry the increase in traffic , we need a traffic impact assessment

Parking can become a problem

Noise impact of patrons .

What would the function and operation of soup kitchen be

There needs to be further meetings and discussions on these issues .

For the above reasons I cannot support the application for departure .

Regards

C H de Villiers

FILE NO:	01 4156 ✓
	Hemel + Aarde
SCAN NO:	deV
COLLABORATOR NO:	1619424

TP
28 DEC 2021

54214

TP n/hoof
(M. Olijia)

L Gillion



From: Kellermans <[redacted]>
Sent: Friday, 24 December 2021 12:31
To: L Gillion
Cc: reception@estatehna.co.za; Kellie Kellerman
Subject: FW: The Brewery - application for a place of entertainment
Attachments: NOTICE - Erf 4156 Hemel Aarde Village (Departure).pdf

Geagte Loretta

Ek teken beswaar aan teen die voorgestelde aansoek vir Erf 4156 soos per aanhangsel.

Ek het hoofsaaklik twee besware:

- Geraasvlakke gaan styg – die perseel is te naby aan bestaande woonbuurtes. Die stilte en rustigheid van die woonbuurt (Hemel en Aarde Estate) sal hoogs waarskynlik versteur word.
- Die volume voertuie gaan drasties toeneem. Toegangsroetes is onvoldoende asook parkering. Die huidige R43 en R320 is reeds oorlaai met verkeer en gaan beslis 'n erenstige probleem skep tot frustrasie van baie inwoners in die buurt.

Vriendelike groete
 Frederik Kellerman
 Hemel en Aarde Estate

From: Reception | Hemel-en-Aarde Estate <reception@estatehna.co.za>
Sent: Thursday, 23 December 2021 13:57
To: Reception <reception@estatehna.co.za>
Subject: The Brewery - application for a place of entertainment

Dear Members

The attached notice has been brought to our attention by a concerned neighbour (not a Member of the Estate) of the Brewery across the road.

Any Member wanting to comment on the proposed application for departure may contact the Town Planner, Mr. H. Boshoff at 028 313 8900 / loretta@overstrand.gov.za before 28 January 2021.

Regards,

Adriaan de Koker
 OPERATIONS MANAGER



Tel: 028 316 2691
 Cell: 060 887 6199
 Email: opsmanager@estatehna.co.za

FILE NO:	St 4156 ✓
	Hemel & Aarde
SCAN NO:	Kellerman
COLLABORATOR NO:	1619384

Information in this communication is confidential. It is intended solely for the person or entity to whom or which it is addressed

TP

28 DEC 2021

55/214

TP N/Ahead
(H. Olivia)

L Gillion

From: Selwyn Gill <
Sent: Monday, 27 December 2021 17:09
To: L Gillion
Subject: The Brewery



Good afternoon, I wish to advise that I totally object to the Brewery being allowed to play music until 10 pm. As a resident of the Hemel en Aarde estate we are reasonably close to them and the music pounds extremely loud when they do play music. Under no circumstances am I prepared to listen to their music to the extent that I need to turn the volume up whilst watching tv.

I trust this 'proposal' will be declined as I cannot see any resident accepting it.

Regards
Selwyn Gill
60 Blue Crane str
Hemel en Aarde estate

FILE NO:	CT 4156 v
	Hemel & Aarde
SCAN NO:	Gill
COLLABORATOR NO:	1619392

TP

28 DEC 2021

56/214

L Gillion

456 HON

From: Wendy Botha < >
 Sent: Monday, 03 January 2022 12:33
 To: L Gillion
 Subject: The Brewery

TP n. Sheat
(H. Olivier)



Dear Loretta

This letter comes as a result of the advert in The Village News (24 Dec 2021). Although I had written before I think I need to repeat my objections to this request from The Brewery especially in view of the fact that on Monday evening 27th Dec 2021, the live entertainment commenced. It was so loud that my neighbour's son who was visiting from Pretoria drove over to the Hemel en Aarde Village to see where it was coming from!

If this is the live entertainment that is being requested, I definitely do not want a repeat performance, ever. It is disturbing, an invasion of residents' privacy and I wonder why we should all be subjected to it.

Sincerely,
 Wendy Botha

Address: 35.

FILE NO:	OK 4156 ✓
1/	Hemel Aarde Village
CAN NO:	HON 4156
LABORATOR NO:	1622859

TP 05 JAN 2022

57/214

Re: Erf 4156 Hemel & Aarde Village

L Gillion

From: Wendy Botha <
Sent: Monday, 06 December 2021 07:13
To: L Gillion
Subject: The Brewery

TP-A Theart
(Holwer)



Dear Loretta,

This is to inform you that I am opposed to the request from The Brewery for live entertainment.

Live music in such close proximity to Sundew Villas will be a disturbance.

It will affect the privacy and peace of home-owners in Sundew Villas, especially concerning those who work from home.

Furthermore, older people and those who are recuperating from illness or who are not well, will be adversely affected and stressed by the proposed live entertainment.

Yours sincerely,
Wendy Botha

Erf: 2631.2

FILE NO: EL 4156
Hemel & Aarde
SCA: R.C.
COLLABORATOR NO: 1614071

TP - 6 DEC 2021

L Gillion

58/214
TP-A Theart
(Holivier)



From: Neil Wilson <
Sent: Tuesday, 11 January 2022 12:20
To: L Gillion
Cc: glenfruin.meadows@gmail.com; John Makepeace; 'Adolf Mohr';
Subject: Erf 4156, 5 Village Lane, Hemel & Aarde Village: Application for Departure: Place of Entertainment

Importance: High

For Attention: Mr H. Boshoff

Your Reference: **APPLICATION FOR DEPARTURE, SECTION 16(2)(c) OF THE MUNICIPAL LAND USE PLANNING BY-LAW (2020), TO ACCOMMODATE A PLACE OF ENTERTAINMENT ON ERF 4156, ONRUS RIVER**

FILE NO:	EL 4156-H
CAN NO:	Wilson
LABORATOR NO:	1625077

F.A.Musson, the original owner of the land portions, now incorporated within the municipal area (originally Onrus River, now Overstrand Municipality) agreed at the time to the incorporation, as the 'Hemel & Aarde Village' was proposed under **Rural Zone 3: Agri-Village (R3)**. To note this zoning specifically does not allow a *place of entertainment*.

This is particularly important as the immediately adjacent Glenfruin Meadows on land also previously owned by F.A.Musson, was developed as a **low density lifestyle estate** abutting the Onrus river, with stables and walking and equestrian trails laid out on the commonage.

Across the Onrus river, two further large portions, erven 4179 and 4180 were also incorporated within the Municipal area, with the balance being mountain land (not suitable for development) as a private nature reserve, as part of the Onrus River Mountain Conservancy.

As the owners of erf 4180 we were only advised on 17th December 2021 by the Glenfruin Meadows chairperson's e-mail of the above application, and in **objecting**, wish to state the following;

- Erf 4180 at 2.96ha is zoned **Agricultural Zone 1** and was bought specifically for the rural tranquillity within a nature conservancy between the Onrus river and Onrus River mountain range.
- The main house sits at the foot of the Glenfruin kloof, with the mountain behind forming a natural amphitheatre for any sounds generated, particularly emanating from Hemel & Aarde Village **one off events** such as the Brewery to Brewery MTB Classic. These broadcast events **can be clearly heard** throughout the day from our property.
- Traffic congestion on the narrow access servitude we use through Hemel & Aarde Village during these one off events is alarming.
- Emergency access for fire fighting teams to get access into Glenfruin Meadows to fight any house or Mountain flair ups could be negatively impacted by granting the departure for a place of entertainment.
- **The undesirable impact** on the immediately adjacent Glenfruin Meadows of which we form part, could greatly diminish property values, as the prime reason for buying into this low density, semi-rural equestrian estate, is the **peace and tranquillity** it has to offer.
- Open air, live entertainment sound carries, particularly if their broadcast equipment faces the mountain.
- Indoor live entertainment sound can be acoustically controlled/dampened.

The "Noise Nuisance" that will arise if the departure is granted will definitely have an **undesirable impact** on our retirement lifestyle, and was not envisaged when we and the other owners of Glenfruin meadows considered our property purchase, next to the rural Agri-Village (R)

Yours sincerely

TP 11 JAN 2022

59/214

Neill Wilson
(on behalf of N R and J M M Wilson)
Tel:

P O Box

60/214

L Gillion

From: Adolf Mohr < >
Sent: Wednesday, 19 January 2022 06:30
To: L Gillion
Cc: 'Glenfruin Meadows HOA'; HPM Admin
Subject: RE: Erf 4156 Hemel & Aarde Village (Brewery)
Importance: High



TP- n/Heart
(M. Olivia)

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER: APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD ("The Brewery")) – OBJECTION TO APPLICATION

Good day Loretta

I herewith lodge my objection as authorised trustee for the Dolf Möhr Family Trust, as an owner and interested and affected party of Glenfruin Meadows No 1, to the application for Erf 4156 to accommodate a place of entertainment.

Objection from: Dolf Möhr Family Trust (IT9980/96), as:

- Owner of erf 4342, Onrustrivier, Hermanus
- Co owner of erf 4368
- Co owner of erf 4362

Contact Details:

Name: A.J. Möhr
 Tel No:
 Email:

FILE NO:	Erf 4156 ✓
CAN NO:	Hemel & Aarde Village Owners
LABORATOR NO:	Mohr
	1630083

1 Background:

The Dolf Möhr Family Trust purchased erf 4342 in the year 2000. It was purchased specifically because of the tranquillity provided by the surrounding area, whose longevity was enforced by the zoning of the erven in Glenfruin Meadows, the stables, the adjacent rural area north of the Onrust River and the Hemel and Aarde Village directly to the south of Glenfruin Meadows.

Special care was taken prior to purchasing erf 4342, with how the surrounding properties were zoned and had a deciding influence with the purchase of this property. The Special Zone zoning rights attributed to the Hemel and Aarde Village was specifically studied to ensure the long term tranquillity, could not be effected.

It is clear from the Scheme Regulations as well as their Design Manual that a calm country environment was intended with site use including activities such as restaurants, guesthouses, guestrooms, winery, souvenir shops, tourist information centres, antique shops, arts & crafts shops, art galleries, interior decorators, travel bureau, conference facilities, manufacture of pottery and art and dwelling houses which could be attached to a tourism business or cottage industry concern.

I believe it sensible that all purchasers of a property investigate what is allowed and not allowed prior to them purchasing any property and can only believe the owners of erf 4156, who is now asking for the departure, did their homework beforehand. The owner of erf 4165 in other words knew what they were buying into and what was allowed under the Special Zoning Status.

The application for a departure such as this by erf 4156, was clearly never the intention of the H&A Village developers to accommodate a Place of Entertainment in the H&A Village, is out the of the ordinary and furthermore will have major **negative** effect all the surrounding and nearby property owners.

If the applicant wanted to establish a place of entertainment, they should have done so in an area suitably zoned as such. It must be noted that the change in use from the current zoning is an extreme change, unwanted by the nearby properties, and which will severely and negatively influence not just the lives of the property owners, but also the value of the property they own.

The live events held during the past had a significant negative effect on the lives of me, my family and our pets.

TP 19 JAN 2022

For this and other reasons described below the departure is unwanted and undesirable.

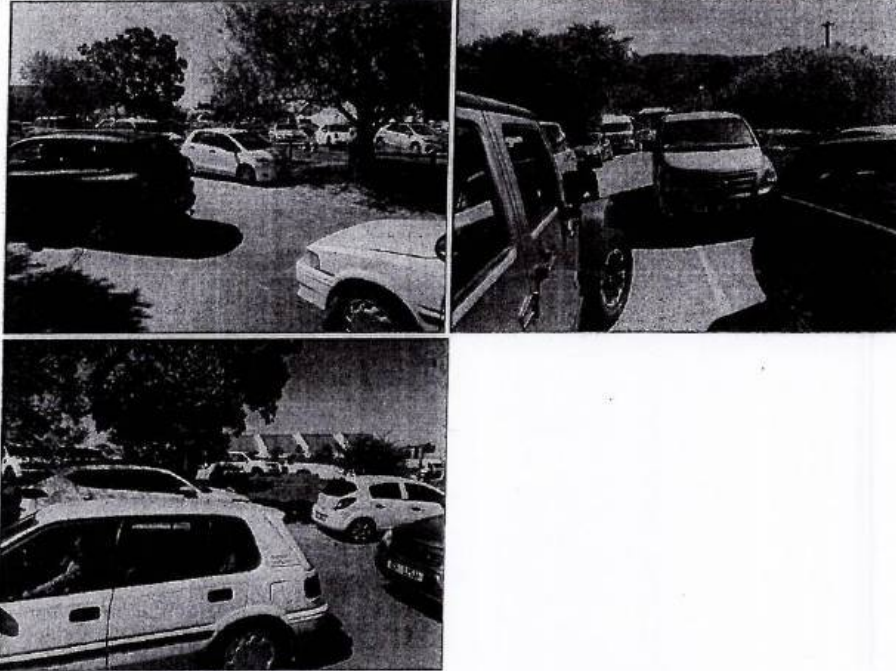
6/21/14

2 Access

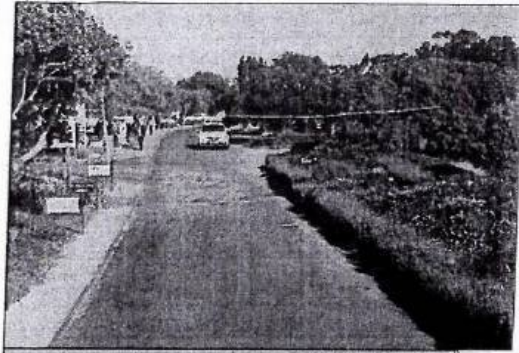
It is the clear intention of The Brewery to draw large **additional** crowds of people to the venue resulting in extensive additional vehicular traffic when hosting or participating with neighbouring properties in holding big events.

It must be specifically noted that congestion on the level seen below, creates a critically unsafe environment and if the Municipality allows the departure to entertain a place of entertainment drawing large crowds with resultant traffic congestion, they are taking the responsibility of any health and safety issues that may arise.

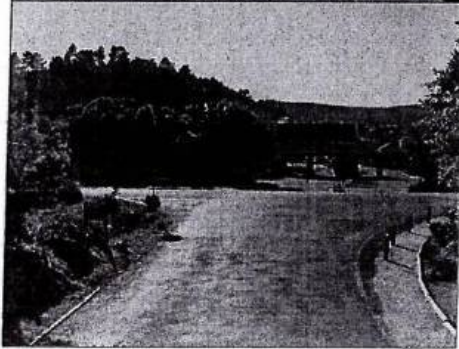
The photographs below shows traffic congestion during such a special event, designed to draw huge crowds.



The approach to Glenfruin Meadows is over a servitude area in H&A Village (Erf 4159) which comprises a single lane road (no road markings) coming off the R320 and runs past the H&A Village retail and office area and The Brewery on the south side of the road and Whalehaven Winery on the north side.



62/214



It is to be noted that this is a very narrow road of less than 6.0 meters overall width in most places, and that it is the only access and egress for numerous properties that include the following:

- The H&A Village Craft Village,
- The Brewery,
- Whalehaven Winery,
- Hornbill House, housing craft, bakery and professional services,
- Woodenways furniture,
- Walker Bay Nursery
- The balance of the businesses and residential areas in the H&A Village,
- Glenfruin Meadows,
- Property across the Onrus River.

The access road intersect with the main road to Caledon and is situated directly opposite the large Hemel and Aarde Estate entrance. The traffic light on the main road to Hermanus, as well as the 1st curve in the road towards Caledon are both approximately 150 meters away, making access onto the R320 difficult even under normal traffic situations. The application is also not supported by a Traffic Impact Assessment (TIA) assessing the suitability for the venue to host events.

6/3/2014



The ground immediately adjacent to the access road has large rocks, trees, signs, electricity boxes, streetlamps etc. on either side. There is often insufficient space for a motorcar and truck to pass each other safely in opposite directions and it is often necessary for vehicles to move off the road to make way for each other.

The road is unmarked and badly maintained and at times poses a danger to motorists, pedestrians and cyclists (of which there are a number). The traffic authorities claim to have no jurisdiction or control over this road as, although it is a public roadway, it is located on private property and they will not police the area by issuing fines, towing vehicles away when illegally parked etc.

The roadway currently carries a voluminous amount of traffic including large delivery vehicles that deliver to the various businesses including the wineries, nursery and furniture/décor businesses.

The road network is already at the bare minimum necessary to support the normal existing traffic and even if upgraded to more effectively make use of the road servitude, in combination with the intersection on the R320 and access road to Glenfruin Meadows will not support a massive ingress of traffic. This is clearly obvious from the photographs shown above.

It must be noted that large areas of the H&A Village are not yet developed - 13 in total and at least 4 that are not developed as of yet. Many of the developed properties located therein are not at their maximum bulk and therefore there is scope for significant additional commercial development.

There are 2 undeveloped properties within Glenfruin Meadows and significant scope for new and additional development of the property across the river which could well include full scale agricultural activities as is their primary right.

There is no roadside parking on this road and there are no stopping areas for vehicles.

Despite the very significant foot traffic of workers and other members of general public and the fact that this is the only access to all the properties referred to above, there is no pedestrian access or pedestrian walkways provided, other than by walking along the road or through what are essentially private properties that could be fenced off at any given time.

This area is also the access to the very popular Hermanus Mountain Bike and walking trails.

For reasons cited above, the venue is not suited to hold events where larger than normal traffic flows are to be generated.

3 Parking

It is to be noted that there is no public or municipal parking servicing the H&A Village at all.

64/24

As there is no contemplation of a "place of entertainment" in the Scheme Regulations of H&A Village, there is no mention of parking requirements for such and it follows that the Overstrand Zoning Scheme Regulations 2020 apply.

This states that a "place of entertainment" needs to have 1 off street parking bay per 4 seats. As per the application, the restaurant site can seat approximately 250 people. If patrons are only limited to this number, then 62.5 parking bays would need to be provided i.e., a shortfall of at least 17.5 bays on those proposed in the application (49 bays).

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

This means that parking must be provided for 500 people sitting, which calculates to at least 125 parking bays.

The application states that the numbers of people are limited as part of the management of the business and also in respect of the cooking.

Common sense dictates that at live concerts people will be standing, will not necessarily attend to eat and the parking per 4 seats would no longer be valid and additional parking to the 125 parking bays must be made provision for. There is no guarantee that management will control the number and the business is profit driven, meaning the more people attending, the better the profit for the business.

Nowhere in the application is parking adequately addressed. The application only states that "guests can park on adjacent parking areas", which common sense should dictate is an unreasonable assumption.

It must be noted that adjacent erven are all private property and house commercial enterprises, or are undeveloped as yet. The assumption that these areas can be used indefinitely for parking cannot be made. During daytime particularly, neighbouring businesses need their parking for their own staff and customers. Most trade on weekends too.

Access to this additional off-site parking is not a given and unless specifically noted on title deeds as inalienable rights attaching to the applicant property in perpetuity, things can and will change as circumstances and further development and expansion takes place in H&A Village.

For these and other reasons the departure is undesirable.

4 Fire and Safety

The drawing of large crowds and additional traffic to H&A Village by granting this departure pose serious threats to the safety and well-being of the properties, patrons and occupants within H&A Village as well as those that have the road as their only form of access and egress.

The agricultural land and mountains above the urban edge of the residential developments accessed through the H&A Village are regarded by the authorities as an extremely high fire risk zone for wildfires and for this reason access of fire fighters and other emergency vehicles is critical at all times, particularly during fire season (Dec-April).

Historically where events have been held in the H&A Village, vehicles have completely blocked the roads and have parked everywhere including in no-stopping zones, the middle of the road and on many occasion, blocking all access to Glenfruin Meadows from the R320.

Risks includes, but are not limited to fire, medical, and municipal services.

The only access to the stables are through Glenfruin Meadows, and during any crisis at the stables access will be blocked off during a event as described in the items above.

For these and other reasons the departure is undesirable.

5 Noise Impact

The noise nuisance generated by The Brewery by holding heavily amplified live and reproduced music outdoors is disturbing and impairs the convenience and peace that my family, guests and I, as reasonable people, are entitled to enjoy on our properties as well as when walking in the common areas of Glenfruin Meadows.

It is unreasonable to be subjected to the noise generated by the live performances. The noise impact assessment also states that the maximum noise levels are exceeded and it must be noted that the distance from erf 4156 is approximately 90 meters from erf 4368, partly owned by the Dolf Mohr Family Trust.

As a matter of interest, the stables are approximately 210 meters away and in a direct line of sight.

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It is common procedure to during live entertainment place speakers around the periphery of the listening crowd and it is therefore reasonable to accept that the closest point where music will be coming from will be at the northern edge of the property.

It is also common knowledge that the crowd noise at such a time will be above any acceptable noise level and in the case of the crowd will this noise level have to be measured from all the other parking areas utilised as described in the application. An example will be that the crowd noise could be as close as against the stables, and or against erf 4368 and or approximately 200 meters away from erf 4362 and or erf 4342.

It must be specifically noted that the impact on the horses and pets have been significant during the events held illegally over the past year.

Attempting to sleep during live events is impossible, and it must be further noted that erf 4342 is also used as a home office, more so since COVID and attempting to work during the live events is impossible.

For these and other reasons the departure is undesirable.

6 Setting a Precedent

If the application is successful in any form, this will set a precedent for businesses already in the H&A Village, many of whom have illegally held large live music events, weddings etc. in the past (as recently as 27 Dec 2021, Bottomless Coffee Band) to apply for place of entertainment departures.

In addition, similar businesses may well be attracted to the H&A Village and apply for similar departures.

Two of the undeveloped erven border Glenfruin Meadows and the Equestrian Centre and pose a huge threat of a ripple of applications for departures to entertainment areas and will also open the door for existing businesses to apply for such departures.

For these and other reasons the departure is undesirable.

7 Place of Entertainment

It must be specifically noted that a place of entertainment opens the door to just that. Nothing will stop a business owner from next starting a nightclub, installing slot machines and/or a strip club, etc.

For these and other reasons the departure is undesirable.

8 Mitigating Measures

In the alternative in that the application is considered favourable in any way, mitigating measures should be imposed that for example:

- Limit the place of entertainment and all amplified sound/music/PA systems to the inside of the building or new buildings which are suitably soundproofed. The crowd must be limited to the number of formally available parking bays.
- Windows and doors should be closed when holding live entertainment after certain hours.
- Specifically regulate that no part of the designated parking area and requirement on the applicant property, may be used for any purpose other than parking i.e., no stage, dance floor, tent, gazebo, marquee to accommodate performers, event participants, patrons or exhibitors may be erected in the parking area.
- Require commitment and crowd control measures to be undertaken by the applicant to keep within "manageable numbers and control".
- Require the presence of meaningful security to protect members of the general public as well as owners and occupiers of adjacent properties.
- Require qualified parking attendants with authority to be appointed during times of high attendance so as to prevent blocking/congestion of the narrow access roads and unlawful parking (traffic authorities have no jurisdiction over the roads in H&A Village).
- Require binding commitment by the applicant and H&A Village HOA to facilitate negotiations with the relevant parties to the registered Servitude Agreements to attend to the upgrading and ongoing maintenance of the road and infrastructure at least from the R320 to the corner at Whalehaven Winery/Biga.

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- Require that the Event By-Law be applied on an individual application basis for the staging of any event that the by-law applies to – so as to ensure that events are managed safely and effectively.

Kind Regards

Dolf Möhr
On behalf of the Dolf Möhr Family Trust.

From: L Gillion <loretta@overstrand.gov.za>
Sent: Wednesday, 15 December 2021 11:09
To: Adolf Mohr < >
Subject: Erf 4156 Hemel & Aarde Village (Brewery)

Beste Mnr Mohr

U telefoniese navraag verwys.

Sien hierby aangeheg die geregistreerde brief rakende bogenoemde aansoek, soos versoek. Die "tracking number" vir die brief is R1357474899ZA.

Hoop u vind bogenoemde in orde.

Groete

Loretta Gillion

Administrator : Town & Spatial Planning
Overstrand Municipality
A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20
T: 028 313 8900 | F: 028 313 2093 | E: loretta@overstrand.gov.za



Overstrand Municipality

A: 1 Magnolia Street, Hermanus, 7200 | P: P.O Box 20, Hermanus, 7200
T: +27 (0)28 313 8000 | F: +27 (0)28 312 1894
E: enquiries@overstrand.gov.za | W: www.overstrand.gov.za

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Please consider the environment before printing this correspondence.

67/214

L Gillion

From: Peter Jones <...>
Sent: Tuesday, 18 January 2022 15:07
To: L Gillion
Subject: Brewery Departure Application



TP A. Heath
(M. Oliver)

Dear Ms Gillion,

I am the registered owner of Erf 4345 otherwise known as 5 Meadow's Avenue Glenfruin Meadows's, as such am an effected party in the above application.

It is unfortunate that the departure application is for a "Place of Entertainment" . I was not uncomfortable with the past live music events that the Brewery held on days of special events, festivals and the odd weekend. From the application I note that the definition of "Place of Entertainment" is substantially broader than the odd live music event, had these activities been allowed at Hemel and Aarde Village when I purchased my property I would most certainly have purchased elsewhere.

At the time that I purchased my property these activities were not allowed, should these activities now be allowed my property will definitely suffer a loss in value as the reason why people choose to live in Glenfruin is the tranquil rural feel which will have been destroyed, because of this I have no option but to object to the application.

As stated above had the application been limited to:

Live Music.

On days of festivals, special events ,Festivals in Hermanus, and public holidays.

Renewable every 3 years with the same opportunity to object.

Not transferable in the event of sale of the Business/building.


And obviously in keeping within reasonable times given that there is a residential estate close by then assuming the above was in place I would have no objection.

Please acknowledge receipt of this email.

Kind regards,

Peter Jones

FILE NO:	Of 4156
DEPARTMENT:	Hemel & Aarde Village Chris
PERSON NO:	Jones
LABORATOR NO:	1630070

Charter 

FIDUCIARY ADMINISTRATORS (PTY) LTD

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TP 18 JAN 2022

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TP D. Theoort
(H. Olivier)

L Gillion



From: Agatha Pretorius <...>
Sent: Tuesday, 18 January 2022 14:56
To: L Gillion
Cc: ...; Gert Pretorius
Subject: ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER:
 APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING
 (obo HERMANUS MICROBREWERY (PTY) LTD ("The Brewery"))

**ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER:
 APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL
 PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD ("The Brewery")) –
 OBJECTION TO APPLICATION**

Dear Loretta

I herewith lodge my objection as an owner and interested and affected party of Glenfruin Meadows No 11 (Erf 4839), to the application for Erf 4156 to accommodate a place of entertainment.

Objection from: Elizabeth Agatha Pretorius as:

- Owner of erf 4839, Onrust rivier, Hermanus

Contact Details:

Name: EA Pretorius

Tel No:

Email:

FILE NO:	Of 4156 ✓
CAN NO:	Hemel & Aarde Village Omnis
LABORATOR NO:	Agatha
	1630061

1 Background:

I purchased erf 4839 in the year 2019. It was purchased specifically because of the tranquillity provided by the surrounding area, whose longevity was enforced by the zoning of the erven in Glenfruin Meadows, the stables, the adjacent rural area north of the Onrust River and the Hemel and Aarde Village directly to the south of Glenfruin Meadows.

It is clear from the Scheme Regulations as well as their Design Manual that a calm country environment was intended with site use including activities such as restaurants, guesthouses, guestrooms, winery, souvenir shops, tourist information centres, antique shops, arts & crafts shops, art galleries, interior decorators, travel bureau, conference facilities, manufacture of pottery and art and dwelling houses which could be attached to a tourism business or cottage industry concern.

I believe it sensible that all purchasers of a property investigate what is allowed and not allowed prior to them purchasing any property and can only believe the owners of erf 4156, who is now asking for the departure, did their homework beforehand. The owner of erf 4165 in other words knew what they were buying into and what was allowed under the Special Zoning Status.

The application for a departure such as this by erf 4156, was clearly never the intention of the H&A Village developers to accommodate a Place of Entertainment in

TP 18 JAN 2022

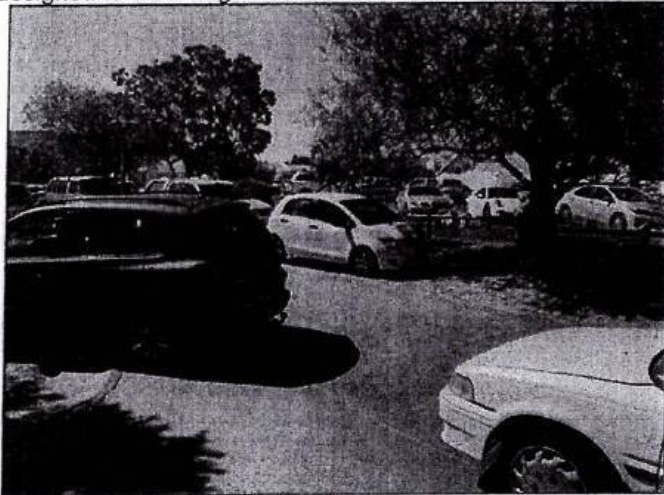
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the H&A Village, is out the of the ordinary and furthermore will have major negative effect all the surrounding and nearby property owners. If the applicant wanted to establish a place of entertainment, they should have done so in an area suitably zoned as such. It must be noted that the change in use from the current zoning is an extreme change, unwanted by the nearby properties, and which will severely and negatively influence not just the lives of the property owners, but also the value of the property they own. The live events held during the past had a significant negative effect on my, my family and my friends on occasion. For this and other reasons described below the departure is unwanted and undesirable.

2 Access

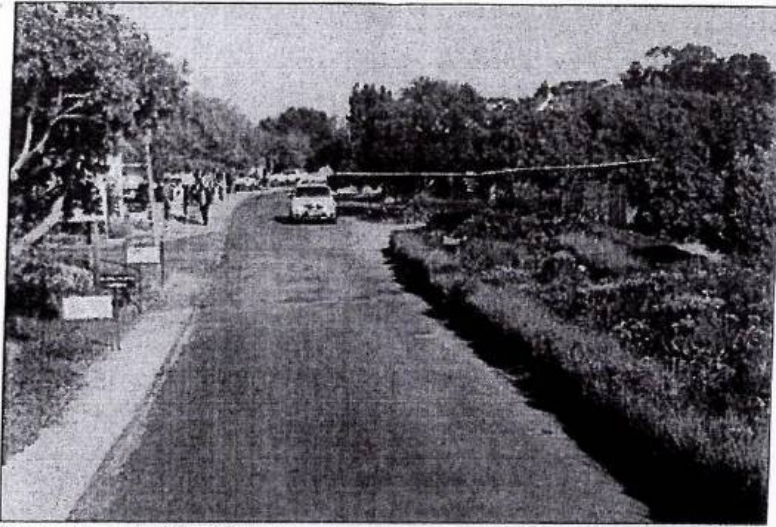
It is the clear intention of The Brewery to draw large additional crowds of people to the venue resulting in extensive additional vehicular traffic when hosting or participating with neighbouring properties in holding big events. It must be specifically noted that congestion on the level seen below, creates a critically unsafe environment and if the Municipality allows the departure to entertain a place of entertainment drawing large crowds with resultant traffic congestion, they are taking the responsibility of any health and safety issues that may arise.

The photographs below shows traffic congestion during such a special event, designed to draw huge crowds.



The approach to Glenfruin Meadows is over a servitude area in H&A Village (Erf 4159) which comprises a single lane road (no road markings) coming off the R320 and runs past the H&A Village retail and office area and The Brewery on the south side of the road and Whalehaven Winery on the north side.

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It is to be noted that this is a very narrow road of less than 6.0 meters overall width in most places, and that it is the only access and egress for numerous properties that include the following:

- The H&A Village Craft Village,
- The Brewery,
- Whalehaven Winery,
- Hornbill House, housing craft, bakery and professional services,
- Woodenways furniture,
- Walker Bay Nursery
- The balance of the businesses and residential areas in the H&A Village,
- Glenfruin Meadows,
- Property across the Onrus River.

The access road intersect with the main road to Caledon and is situated directly opposite the large Hemel and Aarde Estate entrance. The traffic light on the main road to Hermanus, as well as the 1st curve in the road towards Caledon are both approximately 150 meters away, making access onto the R320 difficult even under normal traffic situations. The application is also not supported by a Traffic Impact Assessment (TIA) assessing the suitability for the venue to host even the ground immediately adjacent to the access road has large rocks, trees, signs, electricity boxes, streetlamps etc. on either side. There is often insufficient space for a motorcar and truck to pass each other safely in opposite directions and it is often necessary for vehicles to move off the road to make way for each other. The road is unmarked and badly maintained and at times poses a danger to motorists, pedestrians and cyclists (of which there are a number). The traffic authorities claim to have no jurisdiction or control over this road as, although it is a

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public roadway, it is located on private property and they will not police the area by issuing fines, towing vehicles away when illegally parked etc.

The roadway currently carries a voluminous amount of traffic including large delivery vehicles that deliver to the various businesses including the wineries, nursery and furniture/décor businesses.

The road network is already at the bare minimum necessary to support the normal existing traffic and even if upgraded to more effectively make use of the road servitude, in combination with the intersection on the R320 and access road to Glenfruin Meadows will not support a massive ingress of traffic. This is clearly obvious from the photographs shown above.

It must be noted that large areas of the H&A Village are not yet developed - 13 in total and at least 4 that are not developed as of yet. Many of the developed properties located therein are not at their maximum bulk and therefore there is scope for significant additional commercial development.

There are 2 undeveloped properties within Glenfruin Meadows and significant scope for new and additional development of the property across the river which could well include full scale agricultural activities as is their primary right.

There is no roadside parking on this road and there are no stopping areas for vehicles.

Despite the very significant foot traffic of workers and other members of general public and the fact that this is the only access to all the properties referred to above, there is no pedestrian access or pedestrian walkways provided, other than by walking along the road or through what are essentially private properties that could be fenced off at any given time.

This area is also the access to the very popular Hermanus Mountain Bike and walking trails.

For reasons cited above, the venue is not suited to hold events where larger than normal traffic flows are to be generated.

3 Parking

It is to be noted that there is no public or municipal parking servicing the H&A Village at all.

As there is no contemplation of a "place of entertainment" in the Scheme Regulations of H&A Village, there is no mention of parking requirements for such and it follows that the Overstrand Zoning Scheme Regulations 2020 apply.

This states that a "place of entertainment" needs to have 1 off street parking bay per 4 seats. As per the application, the restaurant site can seat approximately 250 people. If patrons are only limited to this number, then 62.5 parking bays would need to be provided i.e., a shortfall of at least 17.5 bays on those proposed in the application (49 bays).

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

This means that parking must be provided for 500 people sitting, which calculates to at least 125 parking bays.

The application states that the numbers of people are limited as part of the management of the business and also in respect of the cooking.

Common sense dictates that at live concerts people will be standing, will not necessarily attend to eat and the parking per 4 seats would no longer be valid and

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additional parking to the 125 parking bays must be made provision for. There is no guarantee that management will control the number and the business is profit driven, meaning the more people attending, the better the profit for the business. Nowhere in the application is parking adequately addressed. The application only states that "guests can park on adjacent parking areas", which common sense should dictate is an unreasonable assumption.

It must be noted that adjacent erven are all private property and house commercial enterprises, or are undeveloped as yet. The assumption that these areas can be used indefinitely for parking cannot be made. During daytime particularly, neighbouring businesses need their parking for their own staff and customers. Most trade on weekends too.

Access to this additional off-site parking is not a given and unless specifically noted on title deeds as inalienable rights attaching to the applicant property in perpetuity, things can and will change as circumstances and further development and expansion takes place in H&A Village.

For these and other reasons the departure is undesirable.

4 Fire and Safety

The drawing of large crowds and additional traffic to H&A Village by granting this departure pose serious threats to the safety and well-being of the properties, patrons and occupants within H&A Village as well as those that have the road as their only form of access and egress.

The agricultural land and mountains above the urban edge of the residential developments accessed through the H&A Village are regarded by the authorities as an extremely high fire risk zone for wildfires and for this reason access of fire fighters and other emergency vehicles is critical at all times, particularly during fire season (Dec-April).

Historically where events have been held in the H&A Village, vehicles have completely blocked the roads and have parked everywhere including in no-stopping zones, the middle of the road and on many occasion, blocking all access to Glenfruin Meadows from the R320.

Risks includes, but are not limited to fire, medical, and municipal services.

The only access to the stables are through Glenfruin Meadows, and during any crisis at the stables access will be blocked off during a event as described in the items above.

For these and other reasons the departure is undesirable.

5 Noise Impact

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In addition, similar businesses may well be attracted to the H&A Village and apply for similar departures.

For these and other reasons the departure is undesirable.

7 Place of Entertainment

It must be specifically noted that a place of entertainment opens the door to just that. Nothing will stop a business owner from next starting a nightclub, installing slot machines and/or a strip club, etc.

For these and other reasons the departure is undesirable.

8 Mitigating Measures

In the alternative in that the application is considered favourable in any way, mitigating measures should be imposed that for example:

- Limit the place of entertainment and all amplified sound/music/PA systems to the inside of the building or new buildings which are suitably soundproofed. The crowd must be limited to the number of formally available parking bays.
- Windows and doors should be closed when holding live entertainment after certain hours.
- Specifically regulate that no part of the designated parking area and requirement on the applicant property, may be used for any purpose other than parking i.e., no stage, dance floor, tent, gazebo, marquee to accommodate performers, event participants, patrons or exhibitors may be erected in the parking area.
- Require commitment and crowd control measures to be undertaken by the applicant to keep within "manageable numbers and control".
- Require the presence of meaningful security to protect members of the general public as well as owners and occupiers of adjacent properties.
- Require qualified parking attendants with authority to be appointed during times of high attendance so as to prevent blocking/congestion of the narrow access roads and unlawful parking (traffic authorities have no jurisdiction over the roads in H&A Village).
- Require binding commitment by the applicant and H&A Village HOA to facilitate negotiations with the relevant parties to the registered Servitude Agreements to attend to the upgrading and ongoing maintenance of the road and infrastructure at least from the R320 to the corner at Whalehaven Winery/Biga.
- Require that the Event By-Law be applied on an individual application basis for the staging of any event that the by-law applies to – so as to ensure that events are managed safely and effectively.

Kind Regards

Elizabeth Agatha Pretorius
Owner of Erf 4839

75/214

L Gillion

From: Colleen Greyling <>
Sent: Wednesday, 19 January 2022 11:25
To: L Gillion
Subject: Live music at the Brewery



TP. n. Ahoort
 (H. Olivia)

Good morning

We live in Hemel en Aarde Estate. We are close to the entrance gate, which means close to the Brewery. There has been live music at the Brewery and it definitely disturbs us, to the point of having to turn our TV louder, and not been able to sleep because of the noise. I know some residents of the Estate would not have a problem with loud music. I'm sure they are the ones that live closer to Mount Pleasant side.

I'm not being difficult at all.

Kind regards
 Colleen Greyling

FILE NO:	St 456 ✓
Hemel en Aarde Village Crus	
CAN NO:	Greyling
LABORATOR NO:	1630043

TP
 19 JAN 2022

76/214

L Gillion

From: Cecily du Plessis < >
Sent: Tuesday, 18 January 2022 11:53
To: L Gillion
Subject: Objections



I am totally opposed to a soup kitchen at the Hemel en Aarde village.
 I believe the soup kitchen should be set up close to the area in which the people in need of it live.
 Not make undernourished people walk miles for sustenance .
 And could also lead to homeless people squatting in this area.
 Also. H and A Village was intended to have the upstairs units for residential use.
 To suddenly have excessive loud music in a semi residential area is totally unacceptable.
 Regards. Cecily du Plessis

TP. n. Ahearne
 (A. Olivia)

FILE NO:	Of 4156 ✓
Hemel en Aarde Village Objs	
CAN NO:	Cecily
LABORATOR NO:	1630047

TP 18 JAN 2022

TP. N. /hearG
(H. Olive)

77/214

L Gillion

From: Hugh Frangs < >
Sent: Tuesday, 18 January 2022 12:14
To: L Gillion
Subject: OBJECTION TO APPLICATION BY BREWERY



OBJECTION TO APPLICATION BY THE BREWERY TO EXTEND PROPERTY AS A PLACE OF ENTERTAINMENT

The following concerns are pertinent to the issue.

1. The introduction of a soup kitchen adjacent to a gin bar is really strange. Hermanus has many soup kitchens run by the local churches and the community, including a daily soup kitchen in Zwelihle. Locating such a facility in this area will not offer any real value to the needy, as it is out of range and **inaccessible** to most of the homeless. In addition, there are no **toilet facilities** shown on the plan for users of the soup kitchen
2. There is a question regarding the concept of 'a place of entertainment' located in a predominantly quiet residential area. This facility will increase **traffic and noise** and end up being a disturbance to the community and only serving the benefit of the licensee.
3. The traffic light at the intersection of the R320 and R43 is the **busiest traffic intersection** in the Overberg. There are **no proper verges or pavements** on the west (Hemel en Aarde Estate side). Daily, people wanting lifts are found lining the road. There are boulders to discourage cars/trucks from stopping. However lifts are offered and these vehicles block the road while business is transacted. Surely this whole congestion and infrastructure has to be sorted out before granting any licences which will increase the traffic and further add to the problem?

H.O AND I. L. FRANGS
45 BLUE CRANE
HEMEL EN AARDE ESTATE

Hugh & Lynn Frangs

FILE NO:	SL 4156 ✓
CAN NO:	Hemel en Aarde Village Chms
	Frangs
LABORATOR NO:	1630055

TP 18 JAN 2022

78/214

L Gillion

From: Tiaan Rabe < >
Sent: Tuesday, 18 January 2022 12:31
To: L Gillion
Subject: Brewery at Hemel en Aarde Village



TP. n. Ahearne
(M. Olivier)

Good day,

Kindly note that I do not approve the planned expansion of the Brewery.

This increase of traffic will cause massive delays outside Hemel en Aarde Estate.

The noise levels will also not be acceptable.

Regards,
Tiaan Rabe

Sent from my iPhone

FILE NO:	ET 4156 ✓
SCAN NO:	Hemel en Aarde Village Oms
	Rabe
REGISTRATOR NO:	1630057

TP 18 JAN 2022

TP n/thead
(M. Oliver) 1/214

L Gillion

From: Reifarth < >
Sent: Friday, 17 December 2021 16:09
To: L Gillion
Subject: ERF 4156 THE BREWERY



Good day

I refer to the application of The Brewery for live music on their premises, and hereby object to this application. Even at present their music is loud, making it unpleasant at night. The Brewery is surrounded by residential properties on all sides and whether the businesses around them don't mind is not relevant.

Kindly take note of my objection.

Kind regards

Mrs. M. Reifarth

 Virus-free www.avast.com

FILE NO:	51456 ✓
	Home & Made
SCAN NO:	Village
	HMS 455
COLLABORATOR NO:	1618588

TP 17 DEC 2021

1211



L Gillion

From: Dalena < >
Sent: Monday, 20 December 2021 17:57
To: L Gillion
Subject: THE BREWERY- Live entertainment

Re: Erf 4156 H&A Village
TP n. Ahead
(M. Olivia)

Beste Loretta

Ek is die eienaar van erf 2671 in die Sundew Villas Kompleks in Sandbaai
My adres in die kompleks is Stergianosstraat 44

Hiermee teken ek beswaar aan oor die "Brewery" se versoek om lewendige musiek vir hulle klante te speel

Lewendige musiek is gewoonlik hard en kan baie storend wees enige tyd van die dag.

Mense se privaatheid en rustigheid kan gesteur word veral as jy van die huis af werk of moeg tuis kom na werk
Ouer mense wat is veral baie beïndruk met die ruatigheid in die kompleks.

Wat my die meeste bekommer is die feit dat daar nie n proef periode is dat mens meer inligting het.

Beteken di took dat jy nie mag kla as realiteit eers daar is nie.

So ek meen dat mens eerder nou beswaar moet aanteken

MA Folscher.co.za

FILE NO:	21 4156 ✓
	Mama's Bride Village
SCAN NO:	
	Folscher
COLLABORATOR NO:	
	1618849

TP 21 DEC 2021



TP. N. (head)
(H. Olivia)

81/214

Cell: (Louise Makepeace)
Cell: (John Makepeace)

20th December 2021

BY EMAIL TO: loretta@overstrand.gov.za

BY EMAIL FM: makepeace.hermanus@gmail.com

Dear Loretta

Application for Departure: Interactive Town and Regional Planning obo Hermanus Microbrewery (Pty) Ltd

In respect of this application I represent, either personally or in a proxy capacity, the following interested & affected parties:

Erf 4365, Erf 4366, Erf 4179, Erf 283, Remainder of portion 338 of the Farm Onrust River Nr 581, Portion 2 of the farm Glenfruin Nr 578

We note that the existence of the above application only came to our collective attention for the first time as recently as 15th December 2020. The closing date for comments by interested and affected parties is noted as being the 20th December 2020 i.e. today.

We have been reliably informed by you that for, whatever reason, this Application was not advertised in the lay press as required and this has been verified by us by further inquiry.

We as well as others, including the Chairperson of the Glenfruin Meadows Homeowners Association Dolf Mohr, have been advised by you that the adverts iro this application will be placed during the course of this week and that the closing date for comment / objection will be indicated in the adverts and will that this will be towards the end of January 2022.

We place on record that we fully intend to comment / object and that we would be severely prejudiced should we not be given the opportunity and further that we shall be making such submissions on or before the closing date which is still to be advertised.

This revised date will give us the opportunity to examine the impact and desirability of such a departure or otherwise, consult with specialists and do all things necessary to make an objective comment / objection.

Thank you and yours sincerely

John Makepeace

FILE NO:	Al 4114 ✓
	Hemel & Made Village
SCAN NO:	
	John
COLLABORATOR NO:	1618642

20 DEC 2021

TP: A. Theart
(H. Olivier)

82/214



L Gillion

From: Gerrit Oosthuizen < >
Sent: Sunday, 19 December 2021 19:57
To: Adolf Mohr; L Gillion; wine@hermanus.co.za; hemelaardevillage@gmail.com; johnd@hermanus.co.za; henniehenn1976@gmail.com; gcrothschild@gmail.com; Sally Barnard; hennie@hennicorp.com; wine@hermanus.co.za
Cc: Andy Smith; jo@wilarch.co.za; Glenfruin LawsonsSmith James; Glenfruin Peter Jones; Roger Maarschalk; Charles DeVilliers; Ingrid de Villiers; Glenfruin Versteijne; Ina BvN; Glenfruin Gerrit Oosthuizen; Peter Finlayson; gert.dp.pretorius@gmail.com; Chris Alheit; Glenfruin Francois Barnard; Hennie Roux; Glenfruin Helena selawry; Sean McArthur; Glenfruin Shaun Smith; annelize Toua; Lesley; Gerard Kemp; Louise Makepeace; John Makepeace; Janine Botha; Macayla Blignaut; Neil Wilson; Glenfruin Meadows H.O.A; hpmreception@hermanus.co.za
Subject: OBJECTION_Re: Erf 4156, 5 Village Lane: Hemel en Aarde Village, Onrustrivier: Application for Departure: Interactive Town and Regional Planning Jobo Hermanus Microbrewery (Pty) Ltd
Attachments: image001.png; ATT00001.htm; Annexures, Erf 4156 Hemel & Aarde Village (Departure).pdf; ATT00002.htm; Request for comment_Glenfruin Meadows HOA.pdf; ATT00003.htm



To whom it may concern.

The owner of erf 4152 - GANG Ceramic Design Cc - objects against the below departure. Our main concern is that the building guidelines of the Hemel & Aarde Village is not adhered to.

Kind regards

Gerrit Oosthuizen
Creative Director
VLVLK Group (PTY) Ltd

FILE NO:	Erf 4156 ✓
	Hemel & Aarde Village
SCAN NO:	Gerrit
COLLABORATOR NO:	1618634



13 Village Lane, Hemel & Aarde Village, Hermanus, 7201 [View on Map](#)



VLVLK | VEELVLAK Through Passion, Commitment And Collaboration. We Transcend Expectations.

TP 20 DEC 2021

L Gillion

From: Neill Wilson Architects < >
Sent: Monday, 20 December 2021 15:11
To: L Gillion
Subject: The Brewery application / Preliminary Comment
Attachments: NOTICE - Erf 4156 Hemel Aarde Village (Departure).pdf

Importance: High



Attention: Mr H Boshoff / Loretta

Dear Sirs

ERF 4156 Hemel Aarde Village (Departure) / Preliminary Comment

When The Brewery previously held events (unauthorised) – the noise was unbearable – even to us alongside Kidbrooke high up on the mountainside and we, as well as various others in Glenfruin Meadows, lodged an objection with the Municipality to put a stop to it.

Furthermore the traffic generated by one of the “Shows” prevented free access to the Glenfruin Estate – and when asked to assist the Traffic Department advised that the Hemel & Aarde Village was ‘out of their jurisdiction’.

Bear in mind that if this Departure is allowed, others in the H&A Village may then follow suit i.e. – Whalehaven Winery – Hermanuspietersfontein. The outcome for the surrounding neighbourhoods would be a loss in property values, unpleasant exposure to noise at any time of day or night – the “noise police” were conspicuously ineffective when asked to control it previously.

We would like to draw to your attention that the original zoning for the Hemel & Aarde Village was based on a “Live-Work from Home” concept. This does not appear to have been controlled and if this application is allowed to go through it will be the final coup de grace to surrounding residential neighbourhoods.

This comment is preliminary and will be followed up in due course after the application has been advertised for objection.

Yours sincerely,

JMM Wilson
 3 Associated Estate
 Glenfruin Meadows
 Erf 4344

FILE NO:	517 4156
	Hemel & Aarde Village
SCAN NO:	Wilson
COLLABORATOR NO:	1618817

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20 DEC 2021

TP A. (heard
(H. Olivia) 24/214

L Gillion

From: Wayne Le Roux <
Sent: Sunday, 19 December 2021 22:34
To: L Gillion
Subject: The Brewery - Live entertainment request



Attention Overstrand Municipality :

I Wayne Le Roux owner of 65 Stergianos Sundew Villas Sandbaai ;

Hereby object against this decision and do not approve for a live entertainment or show to occur at the particular place the "Brewery" as a permanent gesture.

Reasons :

We have in the past been disturbed by loud music coming from events that has been held at the Brewery and did not bother of complaining seeing that it is a once off event.
We have little children of two years in age, who also need the peace and quiet in the night time in order to get a good nights rest.
I am currently also studying in night time and cannot even start to think how troubling this would be hearing loud music from their premises.
We stay just opposite of the brewery and I believe that everyone should have the opportunity to live and prosper but after hours music during the night will certainly disturb our peace and sanity in the privacy of our own home.
Our bedrooms all reside on the side of the main road and we can clearly, very clearly hear the disturbance of music when there is an event and music is being played.

I hope you find this In order, please feel free to contact if there may be any questions.

Regards

Wayne Le Roux

FILE NO:	At 1156 ✓
	Memela Node Village
SCAN NO:	Wayne
COLLABORATOR NO:	168813

TP 20 DEC 2021

85/214

L Gillion

From: hannie van Niekerk <
Sent: Sunday, 19 December 2021 20:50
To: L Gillion
Subject: Lewendige vermaak "The Brewery"



Wie dit mag behaag .
 EK is gekant teen die kennisgewing ivm lewendige vermaak (The Brewery)
 Luide oorverdwende musiek kan n steurnis wees ongeag die tyd van die nag of dag as ook die tyd van die maand.
 Dit val nie altyd in almal se smaak of waarde van musiek wat kan lei dat jou privaatheid beslis ge affekteer kan raak soos
 in geval van die ouer garde in ons gemeenskap , wat waarde heg aan rustigheid en vrede.
 Asook die persoon wat vanaf die huis werk weens covid 19 sal beslis ook ernstig geaffekteer word .

Die uwe
 J E van Niekerk

TP. A / (hoort
 (H. Olivia)

7200

FILE NO:	CT 4156 v
	Memel a. Ade Village
SCAN NO:	Van N
COLLABRATOR NO:	618802

TP 20 DEC 2021



THE HUDD TRUST

COMMENT / RESPONSE TO :

ERF 4156, VILLAGE LANE, HEMEL EN AARDE VILLAGE, HERMAUNS –
APPLICATION FOR DEPARTURE

TR. D. (head
C.H. Oliva)

INTRODUCTION

Kidbrooke Place, owned by the Hudd Trust, is a retirement village where elegant, spacious, Cape Georgian cottages, and Frail Care Facilities, command spectacular sea and mountain views.

At Kidbrooke, residents enjoy a tranquil life at the foot of the Hemel-en-Aarde Valley. The grounds are exquisite, the cottages, which come in 1-, 2- and 3-bedroom sizes are all well-appointed and the views are quite simply stunning.

Kidbrooke strives to provide a safe, secure, and peaceful environment for residents and staff.

COMMENT ON DOCUMENTATION PROVIDED ITO FINDINGS

1. Previous live events have proven the noise levels are not acceptable, in particular during the evenings.
2. Day time events, such as the events held at Curro School sport days, are acceptable, as these are infrequent and during the daytime.

CONCLUSION

The Hudd Trust / Kidbrooke Place herewith voice our concern and disapproval of the application.

Best regards,

Caroline Gibbs
Hudd Trust Manager

20.12.2021

FILE NO:	514156 ✓
Hemel en Aarde Village	
SCAN NO:	Hudd
COLLABORATOR NO:	16/8800

Trust No: IT 618/87

Trustees: Chairman: JA de B Martin, AG Marshall, MG van Eyk, FE Maytham
 P O Box 801 Hermanus, 7200 South Africa Tel: 028 316 4033
 e-mail: manager@huddtrust.co.za admin@huddtrust.co.za
 Kidbrooke Place Sales Tel: 028 316 1127 email: sales@kidbrooke.co.za

20 DEC 2021

87/214



L Gillion

From: Christa Frade <
Sent: Thursday, 23 December 2021 14:23
To: L Gillion
Subject: BREWERY

Re: Erf 4156 H&A Village

TP. N. Ahearne
(H. Olivier)

Good day Loretta

I want to lodge a objection to the development in the Hemel and Aarde Village. It is to close to my 2 properties located in Hemel en Aarde Estate and also in Sun Dew Village.

I feel there will be noise and disruption of quiet to both my properties.

Regards
WCM Frade

FILE NO:	OF 4156 ✓
	Hemel & Aarde
SCAN NO:	
	Frade
COLLABORATOR NO:	
	1618976

TP 24 DEC 2021

88/211

TP. N. Alheit
(M. Oliva)

L Gillion

From: Annelize Toua <
Sent: Sunday, 09 January 2022 20:34
To: 'Shaun Smith'; 'Gerrit Oosthuizen'
Cc: 'Adolf Mohr'; L Gillion; wine@hermanus.co.za; hemelaardevillage@gmail.com; johnd@hermanus.co.za; henniehenn1976@gmail.com; gcrothschild@gmail.com; 'Sally Barnard'; hennie@hennicorp.com; 'Andy Smith'; jo@wilarch.co.za; 'Glenfruin Lawsonsmit James'; 'Glenfruin Peter Jones'; 'Roger Maarschalk.'; 'Charles DeVilliers'; 'Ingrid de Villiers'; 'Glenfruin Versteijne'; 'Ina BvN'; 'Glenfruin Gerrit Oosthuizen'; 'Peter Finlayson'; gert.dp.pretorius@gmail.com; 'Chris Alheit'; 'Glenfruin Francois Barnard'; 'Hennie Roux'; 'Glenfruin Helena selawry'; 'Sean McArthur'; 'Lesley'; 'Gerard Kemp'; 'Louise Makepeace'; 'John Makepeace'; 'Janine Botha'; 'Macayla Bignaut'; 'Neil Wilson'; 'Glenfruin Meadows H.O.A'; hpmreception@hermanus.co.za
Subject: RE: OBJECTION_Re: Erf 4156, 5 Village Lane: Hemel en Aarde Village, Onrustrievier: Application for Departure: Interactive Town and Regional Planning Jobo Hermanus Microbrewery (Pty) Ltd

Hi Everyone

We experienced some of the noise from the venues from outside Glenfruin Meadows Estate and feel that if it was only over the festive season it would have been fine, but to have to listen to that every weekend will be disturbing. So for that reason we are going to object.

Kind Regards

Mike and Annelize Toua
 ERF 4360

FILE NO:	Erf 4156 v
Hemel en Aarde Village Onrus	
SCAN NO:	
Toua	
LABORATOR NO:	
1624719	

From: Shaun Smith <
Sent: Thursday, 23 December 2021 14:54
To: Gerrit Oosthuizen <gerrit@vvlk.com>
Cc: Adolf Mohr <dolfmohr@csconsult.net>; loretta@overstrand.gov.za; wine@hermanus.co.za; hemelaardevillage@gmail.com; johnd@hermanus.co.za; henniehenn1976@gmail.com; gcrothschild@gmail.com; Sally Barnard <sally@beachhouse.co.za>; hennie@hennicorp.com; Andy Smith <andy@tdcreative.com>; jo@wilarch.co.za; Glenfruin Lawsonsmit James <Lawsonsmith.james@gmail.com>; Glenfruin Peter Jones <peter.jones@charterholdings.co.za>; Roger Maarschalk. <marshdog@iafrica.com>; Charles DeVilliers <ntoma@hermanus.co.za>; Ingrid de Villiers <ingydevilliers@gmail.com>; Glenfruin Versteijne <anmaversteijne@gmail.com>; Ina BvN <ina@bvnprok.co.za>; Glenfruin Gerrit Oosthuizen <projects@mytile.co.za>; Peter Finlayson <peter@bouchardfinlayson.co.za>; gert.dp.pretorius@gmail.com; Chris Alheit <chris@alheitvineyards.co.za>; Glenfruin Francois Barnard <therock.francois@gmail.com>; Hennie Roux <louisroux239@gmail.com>; Glenfruin Helena selawry <hselawry@aol.com>; Sean McArthur <sean@globalstone.co.za>; annelize Toua <annelizetoua1@gmail.com>; Lesley <swallowsloft@futurenet.co.za>; Gerard Kemp <gerardkemp60@gmail.com>; Louise Makepeace <makepeace.lou@gmail.com>; John Makepeace <makepeace.hermanus@gmail.com>; Janine Botha <jandypanyx@gmail.com>; Macayla Bignaut <macaylabignaut18@gmail.com>; Neil Wilson <neill@wilarch.co.za>; Glenfruin Meadows H.O.A <glenfruin.meadows@gmail.com>; hpmreception@hermanus.co.za
Subject: Re: OBJECTION_Re: Erf 4156, 5 Village Lane: Hemel en Aarde Village, Onrustrievier: Application for Departure: Interactive Town and Regional Planning Jobo Hermanus Microbrewery (Pty) Ltd

To whom it may concern

TP 10 JAN 2022

89/214

As the owners of erf 4356 Glenfruin Meadows, we have no objection whatsoever to the application by the brewery for live music to be played

The Brewery is a fantastic venue and we feel it adds value to our property having it so close by.

Regards

Shaun and Carol Smith

Sent from my iPhone

On 19 Dec 2021, at 19:57, Gerrit Oosthuizen <gerrit@vvlk.com> wrote:

<RSImage.png>

To whom it may concern.

The owner of erf 4152 - GANG Ceramic Design Cc - objects against the below departure. Our main concern is that the building guidelines of the Hemel & Aarde Village is not adhered to.

Kind regards

Gerrit Oosthuizen
Creative Director
VLVLK Group (PTY) Ltd

<RSImage.png>

gerrit@vvlk.com
083 232 9238
028 316 3296
13 Village Lane, Hemel & Aarde Village, Hermanus, 7201 View on Map<RSImage.png>
<RSImage.png>

[View Disclaimer](#) | [Download my contact details](#)

On 17 Dec 2021, at 08:16, Adolf Mohr <dolfmohr@csmconsult.net> wrote:

Erf 4156, 5 Village Lane: Hemel en Aarde Village, Onrustrivier: Application for Departure: Interactive To and Regional Planning Jobo Hermanus Microbrewery (Pty) Ltd

Good Morning

Find attached correspondence received on the 15th of December from Overstrand Municipality "Request for comment Glenfruin Meadows HOA" and the annexure that explains the request for comment.

You will notice that:

1. In the request for comment,
 - a. the Municipality requested that each individual landowner of Glenfruin Meadows must receive a copy the notice. This email serves as that notice.
 - b. It is noted that the HOA received the said notice by registered post. This is incorrect as the HOA has not at least until the 15th of December, received any such notice by registered post. I received it by email the 15th and only after I requested that it be sent to me. I must note that I did not read anything sinister in my discussion with the Municipality, we simply just did not receive the registered letter.

20/214

2. In the attached Annexures, it states that comment must be received before or on the 20th of December
 - a. It became apparent in the discussions with the Municipality that the notice, which must be advertised on an open platform like a local newspaper, was in fact not advertised as yet.
 - b. The Administrator, Town & Spatial Planning from the Municipality informed me by email that
 - i. the notice will be advertised in the Village News on the 22nd of December 2021;
 - ii. that written comment must reach the Municipality before or on the 28th of January 2022.
3. Note that the HOA will, if it feels sensible, provide comment before or on the 28th of January 2022.
4. It has come to my attention that there has been some internal Glenfruin communication stating comment **must** be sent to the Municipality before or on the 20th of December, and that the later date 28th of January 2022 is for objections. I want to clarify that there is only one date, and that date is the 28th of January 2022.
5. If you want to send a correspondence to the Municipality before the notice is advertised on the 22nd of December, I suggest strongly that you resent the comment after the 22nd, because the 1st comment may well be ignored.
6. Please cc glenfruin.meadows@gmail.com into your responses to the Municipality, so that the HOA has a record of all comments.
7. Note that each owner of Glenfruin is requested to comment individually in the notice from the Municipality. Not having a record of your individual comments will therefore diminish, or even nullify, any comment that the HOA may submit.
8. Also note that in this instance, is there not really a difference between a comment and an objection.
 - a. A comment will be viewed as an agreement to the departure.
 - b. If the HOA is therefore not cc'd into your comments, we can only assume that you did not have an objection to the departure.
 - c. A comment, if it is an objection must be specific to have an impact. A comment for instance, that they must only play live reggae music, would not be seen as a relevant comment, and will be disregarded.
 - d. To ensure your comment is relevant, it is important that you read the annexure, specifically the motivation from the applicant, and understand what the departure is for.

Kind Regards

Dolf Möhr
<image001.png>

<Annexures, Erf 4156 Hemel & Aarde Village (Departure).pdf>
<Request for comment_Glenfruin Meadows HOA.pdf>

TP n. theod
(H. Olivier)

9/1/214



L Gillion

From: Hennie Roux < >
Sent: Sunday, 09 January 2022 13:34
To: L Gillion
Subject: Comments re: Application for Departure, ERF 4156, 5 Village Lane, Onrustrivier
Attachments: live music no no.docx

Dear Loretta,

Please find attached hereto our comments regarding the application for departure of the By-Law to accommodate a place of entertainment on Erf 4156 Onrustrivier.

We are the owners of erf 4353 Glenfruin Meadows. My name is L H Roux and my wife is M Y Roux, Our Address is: 7201. We can be contacted on (or or via this e-mail address ().

Our property is within 300 meters of erf 4156 and we do have serious misgivings about any sort of live music being allowed in proximity of suburban housing – which comments we have attached hereto

Kind regards,
LH and MY Roux

FILE NO:	4156 ✓
NAME:	Hennie & Myroux Roux
SCAN NO:	Roux
LABORATOR NO:	1624734

TP 10 JAN 2022

90/214

No 14 Glenfruin Meadows,
Onrus River
Hermanus
7201.

Dear Sir(s),

NOTICE TO AFFECTED PERSONS – FILE 4156, APP ID 3830/2021

Your notice – received on the 17th December 2021 – regarding the application that you have received for a departure, in terms of Section 16 (2) (c) of the By Law to accommodate a place of entertainment on Erf 4156, Onrustriver, refers.

The **Introductory Motivation** for this departure appears somewhat contrived – “enhanced income” and “survival of the business” are easily bandied about – without proving anything. In addition the “remarkable Tourist attraction” adage holds no sway against all the other very remarkable tourist attractions that exist in and around Hermanus.

The **Proposal** identifies that the owners wish to allow for “live” performances on the property. That is to allow live entertainment events and music for 4 hours in day time and 2 hours at night - from 07h00 to 22h00. It is not clear what the “Soup Kitchen” in a container has to do with the proposal. So what the owners are proposing is that on any given day you will have the situation that live music could blare out at you for 6 hours – any time between 07h00 and 22h00. This is completely unacceptable.

The **Desirability** motivation lists all the businesses in a good few square kilometres around the subject site. All businesses that do not create music noise, and all businesses that are surviving very well thank you. There are many businesses in this so called R43 node that do operate after hours. None of them “Generate Noise From Music and Live Music”. None of them appear to support this application.

A place used for commercial entertainment – this is the CRUX of this application. Reading between the lines, the owners see their “commercial entertainment” site being so popular that parking in adjacent properties will all be taken up, so popular that 250 people inside and 250 people outside will be “rocking” the whole R43 node.

It is the biggest misnomer that live music is acceptable to people more than 300 meters away from the music source, just because some or other decibel number is not exceeded. If I can hear your music in my house – then your music is too loud – because why should I be subjected to listening to something that I don’t like. Over the past months we have often heard their music. There are two Estates within 300 meters of this so called “Commercial Entertainment” place – an issue that is never even mentioned by the applicants. In addition other housing estates (Existing and future) are sure to be affected by the music noise. It makes absolutely no sense to allow this commercial entertainment place a licence to make live music on their property, and we sincerely urge the Municipality not to approve this application. It will forever more be a major conflict situation in this area.

The **Conclusion** of the application. The first paragraph glibly portrays that the granting of a commercial entertainment licence will “serve as a catalyst for business and economic growth in the respective business sectors without compromising on the non-business land users in the vicinity”. This last underlined statement is the only reference that the owners make to the fact that there are

10 JAN 2022

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home owners in the vicinity. (see above)

The Planning Principles just do not make any sense. Since 1994 "equity in the provision of access opportunities, facilities services and land" has been a given. How does making live music change that?? How will it address past apartheid spatial development imbalances. The rest of the spatial sustainability paragraphs do not in any way describe how the owners are going to achieve that. It thus cannot count in terms of a possible "plus point".

The **Efficiency** motivation would indicate that lots of people will now move into/onto a space that is normally at acceptable sound levels. 250 people indoors may not affect the sound levels too much. 250 people indoors and 250 people outdoors will be a huge sound addition, which if interspersed with music will have sound that is quite over the top. The size of the intersection leading to the venue and the traffic congestion that it already creates – is not addressed and is doubtful that it will lead to any sort of efficiency

Not unexpectedly, the applicants have come to a **Conclusion** which states that the application is regarded as **Desirable**. There is however not any indication that any of the surrounding businesses are in support of the application.

We sincerely trust that the Hermanus Municipality through the office of the Town Planner – Mr Boshoff, will reject the application and forbid any live music from any of the businesses that operate in close proximity to any neighbourhood housing.

Owners of Erf 4353

L H Roux and M Y Roux

94/214

TP - A Theart
(Holwier)

L Gillion

From: Amanda Hitge <
Sent: Friday, 07 January 2022 13:58
To: L Gillion
Subject: ERF 4156



Ek, Amanda Hitge, adres: Stergianos str 50, Sundew Villas, Sandbaai wil ten sterkte kopsie maak teen bogenoemde se versoek om musiek te maak. Ons het n voorsmakie gehad van wat daar sal plaasvind, en maak absoluut beswaar daarteen.

Die gedoef doef was onuithoubaar

Onder geen omstandighede kan ek dit goedkeur nie.

Beste groete

A.Hitge

Tel:

FILE NO: EL 4156
Hemel & Aarde
CAN NO: 17
LABORATOR NO: 1623988

TP - 7 JAN 2022

95/214

4156 Hemel & Aarde Village

L Gillion

From: Reinet Stander
Sent: Tuesday, 30 November 2021 12:13
To: L Gillion
Subject: Erf 4156



TP. n. Alcock
(M. Olija)

Beste Loretta,

My huis is
Erf 2616.

Ek maak ten sterkste beswaar teen 'live music' op hierdie perseel. Klank besoedeling vir alle inwoners vir myle in die area. Verhoogde geraas ook van motors en mense. Village Lane is 'n statige straat met beheersde en vooraanstaande besighede. As hierdie aansoek slaag sal hierdie goeie atmosfeer daarmee heen wees.

Wag uwe,
Reinet Stander.

FILE NO:	4156 ✓
	Hemel & Aarde
SCAN NO:	HMS 4156
COLLABORATOR NO:	1610521

TP 30 NOV 2021

TP- A Theart
(Holivier)



L Gillion

From: Amoré Nel < >
Sent: Monday, 29 November 2021 10:50
To: L Gillion
Subject: ERF 4156 Application for departure: Comment of owner Erf 2722 Sundew Villa

Good day,

Regarding the application of HERMANUS MICROBREWERY to expand their entertainment area I, owner of Erf 2722 in Sundew Villas, disagree in the strongest terms for this plan to go forward. The noise would be incredibly disruptive to the residential area. Our homes are where we go to rest and recover in peace after a hard day's work, and surrounding businesses should be respectful of this.

Regards,

Dr. Amoré Nel
SANSA Space Science Division
Tel.: +27
E-Mail:

Amoré Nel | Applied Geomagnetic Researcher
☎ +27 28 285 0003 📠 +27 73 793 1947
Hospital Street, Hermanus, 7200 | PO Box 32, Hermanus, 7200



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EL 4156-HON
COLLABORATOR NO:
HON 4156
SCAN NO:
1609719
FILE NO:

TP 29 NOV 2021

97/214

L Gillion

From: Thursday, 27 January 2022 12:06
Sent: L Gillion
To: H Boshoff
Cc: Sections 51 & 52 of the By-law - Petition
Subject:



TP. N. Theart
 (H. Olivier)

Dear Sirs

**ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE,
 ONRUSTRIVIER: APPLICATION FOR DEPARTURE: INTERACTIVE
 TOWN AND REGIONAL PLANNING (obo HERMANUS
 MICROBREWERY (PTY) LTD ("The Brewery"))**

Name: Peter and Geta Finlayson

Address: _____

FILE NO:	EF 4156 ✓
SCAN NO:	142 Village Onus
	Finlayson
COLLABORATOR NO:	1633943

Declaration of Interest: This is to advise you that I am an interested and affected party to the above application

My interest is related to ownership of properties in the vicinity of Erf 4156, as detailed above.

These properties are: Erf 4349, Glenfruin Meadows Onrus, 7201,

We wish to object to the above application for departure concerning the Hermanus Microbrewery Pty Ltd.

Our business being Robins Nest Guest house is impacted by noise pollution derived from this place of entertainment.

While it is understood that a noise assessment has been undertaken the controls and parameters of this assessment are not in place.

28 JAN 2022

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The Application

It is noted that according to the Town Planning Application Form completed by the applicant, the application is for:

Permanent Departure from the provisions of the zoning scheme;

Consent use provided for in the zoning scheme – Section 16(2)(o); and
the Determination of an administrative penalty – Section 16(2)(q).

The application is for a “place of entertainment” which means a place used for commercial entertainment which may attract large numbers of people, operates outside normal business hours or generates noise from music or revelry on a regular basis and includes a cinema, a theatre, an amusement park, a dance hall or a night club and gambling and live music”. (Overstrand Municipality Land Use Scheme, 2020).

As per the application on page 20, “the specific request for a departure is to allow **live music and events** on the property”.

An “event” is defined as:

(a) a sporting, cultural or entertainment event, including live acts, held outside the venue or building, or which by their nature, size or impact are considered outside the normal use parameters for the venue;”

(Overstrand Municipality: Events By-Law).

1. Historic Complaints

- 1.1 Since The Brewery opened its doors we have been obliged to complain on several occasions in respect of excessive noise levels and traffic congestion as a result of live music and events – which took place without proper licences in place or control – and in contravention of legal notices served on this establishment. Ref: Kurt Thomas, Town Planner: Land use & Compliance – confirmed 1st notice – issued July 2020 (4 months after complaint). Naudica Gerber, Town Planner: Land use & Compliance confirmed 2nd notice served on 14th December 2021.

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- 1.2 We have also been obliged to contact Law Enforcement and the SA Police to attempt to prevent or mitigate the unpleasant results of these illegal activities – without success. Except for one occasion on the 27th December 2021 when Hermanuspietersfontein asked some very noisy performers (Bottomless Coffee Band) – who either stopped playing or moved indoors – after which it was more bearable. In all other cases our pleas (i.r.o. The Brewery) fell on deaf ears or were overridden by a relaxation of these restrictions.

2. Location in H&A Village which is a Special Zone with its own Scheme Regulations

- 2.1 The Brewery is part of the H&A Village with its own Special Zoning, Design Manual and Scheme Regulations – and was originally promoted as a “Live/Work from Home” development – envisaging arts & crafts, emporiums, farmstalls, cottage industries and such like with some residential use and general tourism activities – i.e. Salons, activity centres, etc. Whilst the nature of the development has shifted further away from “cottage industries” there are some niche businesses based on this concept still successfully operating there today.
- 2.2 The original concept was also in keeping with the country atmosphere in tandem with the adjacent development Glenfruin Meadows – the property originally owned by Mr. Frank Musson – who was still in residence at Glenfruin Farm during the initial development of the H&A Village. It is highly unlikely that Mr. Musson (now passed) would have condoned or foreseen a divergence from the original parameters of the Scheme that would allow Rock, Reggae, etc. to blast the neighbourhood.
- 2.3 The Special Zoning does not allow for a departure of this nature either as a primary right or by consent use – nor could it have been in keeping with the promise of a tranquil ‘country lifestyle’ envisaged and marketed to prospective purchasers of the Glenfruin Meadows Estate properties – also developed in collaboration with Mr. Musson the original owner of the property.
- 2.4 Therefore a departure for a Place of Entertainment and Events would be a far cry from the original concept of this development – a fact the current owners of The Brewery must have been well aware

of despite their subsequent frequent flouting of regulations. (Having successfully 'got away with it' – on many occasions.)

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- 2.5 It is a strong possibility that further down the line other establishments in this Scheme may also apply for departures or licences for Live Music and Events. Whalehaven Winery may decide to hold regular 'concerts' – Hermanuspietersfontein may also wish to expand their activities, etc. What then? A cacophony of invasive sound – and difficult to refuse when the door has been opened to one business already.
- 2.6 This extremely undesirable departure, if granted, would then presumably vest in their property's title deed. The means to control the contraventions to date have not been effective and there does not appear to have been any communication or consultation or participation with the owners of neighbouring properties who will be negatively affected.

On this basis I object to the application and reiterate that it is undesirable.

3. Access road and traffic

- 3.1 Despite the noticeably poor turnout at a couple of their recent shows, in previous years crowds attracted by some events have created a gridlock both into and out of the Glenfruin Meadows Estate from our servitude road behind the Whale Haven Winery to the exit onto the R320.
- 3.2 Should any events at The Brewery attract large numbers this will exacerbate an existing problem both within the H&A Village and the intersection directly facing the entrance of the H&A Estate, which even now, is sometimes difficult to access at peak times. The timing of the Sandbaai/Engen traffic lights only allow a limited number of vehicles through from the R320/Caledon side causing a traffic jam – vehicles are also attempting to access the R320 from the H&A Estate side.
- 3.3 The servitude road inside the H&A Village running from Hornbill House to the R320 is narrow – barely allowing vehicles – particularly delivery trucks, etc. to pass easily. It is also cluttered with rocks, signage, flowerbeds, electricity boxes? This road must also serve as

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access to all the other businesses in this development – and those still to be developed which currently act as unofficial parking for others.

- 3.4 At the exit of the servitude onto the R320 several accidents have occurred over the years as vehicles have to nose forward whilst waiting to turn. And there have been a few 'near' misses with cyclists veering straight across the road from the cycle tracks – to avoid going on to the R320. No cycle track or pedestrian sidewalk is evident on the servitude.
- 3.5 There does not appear to be a TIA (Traffic Impact Assessment) attached to this application? A significant oversight considering the very serious impact this could have.
- 3.6 The Municipality have a well-documented Events Policy but without strict adherence to the contents of the document The Brewery may generate excessive traffic that is beyond the control of the Traffic Department who are not authorized to police this area. We have already experienced this in the past.

For these reasons among others, this application is undesirable.

4. Noise Impact of Place of Entertainment

- 4.1 The granting of this departure would allow the Brewery, and their successors in ownership of the property, the potential to terminally destroy the ambience and nature of the Glenfruin Meadows Estate and other residential areas close by including Kidbrooke Place, a retirement village – which lies adjacent to our home on the mountainside.
- 4.2 The CPA (Consumer Protection Act) now demands full disclosure of material defects when selling a home – and loud noise definitely qualifies as a latent negative factor. Acknowledging the possibility that their properties may be affected by this noise pollution - and the concomitant property devaluation - may dissuade some from registering an objection
- 4.3 Allowing The Brewery to hold events and live music on any day of the week, not in regular hours, without noise or traffic control is not something that is reasonable to expect those negatively affected by this departure application to accept.

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- 4.4 At this stage, given our unpleasant experiences up until now, we have no expectation that the noise will be controlled. We do not want to be at the mercy of any operator who might have a cavalier attitude and do as they please, without absolute certainty that noise levels will be well within acceptable limits and allocated hours.

On this basis - I consider this departure application to be undesirable.

5. Noise Impact Assessment (NIA)

- 5.1 The noise levels we have been exposed to date have not been acceptable and we call into question the efficacy and methodology of any NIA (Noise impact Assessment) that has been provided to support this departure application.
- 5.2 Have the geographical conditions been factored in? The mountain behind us creates a 'sounding board'. Wind direction also plays a part. On occasion we experience noise from as far afield as Zwelihle – fortunately to nowhere near the same extent as The Brewery's live music events.
- 5.3 There is no record of anyone in the Glenfruin Meadows Estate having being contacted to comment or participate in the NIA? Please correct me if this is not the case.
- 5.4 I also have no recollection of any participation process i.r.o. this application being advertised or communicated to the general public, other residents of our area i.e. Sundew Villas, or Glenfruin Meadows – please confirm if this is the case. It seriously impacts on the enjoyment of our properties and should surely warrant wider discussion and the involvement of those in the area.
- 5.5 Without a participation process is it highly unlikely that the owners of the vacant property opposite The Brewery - (Erf 1447) - have first-hand experience of the negative noise impact from previous shows and events. They would be in the direct 'firing line' of noise invasion if this departure is allowed. Presuming their original application for a retail development was turned down, it is possible that either a residential or mixed use development may be applied for in future – surely they should be made fully aware of what is in store for them?
- 5.6 The same applies to Kidbrooke Place who have acquired the farmland Erf 362/581 adjoining Erf 4179. This may be developed

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into an extension of their retirement facility and bring it even closer to the source of the noise.

- 5.7 Furthermore – there are no measures indicated in the NIA detailing how the noise levels will be controlled? Or by whom? Or what recourse we have if the noise levels are exceeded.
- 5.8 It would be extremely unreasonable to expect residents/ratepayers to have to 'police' events and noise infringements themselves – which may necessitate investing in costly equipment or the services of qualified technicians – in all probability 'after hours'.
- 5.9 To note, historically, some extended live music and events in the Hermanus CBD have been problematic – as in the case of the Hermanus Whale Festival which dwindled significantly in size over the years as it impacted negatively on the residential accommodation and traffic in the surrounding areas and from anecdotal reports from local businesses in the CBD, failed to deliver the hoped for boost in trade.
- 5.10 It is my understanding that if this departure is allowed, there would be no limitation of live music, amplified music or events in one form or another. Refer Item 6.1 below.

For this and other reasons – this application is not desirable.

6. Business Hours

- 6.1 My understanding is that, if allowed, it is proposed that the applicant is to be permitted (1) to have "live entertainment events strictly to between 7h00 and 22h00 with a maximum of 2 hours per evening and 4 hours during the daytime for events" on any day of the week. (2) In addition, any number of additional hours of PA systems amplifying voices and reproducing music would be permissible.

This translates into possibly

- (1) 7 Days a week
- (2) 24 hours a day

That is a horrendous proposition and for that reason I further object to this application.

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7. Insufficient Parking

- 7.1 As detailed under Item 3. Access road and Traffic, the access and parking facilities have proved woefully inadequate on previous occasions when events had caused a gridlock and trapped us in a traffic snarl up.
- 7.2 As far as I am aware – no public parking exists in the H&A Village. Any additional parking required by a business for an event must be sanctioned/agreed with other owners – without a permanent legal right to use these other properties for this purpose. Therefore – whilst everyone is on good terms they could possibly negotiate an arrangement for temporary use, further on, if they are not so friendly or develop the property for their own use, this privilege may be withdrawn.
- 7.3 From the Scheme Regulation of the H&A Village the Municipality obviously did not anticipate that there would be a Place of Entertainment and therefore the Overstrand Zoning Scheme Regulations of 2020 should be enforced.
- 7.4 How would this be addressed now to meet the parking requirement for a possible turn-out of up to +500 people. Where would they place the site toilets if required? How can they guarantee Health & Safety in the event of a fire. It is obvious that there would be a considerable number of vehicles and people trying to escape the scene – with a bottleneck at a critical point.
- 7.5 Whilst the application appears to address the parking requirement related to seating (the transitory nature of it aside) – it does not specify whether the 250 seats are inside / outside or both. It also does not indicate that as per Item 8.2 below, seating is not even relevant for some events.

For the above reasons this application is undesirable.

8. Attracting large numbers of people

- 8.1 Large events and traffic congestion could become the order of the day if this departure is granted.
- 8.2 Assuming that nothing is 'off limits' for a Place of Entertainment – hypothetically there is nothing to stop them setting up a

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marquee/tent and holding a 3 Day 'Trans Party' / Rave. This may not be their target market currently but who can say with certainty they/or subsequent owners may not go this route – lured by profit. **N.B.** No one would be sitting in a chair at such events - enjoying a pleasant evening meal – they would be dancing shoulder to shoulder to very amplified music – until dawn.

- 8.3 To suggest that the number of people attending is limited by the cooking facilities is misleading – there is presumably no restriction on calling in Food Trucks, market stalls or outside catering for a large event. These traders may even be accommodated on adjoining sites – with permission or collaboration with other property owners - as with the parking arrangements
- 8.4 As mentioned above, parking is subject to the goodwill and agreements with other property owners in the H&A Village. This can change at any time.
- 8.5 There has been no visible control to some events in the past that I am aware of indicating that seat numbers are limited – again very difficult to police as the premises are not contained and open to the surrounding properties – even to the R43. Attendance at these live events is generated simply by promotion on social media – no tickets required. Monitoring any seat capacity or the turn out would require considerable resources to establish if they were within regulations. Who would undertake this task effectively? The organizers would obviously not be keen to admit that numbers had been exceeded.
- 8.6 We should respect the right of any business to try and maximize their profit but not at the expense of bending the rules to suit themselves. Abuse of entrusted power or privilege for private gain is not desirable – the current state of our Nation is sad testimony to this.
- 8.7 What measures will be in place to make sure the management of this business abide by the rules, observe all restrictions and control the numbers? And what recourse do we have if this does not happen? How often does it have to happen before decisive action is taken? These are a few of the many questions we need clarity on.

For these, and other reasons I do not support this application.

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9. Setting of a Precedent

- 9.1 If this application for a departure is granted it is highly possible that other business in the H&A Village will want maximize or expand their activities with departures of this nature for themselves. Conversely – it is also possible that some may in fact object given many of the reasons above.
- 9.2 The Brewery are not alone in taking advantage of the laissez faire that prevails in controlling events in the H&A Village. Recently the Hermanuspietersfontein Winery held an event with live music in December 2021 – the Bottomless Coffee Band. Mercifully, they at least had the decency to ask the band to perform indoors after we complained. .
- 9.3. Nevertheless, many events, weddings, etc. have taken place over the years - without the necessary permits.
- 9.4 If a departure is granted and regulations are not adhered to – what procedure, time scale and costs and legal recourse are in place to revoke their rights? And on whom would this responsibility rest?
- 9.5 We contend that once the departure is granted it could be a costly business to revoke – mired in legal battles – if the conditions of the application are abused and then challenged. Apart from the cost, this could take a long time to resolve.
- 9.6 The Local Authority must be commended for taking cognizance of the unique attractions of Hermanus and environs and protecting and endeavouring to promote the unspoiled nature of this beautiful part of the world that brings the high value visitors to our shores. If this is replaced with nightclubs, casino's, loud noisy events – and anything goes – it will change and not for the better.
- 9.7 Our Municipality has scored well over the years in terms of clean audits, blue flag beaches, 'cleanest town', etc. And they may be confident that they can manage this departure effectively at present. However, the departure lives on – perhaps without the necessary control in later years.

For the above reasons, I object to this application.

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10. Fire and Safety

10.1 Refer Item 7.4 above.

10.2 We have met with the Municipal Fire Chief on several occasions in the past and been advised that Glenfruin Meadows and the surrounding area is very high risk in terms of veld fire.

10.3 Given the inadequate parking facilities and resultant gridlocks we have experienced previously – how will the Fire Department be able to access the area if there is a fire – either in the Glenfruin Meadows Estate or the H&A Village?

10.4 This is a very dangerous proposition in terms of fire safety. A comprehensive assessment by the Fire Department will be required – taking into account the extreme overloading of parking in this area that has occurred over the past. Many of the residents of Glenfruin Meadows can attest to the fact that there would be no way of extricating the number of vehicles that some of these shows/events have attracted without loss – hopefully not of life - in the case of an uncontrolled fire.

10.5 The Fire Plan once compiled must be approved by the Local Fire Department and Fire Chief at that time. There is no evidence that a Fire Plan – that takes into account the reality of very high numbers of vehicles and people in a restricted area, has been compiled as yet.

For the above reasons, this application is undesirable.

11. Mitigating Measures

However in the event that this application should receive justification of any sort – the following measures, amongst others, are recommended to mitigate the impact;

11.1 Restricting the live music/amplified music/PA systems to indoors with suitable acoustic measures to reduce sound.

11.2 Limit the hours for live / amplified music – in particular – with clearly detailed times – the hours allowed, time of day, day of the week.

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- 11.3. Number of events that will be allowed – per week – per month – per year and limit the number of days per week – month – year that amplified live or reproduced music will be allowed.
- 11.4 Enforce the rules on designated parking – no relaxations to allow large tents or marquees or other structures to be utilized where parking is provided.
- 11.5 Appoint an expert in acoustic measurement to undertake a comprehensive, in-depth NIA (Noise Impact Assessment) – not limited to simple readings at certain points but also to take into account the particular geographical and meteorological factors relating to sound amplification in the area.
- 11.6 Evidence and guarantees from the Local Authority that effective equipment and qualified technicians will be available to monitor and enforce the regulations in terms of noise control – including ‘after hours’ when this is most likely to occur. Without cost to the complainants.
- 11.7 Engagement with Law Enforcement and the SAPS to establish a clear plan of action and undertaking from them to take action if infringements occur, including control of unruly elements, i.e., possible de-escalation of confrontation often generated by angry motorists as well as intruders/trespassing into the Glenfruin Meadows Estate – (this has happened several times in the past during cycle events when the participants decide to take a practice run around the Estate or onto private property across the river).
- 11.8 Establish the legal route the Local Authority will follow – and the time frame in which this will take place – if regulations are abused. Fines have a negligible effect when profits are high, therefore the process - to be effective - must entail swift revocation of their rights to have a Place of Entertainment/Events. A clear understanding of how many infringements will trigger this revocation must be set.
- 11.9 Undertake a TIA (Traffic Impact Assessment) – to review the access to and out of the H&A Village – and provide for an upgrade to resolve the unsatisfactory entry and exit into this development that currently exists as well as provide for voluminous numbers of

vehicles (assuming that somehow the parking issue can be overcome).

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- 11.10 A comprehensive Fire Plan – as per Item 10.5 above.
- 11.11 Fix the roads – including the servitudes within the H&A Village and access from the R320 – and afford proper consultation with all property owners of the H&A Village and those with servitude rights i.r.o. this upgrade.
- 11.12 Provide proper control at all events and shows with qualified parking/traffic controllers and adherence to the By-laws as contained in the Local Authority's Events Management Policy for any event – particularly those that may exceed capacity of the applicant or combined applications from others in the H&A Village..
- 11.13 A clear and binding undertaking from the Local Authority that they will uphold the conditions of the departure application for a Place of Entertainment / Events – for as long as this departure exists - with no relaxation - particularly on the issue of noise.

The above summarizes my objection to the above application for a departure and I trust the decision will be impartial and fair and take note of the fact that many residents, particularly in our Estate have been subjected to unlawful practices and unpleasant interference in the enjoyment of our properties – not just in the past few months, but for several years.

Yours faithfully,

Peter and Geta Finlayson

Glenfruin Meadows Estate

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L Gillion

From: Helena Selawry <l...>
Sent: Friday, 28 January 2022 11:26
To: L Gillion
Subject: Fwd: The Brewery - Live Outdoor Entertainment-Application for "place of entertainment"

TR. n. heart
(M. Olivia)

Subject: The Brewery - Live Outdoor Entertainment-Application for "place of entertainment"

Dear Loretta:

With regard to the application for a Permanent Departure from the provisions of the Overstrand Zoning Scheme for a "place of entertainment", I herewith object.

My reasons for objecting are:

The unique Scheme Regulations of the H&A Village, in which the applicant property is located, do not make allowance for a place of entertainment. This is for good reason and this kind of business would be undesirable in the H&A Village.

I've lived in the USA for many years until my husband developed dementia and could no longer drive. I bought a house at Glenfruin Meadows since it is a quiet environment perfectly suited for a person who has Alzheimer's disease. I know from previous experience that the noise made by the musical instruments at the Brewery affected him very negatively. We could hear the noise very clearly since our house is almost directly across from the Brewery. I practiced medicine in the USA for 40 years and know from personal experience that these patients are very much affected by a loud noise especially in the evenings when they try to go to sleep. I truly do not wish to move away from the serene surroundings that I now experience and where I can take care of my husband.

I therefore consider the very real noise nuisance, as we have already experienced, as inconsiderate and undesirable.

The basic Noise Impact Assessment conducted indicates that maximum noise levels are exceeded. The application does not contain or propose any noise mitigation factors that the applicant should, or is willing to undertake, and this is unacceptable.

Parking on the applicant property is inadequate and there is no public parking in the vicinity.

The access road is inadequate, unsafe and badly maintained and is already not coping with the volume of traffic including large delivery vehicles. Further congestion will inhibit the access for emergency vehicles, which particularly in the case of fire (a very real threat) could have dire consequences. Entering the H&A Village is effectively entering a cul-de-sac - the only way in (for all businesses located there, visitors and delivery vehicles as well as numerous residential properties and farms having to use the road) is the only way out.

A precedent would be set and a ripple effect would mean more such businesses would start up or be drawn to locate in the H&A Village. There are a number of properties which are undeveloped/under developed - traffic congestion and parking shortcomings are intensifying daily as it is.

Thank you for considering my objections,

Please be so kind and acknowledge receipt of my e-mail.

Kind regards,

Helena Selawry, MD, Ph.D

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FILE NO:	SP 1156 ✓
	H&A Village Onus
SCAN NO:	Selawry
LABORATOR NO:	1633983

28 JAN 2022

L Gillion

FILE NO:	4156 ✓	Andrew & Debbie Panaretou
From:	H&A Village Owners	Friday, 28 January 2022 12:25
Sent:		L Gillion; Dean O'Neill
CAN NO:		
Cc:	Andrew	
COLLABORATOR NO:	1633999	



OBJECT	OBJECTION TO APPLICATION OF ERF 4156/5, HEMEL-EN-AARDE VILLAGE ("The Brewery")
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TP. n. (heart)
(I.A. Oliver)

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER: APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD ("The Brewery")) – OBJECTION TO APPLICATION

To who this may concern

For the following reasons I hereby lodge my objection as the owner of Erf 8210, 6 Wild Plum, Hemel and Aarde Estate:

1. Negative impact on resale value of property.

Having a place of entertainment in centre of a number of residential estates will change the tranquillity of the entire area.

2. Noise impact

The noise nuisance generated by The Brewery by holding heavily amplified live and reproduced music outdoors is disturbing and impairs the convenience and peace that my family, guests and I, as reasonable people, are entitled to enjoy on our properties as well as when walking in the common areas. It is unreasonable to be subjected to the noise generated by the live performances. The hours for live entertainment outlined in the application are implausible as they would be impossible manage (self-management is not an option)

3. Place of Entertainment

It must be noted that a "place of entertainment" covers a multitude of possibilities including noise from music or revelry, dancehalls, nightclubs etc.

Also agreed at the time to the incorporation, the 'Hemel & Aarde Village' was proposed under **Rural Zone 3: Agri-Village (R3)**, which specifically does not allow a *place of entertainment*.

For these and other reasons the departure is undesirable.

4. Parking

It is to be noted that there is no public or municipal parking servicing the H&A Village at all. The Overstrand Zoning Scheme Regulations 2020 states that a "place of entertainment" needs to have 1 off street parking bay per 4 seats.

Mention is made numerous times in the application that the premises can comfortably accommodate 250 people inside as well as 250 outside of the building. This means that parking must be provided for 500 people sitting, which calculates to at least 125 parking bays required.

Common sense dictates that at live concerts people will be standing, will not necessarily attend to eat and the parking per 4 seats would no longer be valid and additional parking to the 125 parking bays must be made provision for. There is no guarantee that management will control the number and the business is profit driven, meaning the more people attending, the better the profit for the business.

Nowhere in the application is parking adequately addressed. The application only states that "guests can park on adjacent parking areas", which common sense should dictate is an unreasonable assumption.

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It must be noted that adjacent erven are all private property and house commercial enterprises, or are undeveloped as yet. The assumption that these areas can be used indefinitely for parking cannot be made. During daytime particularly, neighbouring businesses need their parking for their own staff and customers. Most trade on weekends too.

Access to this additional off-site parking is not a given and unless specifically noted on title deeds as inalienable rights attaching to the applicant property in perpetuity, things can and will change as circumstances and further development and expansion takes place in H&A Village.

For these and other reasons the departure is undesirable.

5. Access

It is the clear intention of The Brewery to draw large **additional** crowds of people to the venue resulting in extensive additional vehicular traffic when hosting or participating with neighbouring properties in holding big events.

It must be specifically noted that congestion on the level seen below, creates a critically unsafe environment and if the Municipality allows the departure to entertain a place of entertainment drawing large crowds with resultant traffic congestion, they are taking the responsibility of any health and safety issues that may arise.

It is to be noted that this is a very narrow road of less than 6.0 meters overall width in most places, and that it is the only access and egress for numerous properties that include the following:

- The H&A Village Craft Village,
- The Brewery,
- Whalehaven Winery,
- Hornbill House, housing craft, bakery and professional services,
- Woodenways furniture,
- Walker Bay Nursery
- The balance of the businesses and residential areas in the H&A Village,
- Glenfruin Meadows,
- Property across the Onrus River.

The access road intersect with the main road to Caledon and is situated directly opposite the large Hemel and Aarde Estate entrance. The traffic light on the main road to Hermanus, as well as the 1st curve in the road towards Caledon are both approximately 150 meters away, making access onto the R320 difficult even under normal traffic situations. The application is also not supported by a Traffic Impact Assessment (TIA) assessing the suitability for the venue to host events.

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The ground immediately adjacent to the access road has large rocks, trees, signs, electricity boxes, streetlamps etc. on either side. There is often insufficient space for a motorcar and truck to pass each other safely in opposite directions and it is often necessary for vehicles to move off the road to make way for each other.

The road is unmarked and badly maintained and at times poses a danger to motorists, pedestrians and cyclists (of which there are a number). The traffic authorities claim to have no jurisdiction or control over this road as, although it is a public roadway, it is located on private property and they will not police the area by issuing fines, towing vehicles away when illegally parked etc.

The roadway currently carries a voluminous amount of traffic including large delivery vehicles that deliver to the various businesses including the wineries, nursery and furniture/décor businesses.

The road network is already at the bare minimum necessary to support the normal existing traffic and even if upgraded to more effectively make use of the road servitude, in combination with the intersection on the R320 and access road to Glenfruin Meadows will not support a massive ingress of traffic. This is clearly obvious from the photographs shown above.

It must be noted that large areas of the H&A Village are not yet developed - 13 in total and at least 4 that are not developed as of yet. Many of the developed properties located therein are not at their maximum bulk and therefore there is scope for significant additional commercial development.

There are 2 undeveloped properties within Glenfruin Meadows and significant scope for new and additional development of the property across the river which could well include full scale agricultural activities as is their primary right.

There is no roadside parking on this road and there are no stopping areas for vehicles.

Despite the very significant foot traffic of workers and other members of general public and the fact that this is the only access to all the properties referred to above, there is no pedestrian access or pedestrian walkways provided, other than by walking along the road or through what are essentially private properties that could be fenced off at any given time.

This area is also the access to the very popular Hermanus Mountain Bike and walking trails.

For reasons cited above, the venue is not suited to hold events where larger than normal traffic flows are to be generated.

For these and other reasons the departure is undesirable.

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6. Fire and Safety

The drawing of large crowds and additional traffic to H&A Village by granting this departure pose serious threats to the safety and well-being of the properties, patrons and occupants within H&A Village as well as those that have the road as their only form of access and egress.

Regarding the soup kitchen, if the intention to feed people on site, they would have to cross the R43 which would be unsafe and dangerous.

The agricultural land and mountains above the urban edge of the residential developments accessed through the H&A Village are regarded by the authorities as an extremely high fire risk zone for wildfires and for this reason access of fire fighters and other emergency vehicles is critical at all times, particularly during fire season (Dec-April).

Historically where events have been held in the H&A Village, vehicles have completely blocked the roads and have parked everywhere including in no-stopping zones, the middle of the road and on many occasion, blocking all access to Glenfruin Meadows from the R320.

Risks includes, but are not limited to fire, medical, and municipal services.

For these and other reasons the departure is undesirable.

7. Setting a Precedent

If the application is successful in any form, this will set a precedent for businesses already in the H&A Village, many of whom have illegally held large live music events, weddings etc. in the past (as recently as 27 Dec 2021, Bottomless Coffee Band) to apply for place of entertainment departures.

In addition, similar businesses may well be attracted to the H&A Village and apply for similar departures.

Two of the undeveloped erven border Glenfruin Meadows and the Equestrian Centre and pose a huge threat of a ripple of applications for departures to entertainment areas and will also open the door for existing businesses to apply for such departures.

For these and other reasons the departure is undesirable.

D.A. PANARETOU

Owner : Erf 8210, Hemel-en-Aarde Estate

115/214

L Gillion

From: Christine <christine.klinck@gmail.com>
Sent: Thursday, 27 January 2022 18:43
To: L Gillion
Subject: ERF 4156



Dear Loretta

I wish to register my objection to the application for departure for the above mentioned erf. My address is 1 Wild Plum, Hemel en Aarde Estate, Hermanus.

Please see below the grounds for my objection. I live within 200 metres of erf 4156 and I am a property owner.

Objection:

I wish to object against the application ERF 4156 – Departure for Place of Entertainment on the following grounds:

Excessive Noise

Within the last month a live event was held which had noise levels that are unacceptable for a residential area.

Traffic

Additional traffic on the small access road as well as the approach to the Hemel en Aarde Village. Additional cars and parking that is not acceptable to neighbours who use the road for access. Extra traffic also carries with it an obvious safety risk, especially at night.

Soup Kitchen

There seems to be no provision for ablutions for the soup kitchen. Apart from the obvious issue of the people attracted by the soup kitchen there is also the issue of these people crossing the main road to access the soup kitchen.

To date there have been no consultation with anyone in the H&A estate, some of whom live within 150m from the proposed venue.

Lastly the area was touted as a quiet residential area when I purchased my property and this application will affect this and therefore by extension the value of my property.

Many thanks

Christine Pflugler

FILE NO:	EL 4156 v
SCAN NO:	Hemel & Aarde
LABORATOR NO:	Christine
	1632759

28 JAN 2022

116/24

TP - A Theart
(Hollivier)



L Gillion

From: Heinz Pflügler <pflugler@gmail.com>
Sent: Thursday, 27 January 2022 22:36
To: L Gillion
Subject: Erf 4156 Application for Departure for Place of Entertainment

Madam,

I wish to register my objection to the above mentioned application on the following grounds:

- I reside at my Property Nr 85 Blue Crane, erf 11122 H&A Estate, approximately **250 metres** from the above proposed Place of Entertainment.
- I bought this property approximately 5 years ago with the understanding of this being a quiet residential location of Hermanus.
- A recent trial run of a live event of the nature pertaining to the above application was held, emanating in catastrophic noise levels. These noise levels at times escalated to such an extent that it interfered / mixed with the sound of the TV programs I tried to listen to during this event.

The statement in the application that the noise level was measured to be acceptable for a residential area must be treated with utter contempt.

I also question the stated impact of this venture on the tourism industry of Hermanus.

Thank you, Heinz Pflugler, property owner

FILE NO:	EL 4156 ✓
	Hemel & Aarde
CAN NO:	Heinz
LABORATOR NO:	1632775

28 JAN 2022

28 JAN 2022

117 / 21/22



27 January 2022

Attention: Ms. Loretta Gillion.

TP - A Theart
(H Olivier)

From: James Lawson Smith

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER;
APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING
(obo HERMANUS MICROBREWERY (PTY) LTD ("The Brewery"))

To whom it may concern

I am lodging my objection as an owner and interested and affected party of Glenfruin Meadows No 4, to the application for Erf 4156 to accommodate a place of entertainment.

My name is James Lawson - Smith, I have lived in Glen Fruin since 1999. My residential home is number 4 Hoepoe Lane (Erf 4346) Glen Fruin , I am also a part owner in Erf 4368 and Erf 4362 in the Glen Fruin Estate

We decided to buy in the estate and built our home here due to the ambience and tranquility of the area .The rural nature of the entire area was why we chose this area years ago to invest and make our home here.

The entire area was supposed to be based on cottage style Industry. What is currently happening at the Brewery and what is proposed is really not at all what is supposed to be happening here. My property is 400m away from the Brewery and yet we can still hear the music and cars pulling away late at night.

The implications of traffic congestion, organized events and loud noise are a far cry from what is supposed to be happening in this area.

We most certainly object to the Brewery's Application for departure

Yours sincerely

Lawson Smith Family

FILE NO:	EL 4156
	Hemel & Aarde
CAN NO:	01
LABORATOR NO:	1633370

28 JAN 2022

118/214

L Gillion

From: Chris Alheit < >
Sent: Thursday, 27 January 2022 12:32
To: L Gillion
Subject: Fwd: OBJECTION_Re: Erf 4156, 5 Village Lane: Hemel en Aarde Village, Onrustrivier: Application for Departure: Interactive Town and Regional Planning Jobo Hermanus Microbrewery (Pty) Ltd

Hi Loretta, I see that I had your email wrong.

Please let me know if this objection will be sufficient, thanks.

TP - A Theart
(H Olivier)



----- Forwarded message -----

From: Chris Alheit < >
Date: Thu, 27 Jan 2022 at 12:28
Subject: Re: OBJECTION_Re: Erf 4156, 5 Village Lane: Hemel en Aarde Village, Onrustrivier: Application for Departure: Interactive Town and Regional Planning Jobo Hermanus Microbrewery (Pty) Ltd
To: Sean McArthur <sean@globalstone.co.za>, <loretta@overstrand.co.za>
Cc: Annelize Toua <annelizetoua1@gmail.com>, Gerrit Oosthuizen <gerrit@vlvlk.com>, Adolf Mohr <dolfmohr@csmconsult.net>, <wine@hermanus.co.za>, <hemelaardevillage@gmail.com>, <johnd@hermanus.co.za>, <henniehenn1976@gmail.com>, <gcrothschild@gmail.com>, Sally Barnard <sally@beachhouse.co.za>, <hennie@henncorp.com>, Andy Smith <andy@tdacreative.com>, <jo@wilarch.co.za>, Glenfruin LawsonsSmith James <Lawsonsmith.james@gmail.com>, Glenfruin Peter Jones <peter.jones@charterholdings.co.za>, Roger Maarschalk <marshdog@iafrica.com>, Charles DeVilliers <ntoma@hermanus.co.za>, Ingrid de Villiers <ingydevilliers@gmail.com>, Glenfruin Versteijne <anmaversteijne@gmail.com>, Ina BvN <ina@bvnprok.co.za>, Glenfruin Gerrit Oosthuizen <projects@mytile.co.za>, Peter Finlayson <peter@bouchardfinlayson.co.za>, <gert.dp.pretorius@gmail.com>, Glenfruin Francois Barnard <therock.francois@gmail.com>, Hennie Roux <louisroux239@gmail.com>, Glenfruin Helena selawry <hselawry@aol.com>, Lesley <swallowsloft@futurenet.co.za>, Gerard Kemp <gerardkemp60@gmail.com>, Louise Makepeace <makepeace.lou@gmail.com>, John Makepeace <makepeace.hermanus@gmail.com>, Janine Botha <jandypandyx@gmail.com>, Macayla Bignaut <macaylabignaut18@gmail.com>, Neil Wilson <neill@wilarch.co.za>, Glenfruin Meadows H.O.A <glenfruin.meadows@gmail.com>, <hpmreception@hermanus.co.za>

Good day all, we are Chris & Suzaan Alheit - owners of Erf nr 43521.

Having small kids between the ages of 9 & 4 years old, we strongly object to this proposal as we've already experienced some noise levels of live events at the Hemel en Aarde Brewery over the festive season and having this kind of noise level on a regular basis will be intensely disturbing to our family.

Loretta, please accept this as our formal objection to this proposal.

Thanks.

Chris & Suzaan Alheit



FILE NO: EL 4156
Hemel & Aarde
CAN NO:
105
LABORATOR NO: 1633392

On Wed, 12 Jan 2022 at 20:42, Sean McArthur <sean@globalstone.co.za> wrote:

I am in agreement with Mike - to have this level of noise on the weekdays - kids trying to go to sleep and noise levels are not acceptable - I will email an objection in the morning

27 JAN 2022

119/214



Dr Catherine Makepeace

27 January 2022

TP- A Theart
(H Olivier)

BY EMAIL

Attention:

Ms Loretta Gillion, Overstrand Municipality. Email: Loretta@overstrand.gov.za

Dear Ms Gillion,

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER:
APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING
(obo HERMANUS MICROBREWERY (PTY) LTD) "The Brewery"

Introduction

I, Catherine Makepeace, am an interested and affected party, and address you in the following capacity:

Beneficiary of Redbuild Trust which is the owner of:
 23 Glenfruin Meadows, erf 4365, Onrus River,
 erf 4179, Onrus River,
 Remainder of Portion 338 of the Farm Onrust River No.581,
 Remainder of Portion 2 of the farm Glenfruin No. 578,
 Erf 283, Hermanus.

FILE NO:	EL 4156
CAN NO:	Hemel & Aarde
	108
LABORATOR NO:	1633408

My email address for notices and serving of documents is

With regard to the application for a Permanent Departure from the provisions of the Overstrand Zoning Scheme for a "place of entertainment", I herewith object.

My reasons for objecting are:

The unique Scheme Regulations of the H&A Village, in which the applicant property is located, do not make allowance for a place of entertainment. This is for good reason and this kind of business would be undesirable in the H&A Village.

The very real noise nuisance, as I have already experienced, is inconsiderate and undesirable.

The basic and perhaps biased Noise Impactment Assessment conducted indicates that maximum noise levels are exceeded. The application does not contain or propose any noise mitigation factors that the applicant should, or is willing to undertake, and this is unacceptable.

Parking on the applicant property is inadequate and there is no public parking in the vicinity.

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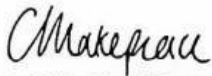
The access road is inadequate, unsafe and badly maintained and is already not coping with the volume of traffic including large delivery vehicles. Further congestion will inhibit the access for emergency vehicles, which particularly in the case of fire (a very real threat) could have dire consequences. Entering the H&A Village is effectively entering a cul-de-sac – the only way in (for all businesses located there, visitors and delivery vehicles as well as numerous residential properties and farms having to use the road) is the only way out.

A precedent would be set and a ripple effect would mean more such businesses would start up or be drawn to locate in the H&A Village. There are a number of properties which are undeveloped/under developed – traffic congestion and parking shortcomings are intensifying daily as it is.

I wholly concur with the detailed comments set out in the separate submissions for the abovenamed properties owned by Redbuild Trust from John Makepeace, the sole Trustee.

Although I live in Cape Town, I enjoy the fruits of my co-ownership of the properties as a beneficiary of our family trust. I am a regular visitor to the properties where I enjoy significant leisure time by hiking, cycling, walking and just chilling there. I believe that the proposed departure will go a long way to negatively impacting my reasonable expectations of peace and quiet whilst enjoying the properties and will also have a direct impact on the legacy of a lifetime of investment in our family trust.

Yours sincerely,



Dr Catherine Makepeace
MBChB (UCT)

FILE NO: OT 4156 ✓
1/2/24 Village Onrus
REF NO: Redbuild
LABORATOR NO: 1633664



Redbuild Trust

VAT No
address for notices and serving of documents:

27 January 2022

BY EMAIL

TP. n. (Heart
(I. Olivier)

Attention:

Ms Loretta Gillion, Overstrand Municipality. Email: Loretta@overstrand.gov.za

WITHOUT PREJUDICE

Dear Ms Gillion,

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER: APPLICATION FOR DEPARTURE:
INTERACTIVE TOWN AND REGIONAL PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD) "The Brewery"

Introduction

I, John Makepeace, am an interested and affected party, and address you in the following capacity:

Sole Trustee of Redbuild Trust, the owner of Erf 4179;
part owner of erf 4368, Onrus River; and
part owner of erf 4362, Onrus River through our undivided share in the Glenfruin Meadows HOA.

Erf 4179 is zoned agriculture but is not agriculturally viable and, for some unknown reason, has been left outside the determination of the Urban Edge.

In its current context it can be seen rather as an exclusive lifestyle property of approximately 2.2ha located on the foothills of the Onrus Mountains looking out over Walker Bay and with a southern boundary running through the middle of the Onrus River.

Across the river is Glenfruin Meadows, a housing and "equestrian" estate comprising beautiful large country properties ranging in sizes from +/- 2000m² to 6000m² and whose common grounds comprising meadows, riverside walkways, paddocks and stables Redbuild Trust shares ownership in, through the HOA.

Although undeveloped, Erf 4179 represents a prime opportunity for the development of a prestigious landmark property such as a "gentleman's estate" with a small vineyard and boutique winery combined with the beautiful fynbos surrounds and craggy cliffs rising above it (note that we are in the beginning stages of planning and developing this having employed the services of various consultants over the past year).

We acquired this property some 19 years ago in 2003 as an investment, with the aim of developing it in our retirement years.

Sadly, even though erf 4179's closest boundary lies some 490mt from the boundary of the applicant, it is so badly affected by the noise nuisance emanating from the applicant property that, were the departure to be granted, these hopes and dreams would literally "go up in smoke" as would a portion of the heritage that we intend leaving the beneficiaries of our family trust and future generations.

For these reasons and all those outlined below we consider the departure to be totally undesirable.

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1. Noise Impact of Place of Entertainment and Noise Impact Assessment supporting application (NIA)

The noise nuisance generated by the applicant by holding heavily amplified live and reproduced music outdoors is disturbing.

The distance from the applicant property to erf 4368, one of the properties of which we are part owners, is approximately 90 meters.

As pointed out in comments submitted in my letter relating to 22 Glenfruin Meadows (erf4366), the lack of participation, the methodology, findings and therefore the permissible noise levels identified therein are to be challenged.

As the live entertainment is to be predominantly outdoors, it is also to be noted that the NIA and the application in general do not indicate any attempts whatsoever to limit or mitigate the disturbing noise pollution and nuisance posed, despite the long history of complaints by fellow property owners of which I am aware.

Although the NIA findings indicate that maximum noise levels are exceeded. The application does not contain or propose any noise mitigation factors that the applicant should or is willing to undertake other than a recommendation to the effect they must take steps not to exceed the limit and this is unacceptable.

The application does not provide any answers to the following key considerations and questions:

- Is a place of entertainment desirable in an environment where people have made huge investments in properties and a lifestyle where nature and peace and quiet can be enjoyed without the disturbing noise of loud music and the noise nuisance that it represents?
- Is a reasonable expectation of peace and quiet having located ourselves here not a right that needs to be protected?
- If the venue is to be limited to certain maximum sound levels, how will the sound levels be managed with regard to the different musicians and sound systems used?
- Who will ensure that these noise levels are enforced?
- Would I and other affected property owners have to complain to the authorities every time that we perceive the noise to be a nuisance?
- Is this a fair burden to be placing on us?
- Our local authority does not have the measuring instruments to ensure compliance with regard to decibel levels.
- Are we going to be forced to police the issue by spending copious amounts of money bringing in experts when we experience abuse?
- Will all of this not in itself deprive us of our rights to enjoy peace and quiet?

We do not believe that the noise issue has been dealt with satisfactorily in the application and given that this is probably one of the key aspects of the operation of a place of entertainment where amplified music is to be played **outdoors, potentially 7 days a week**, we find this unacceptable and that at the very least this aspect needs to be re-visited.

We refer to the detailed submissions with regard to noise in the objection submitted by me for Erf Hon 4366 - 22 Glenfruin Meadows: -

"6. Noise in the context of this application and the Noise Impact Assessment submitted in support thereof"

For these and other reasons the departure is undesirable.

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2. Fire and Safety

Our erf 4179 has as its only access legally and most importantly in respect of fire - geographically - the servitude road running through Glenfruin Meadows and then the H&A Village.

This road is effectively a cul de sac for the entire area.

There is no other access or egress!

Once you have entered there is no other way out except the way you came in!

In addition our erf 4179 is located in an extremely high fire risk zone for wildfires.

As owners we have a significant and onerous responsibility placed upon us by legislation concerning the spread of fire from our property and the concomitant fallout and damage to other surrounding properties.

For this reason, and as frequently discussed with the fire authorities, planning clearing and access for fire fighters and other emergency vehicles is critical at all times, particularly during fire season (Dec- Apr) which coincides with the summer holiday/festive season.

Frequent fires in the mountain within the last few years are well documented.

It is submitted that by granting this departure in any form that allows the applicant to draw large crowds, that are in excess of its licensed capacity, by holding events that bring in large volumes of additional traffic and people into - what is effectively a cul de sac - would be extremely irresponsible and represent a major threat of death or injury, of not only owners and occupants of properties for whom this is the only way in or out but also to the vast numbers of the general public in attendance.

Historically where events have been held in the H&A Village, vehicles have completely blocked the roads and have parked everywhere including in no-stopping zones, the middle of the road and frequently even blocked the access or egress from the residential and agricultural properties.

This aspect is well documented along with photographic evidence in my objection in respect of Erf 4366 – 22 Glenfruin Meadows.

There is no traffic impact assessment in support of the application and it needs to be noted that a reasonable expectation of fire needs to be one of the main considerations were one to be done.

3. Location in H&A Village which is a Special Zone with it's own Scheme Regulations

The applicant property is located in the H&A Village which has a municipal zoning of "Special Zone".

Their unique Scheme Regulations define their properties' primary use as "Tourism Business/Cottage Industry & Dwelling House" with the only additional consent use being for flats.

It is clear from the Scheme Regulations as well as the Design Manual that a calm country environment was intended with site use including activities such as restaurants, guesthouses, guestrooms, winery, souvenir shops, tourist information centres, antique shops, arts & crafts shops, art galleries, interior decorators, travel bureau, conference facilities, manufacture of pottery and art and dwelling houses which could be attached to a tourism business or cottage industry concern.

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This, in general, could be referred to as the whole ethos of the H&A Village when originally contemplated and given Special Zoning status. It is to be noted that Glenfruin Meadows was also proclaimed around a similar time and that a logical assumption of the compatibility with the H&A Village and surrounds would have been made by the developers and subsequent owners of residential erven.

An application for a departure such as this is therefore out of the ordinary and it is to be noted that, at the outset, this land use was clearly never the intention of the H&A Village developers i.e. to accommodate a place of entertainment in the H&A Village. It will have a negative effect on all the surrounding property owners.

For this and other reasons the departure is undesirable.

4. Access road and traffic

It is the clear intention of the applicant to draw large additional crowds of people to the venue during not only current normal operations (which is their right) but potentially thousands of additional people and extensive additional vehicular traffic when hosting or participating with neighbouring properties in holding big events.

The access road into H&A Village intersects with the main road to Caledon (R320) and is situated directly opposite the large Hemel en Aarde Estate entrance. The traffic light on the main road to Hermanus (R43) as well as the first bend in the road towards Caledon are both approximately 150 meters away from the stop street, making access onto the R320 difficult, even under normal traffic situations. The application is also not supported by a Traffic Impact Assessment (TIA) assessing the suitability of the venue to host events.

The approach to Glenfruin Meadows is over a servitude area in H&A Village (Erf 4159) which comprises a single lane road (no road markings) coming off the R320 and runs past the H&A Village retail and office area and the applicant property on the south side of the road and Whalehaven Winery on the north side.

It is to be noted that this is a very narrow road of less than 6.0m overall width in most places, and that it is the only access and egress for numerous properties that include the following:

The H&A Village Shopping Centre, the applicant property, Whalehaven Winery, the balance of the businesses and residential areas in the H&A Village, Glenfruin Meadows, various smallholdings across the Onrus River and farmland in excess of 200ha.

This is effectively a cul de sac! Once you have entered there is no other way out except the way you came in!

It must be noted that large areas of the H&A Village are not yet developed - 13 properties in total and at least 4 that are not developed as of yet. Many of the developed properties located therein are not at their maximum bulk and therefore there is scope for significant additional commercial development and additional traffic.

There are 2 undeveloped properties within Glenfruin Meadows and significant scope for new and additional development of properties across the river which could well include full scale agricultural activities as is their primary zoning rights.

There is no roadside parking on this servitude road (erf 4159) and there are no stopping areas for vehicles.

Despite the very significant foot traffic of workers and other members of the general public and the fact that this is the only access to all the properties referred to above, there is no pedestrian access nor pedestrian walkways provided, other than by walking along the road or through what are essentially private properties

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that could be fenced off at any given time.

This area is also the access to the very popular Hermanus Mountain Bike and walking trails.

The ground immediately adjacent to the road has large rocks, trees, signs, electricity boxes, streetlamps etc. on either side. There is often insufficient space for a motorcar and truck to pass each other safely in opposite directions and it is often necessary for vehicles to move off the road to make way for each other.

The road is unmarked and badly maintained and at times poses a danger to motorists, pedestrians and cyclists (of which there are a number). The traffic authorities have no jurisdiction or control over this road as, although it is a public roadway, it is located on private property and they will not police the area by issuing fines, towing vehicles away when illegally parked etc.

The roadway currently carries a voluminous amount of traffic including large delivery vehicles servicing the various businesses including, bakeries, including the two wineries, nursery and furniture/décor businesses and whatever else is still to come.

The road network is probably already inadequate or the bare minimum necessary to support the normal existing traffic.

In this sense all vehicles that come in must be able to exit on the same roadway.

Granting this departure would enable the applicant to draw large additional crowds and traffic to H&A Village on a regular basis.

For reasons cited above, the venue is not suited to hold events where larger than normal traffic flows are to be generated without going through the necessary applications and being under the control of the excellent Events Policy of the local authority.

For these and other reasons the departure is undesirable.

6. Business Hours

It is proposed that the applicant is to be permitted to have "live entertainment events strictly to between 7h00 and 22h00 with a maximum of 2 hours per evening and 4 hours during the daytime for events" on any day of the week. In addition, any number of additional hours of PA systems amplifying voices and reproducing music would be permissible.

For these and other reasons the departure is undesirable.

7. Insufficient Parking

Granting this departure would enable the applicant to draw large crowds and additional traffic to H&A Village on a regular basis.

It is to be noted that there is no public or municipal parking servicing the H&A Village at all.

As there is no contemplation of a "place of entertainment" in the Scheme Regulations of H&A Village, there is no mention of parking requirements for such and it follows that the Overstrand Zoning Scheme Regulations 2020 apply.

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This states that a "place of entertainment" needs to have 1 off street parking bay per 4 seats. As per the application, the restaurant site can seat approximately 250 people. If patrons are only limited to this number, then 62.5 parking bays would need to be provided i.e., a shortfall of at least 13.5 bays on those proposed in the application (49 bays).

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".
Is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total? If 500, then 76 additional parking bays would be required which would entail the applicant having to purchase another property nearby. The site is fully developed and there is no viable space for any additional parkings.

With respect, it is highly unlikely that the applicant would limit patrons during the normal course of operations to 250 people in total and therefore the parking requirement is grossly understated.

Granting this departure would enable the applicant to draw large crowds and additional traffic to H&A Village on a regular basis and application states "guests can park on adjacent parking areas" (page 23).

It must be noted that adjacent erven are all private property and house commercial enterprises or are undeveloped as yet. The assumption that these areas can be used indefinitely for parking cannot be made. During daytime particularly, neighbouring businesses need their parking for their own staff and customers. Most trade on weekends too.

Access to this additional off-site parking is not a given and unless specifically noted on title deeds as inalienable rights attaching to the applicant property in perpetuity, things can and will change as circumstances and further development and expansion takes place in H&A Village.

This aspect is well documented along with photographic evidence in my objection in respect of Erf 4366 – 22 Glenfruin Meadows.

For these and other reasons the departure is undesirable.

8. Attracting large numbers of people

Granting this departure would enable the applicant to draw large crowds and additional traffic to H&A Village on a regular basis.

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Again, is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total?

Further on page 23 under "Attracting large numbers of people" it is stated that "The numbers are accordingly limited as part of the management of the business and also in respect of the cooking facilities as well as on-site parking (even though guests can park on adjacent parking areas) resulting that the application site does remain within manageable numbers and control."

Most places of entertainment do not provide a seat for each reveler and the applicant does not always require that patrons eat (and even if they did, this could change at any time), therefore the reference to 250 seats is a misnomer both as regards to controlling numbers, limitations posed by cooking facilities and importantly parking.

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In the case of events, there is no consideration with regard to providing a seat for every person nor sufficient parking.

Previous activities have shown that unauthorised events and concerts on the site have drawn large numbers of people with little to no real control over the numbers.

With regard to "numbers are accordingly limited as part of the management of the business", the site has numerous pedestrian entrances on all sides of the property for patrons to enter. There are no gates and where there are walls, they are approximately knee high.

Currently, live music events are free and do not necessarily require a booking or a ticket (refer to social media advertisements).

There is no guarantee that management will control the number - the business is profit driven, meaning the more people attending, the better the profit for the business.

Considering the above, how is it possible to control the numbers?

For these and other reasons the departure is undesirable.

9. Setting of a Precedent

If the application is successful in any form, this will set a precedent for businesses already in the H&A Village - many of whom have illegally held large, very loud, live music events, weddings etc. in the past - to apply for place of entertainment departures. (herewith refer to, as recently as 27 Dec 2021, Bottomless Coffee Band at Hermanuspietersfontein Winery as an example).

In addition, this departure may encourage similar businesses to be attracted to the H&A Village and for them to apply for similar departures.

Many of the properties have not been developed to their full extent.... yet, and there are 4 that have not yet been developed or commissioned.

Two of the undeveloped even border Glenfruin Meadows and the Equestrian Centre/horse stables and pose a huge threat of a ripple of applications for departures to operate as places of entertainment.

It is likely that the H&A Village HOA, and therefore most of their property owners, are in support of this application. In other words, it is possible that they would condone, support and perhaps encourage other/similar applications for land use departures in the future, in the belief that this opens the door for similar departures on their own properties and perhaps adding to their market value.

A "place of entertainment" opens the door to just that. Nothing will stop a business owner from next starting a nightclub, strip club, installing slot machines or the like.

For these and other reasons the departure is undesirable.

11. Mitigating Measures

In the inconceivable alternative in that the application is considered favourable in any way, mitigating measures should be imposed that should, inter alia, include:

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- I. Limit the place of entertainment and all amplified sound/music/PA systems to the inside of the building or new buildings which are suitably soundproofed.
- II. Require that windows and doors are closed when holding live entertainment after certain hours.
- III. Limit the hours as in how many hours between x and y times during the day and how many hours between x and y times at night that noise can be made.
- IV. Limit the number of days per week/month/year that amplified live or reproduced music is permitted.
- V. Require the installation of sealed and regularly calibrated sound receptors at various points where nearby residential areas are affected, that enable the constant monitoring of noise and the recording of values for subsequent analysis etc.
- VI. Ensure that the required number of parkings are provided for on the basis of those required in the local authority regulations for a place of entertainment on the applicant property based on the actual numbers that it aims to attract and is licenced for (1 bay 4 seats)
- VII. Specifically regulate that no part of the designated parking area and requirement on the applicant property, may be used for any purpose other than parking i.e., no stage, dance floor, tent, gazebo, marquee to accommodate performers, event participants, patrons or exhibitors may be erected in the parking area.
- VIII. Require commitment that crowd control measures are undertaken by the applicant to keep within it's regulated capacity "manageable numbers and control".
- IX. Require the presence of meaningful security to protect members of the general public as well as owners and occupiers of adjacent properties.
- X. Provide suitably qualified parking attendants with authority to remove illegally parked cars be during times of high attendance so as to prevent blocking/congestion of the narrow access roads and unlawful parking (traffic authorities have no jurisdiction over the roads in H&A Village) (note: traffic authorities claim not have jurisdiction).
- XI. Provide on site towing services at any event with the authority to remove illegally parked cars (note: traffic authorities claim not have jurisdiction).
- XII. Require the upgrade of access roads to the H&A Village as a condition of the departure as well as the securing of a binding commitment by the applicant and H&A Village HOA to facilitate negotiations with the relevant parties to the registered Servitude Agreements to attend to the upgrading and ongoing maintenance of the road and infrastructure.
- XIII. Require that the local authority Event By-Law be applied on an individual application basis for the staging of any event that exceeds the capacity of the applicant on an event by event basis so as to ensure that events are managed safely and effectively in terms of the By-Law.

In conclusion we consider the application for the departure as outlined above to be totally undesirable and we trust that the Tribunal considering the matter will concur.

In the unlikely event that the departure is granted, even with mitigating measures that include the above, it is noted that we reserve our right to appeal.

Please do not hesitate to contact us if you require any further information.

Yours sincerely

Rebuild Trust - John Makepeace – Sole Trustee

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Redbuild Trust

IT2386/98

VAT No 4230246102

address for notices and serving of documents:

makepeace.hermanus@gmail.com

27 January 2022

BY EMAIL

Attention:Ms Loretta Gillion, Overstrand Municipality. Email: Loretta@overstrand.gov.zaWITHOUT PREJUDICE

Dear Ms Gillion,

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER: APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD) "The Brewery"

Introduction

I, John Makepeace, am an interested and affected party, and address you in the following capacity:

Sole Trustee of Redbuild Trust, the owner of Erf 283 Hermanus; (awaiting deed of transfer from conveyancer – see Conveyancer's confirmation of ownership at the end of this submission).

Erf 283 is a property some 8.8ha in extent with an agricultural zoning but not agriculturally viable. It lies at the foot of the Hemel & Aarde Valley with its eastern boundary lying in the middle of the Onrus River.

It has recently been acquired by us and although undeveloped, once cleared of alien vegetation Erf 283 will represent an opportunity for the development of a prestigious landmark property with the beautiful fynbos surrounds and craggy cliffs rising above the lower section up to a beautiful plateau at an elevation of approximately 145mt above sea level with commanding views up the beautiful Hemel & Aarde Valley to the north and with sea views over Walker Bay.

Sadly, even though Erf 283's closest boundary to the applicant lies some 820mt from the boundary of the applicant, it is badly affected by the noise nuisance emanating from the applicant property, particularly on the plateau where, despite the distance, the disturbing noise nuisance of for example, the Rivertones band can be clearly heard and is by all accounts many decibels above the ambient noise levels experienced here.

If past experience of the threat that the application represents of the *noise sensitive activity* and the *disturbing noise nuisance* thus produced by the applicant, is any indication of what is to be expected in the future (but much more frequently) then the departure applied for is totally out of keeping and in conflict with the peaceful transition from the urban area to the peaceful sleepy agricultural valley that lies beyond.

For these reasons and all those outlined below we consider the departure to be totally undesirable.

1. Noise Impact of Place of Entertainment and Noise Impact Assessment supporting application (NIA)

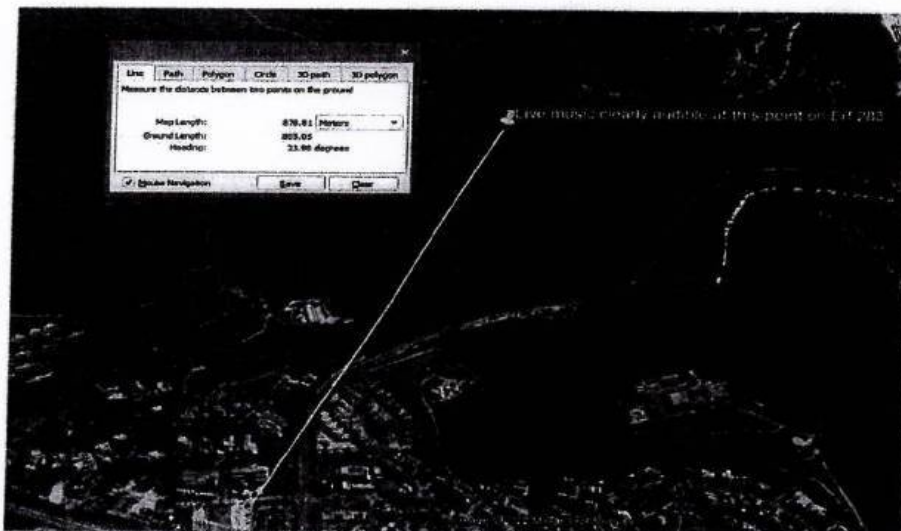
The noise nuisance generated by the applicant by holding heavily amplified live and reproduced music outdoors is disturbing.

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Based upon the representations made in the NIA supporting the application the disturbing noise should not be audible above the ambient noise level experienced on the plateau on Erf 283 some 880mt away.

The NIA states that at the point M2 on the applicant property the noise measured is 55 dBA with source at 95 dBA. This point is approximately 60mt from source – band stand (actual distance not provided in NIA).

Simple attenuation calculations show that, if the applicant was projecting noise at source that was on or near the maximum that the NIA indicates as permissible – 92 dBA, purely as the crow flies i.e. without other obstacles such as mountains bush etc in between, noise if measurable at the point indicated on the image below would be in the region of 33 dBA.



Given all the sound absorption materials in between, it is therefore highly unlikely that the Rivertones Band would be audible at all at this point.

BUT THEY WERE CLEARLY AUDIBLE – on both recent occasions and historically too!

As the live entertainment is to be predominantly outdoors, it is also to be noted that the NIA and the application in general do not indicate any attempts whatsoever to limit or mitigate the disturbing noise pollution and nuisance posed, despite the long history of complaints by fellow property owners of which I am aware.

As pointed out in comments submitted in my letter relating to 22 Glenfruin Meadows (erf4366), the lack of participation, the methodology, findings and therefore the permissible noise levels identified therein is also to be challenged.

Although the NIA findings indicate that maximum noise levels are exceeded. The application does not contain or propose any noise mitigation factors that the applicant should or is willing to undertake other than a recommendation to the effect they must take steps not to exceed the limit and this is unacceptable.

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The application does not provide any answers to the following key considerations and questions:

- Is a place of entertainment desirable in an environment where people have made huge investments in properties and a lifestyle where nature and peace and quiet can be enjoyed without the disturbing noise of loud music and the noise nuisance that it represents?
- Is a reasonable expectation of peace and quiet having located ourselves here not a right that needs to be protected?
- If the venue is to be limited to certain maximum sound levels, how will the sound levels be managed with regard to the different musicians and sound systems used?
- Who will ensure that these noise levels are enforced?
- Would I and other affected property owners have to complain to the authorities every time that we perceive the noise to be a nuisance?
- Is this a fair burden to be placing on us?
- Our local authority does not have the measuring instruments to ensure compliance with regard to decibel levels.
- Are we going to be forced to police the issue by spending copious amounts of money bringing in experts when we experience abuse?
- Will all of this not in itself deprive us of our rights to enjoy peace and quiet?

We do not believe that the noise issue has been dealt with satisfactorily in the application and given that this is probably one of the key aspects of the operation of a place of entertainment where amplified music is to be played outdoors, **potentially 7 days a week**, we find this unacceptable and that at the very least this aspect needs to be re-visited.

We refer also to the detailed submissions with regard to noise in the objection submitted by me for Erf Hon 4366 - 22 Glenfruin Meadows: –

“6. Noise in the context of this application and the Noise Impact Assessment submitted in support thereof”

For these and other reasons the departure is undesirable.

2. Precedent

If the application is successful in any form, this will set a precedent for businesses already in the H&A Village - many of whom have illegally held large, very loud, live music events, weddings etc. in the past - to apply for place of entertainment departures. (herewith refer to, as recently as 27 Dec 2021, Bottomless Coffee Band at Hermanuspietersfontein Winery as an example).

In addition, this departure may encourage similar businesses to be attracted to the H&A Village and for them to apply for similar departures.

Many of the properties have not been developed to their full extent.... yet, and there are 4 that have not yet been developed or commissioned.

A “place of entertainment” opens the door to just that. Nothing will stop a business owner from next starting a nightclub, strip club, installing slot machines or the like.

For these and other reasons the departure is undesirable.

132)24

3. Mitigating Measures

In the inconceivable alternative in that the application is considered favourable in any way, mitigating measures should be imposed that should, inter alia, include:


- I. Limit the place of entertainment and all amplified sound/music/PA systems to the inside of the building or new buildings which are suitably soundproofed.
- II. Require that windows and doors are closed when holding live entertainment after certain hours.
- III. Limit the hours as in how many hours between x and y times during the day and how many hours between x and y times at night that noise can be made.
- IV. Limit the number of days per week/month/year that amplified live or reproduced music is permitted.
- V. Require the installation of sealed and regularly calibrated sound receptors at various points where nearby residential areas are affected, that enable the constant monitoring of noise and the recording of values for subsequent analysis etc.
- VI. Ensure that the required number of parkings are provided for on the basis of those required in the local authority regulations for a place of entertainment on the applicant property based on the actual numbers that it aims to attract and is licenced for (1 bay 4 seats)
- VII. Specifically regulate that no part of the designated parking area and requirement on the applicant property, may be used for any purpose other than parking i.e., no stage, dance floor, tent, gazebo, marquee to accommodate performers, event participants, patrons or exhibitors may be erected in the parking area.
- VIII. Require commitment that crowd control measures are undertaken by the applicant to keep within it's regulated capacity "manageable numbers and control".
- IX. Require the presence of meaningful security to protect members of the general public as well as owners and occupiers of adjacent properties.
- X. Provide suitably qualified parking attendants with authority to remove illegally parked cars be during times of high attendance so as to prevent blocking/congestion of the narrow access roads and unlawful parking (traffic authorities have no jurisdiction over the roads in H&A Village) (note: traffic authorities claim not have jurisdiction).
- XI. Provide on site towing services at any event with the authority to remove illegally parked cars (note: traffic authorities claim not have jurisdiction).
- XII. Require the upgrade of access roads to the H&A Village as a condition of the departure as well as the securing of a binding commitment by the applicant and H&A Village HOA to facilitate negotiations with the relevant parties to the registered Servitude Agreements to attend to the upgrading and ongoing maintenance of the road and infrastructure.
- XIII. Require that the local authority Event By-Law be applied on an individual application basis for the staging of any event that exceeds the capacity of the applicant on an event by event basis so as to ensure that events are managed safely and effectively in terms of the By-Law.

In conclusion we consider the application for the departure as outlined above to be totally undesirable and we trust that the Tribunal considering the matter will concur.

In the unlikely event that the departure is granted, even with mitigating measures that include the above, it is noted that we reserve our right to appeal.

Please do not hesitate to contact us if you require any further information.

Yours sincerely



Redbuild Trust - John Makepeace - Sole Trustee

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B&vN **BURGERS & VAN NOORDWYK**
PROKUREURS | ATTORNEYS

I. S. VAN NOORDWYK, B.A. LL.B.

Conveyancers / Transportbesorgers - Administrators of Estates / Boedelberedderaar

Our Ref / Ons Verr: ISVN/p/B303B

Your Ref / U Verr:

21 January 2022

The Trustees Redbuild Trust
 P.O Box 1415
 HERMANUS
 7200

Dear Mr Makepeace

TRANSFER ERF 263 HERMANUS; P J BOTHA; C P BURGERS; I S VAN NOORDWYK / REDBUILD TRUST

We herewith confirm registration of the above transfer in the Cape Town Deeds Office today and attach hereto our reconciliation statement which we trust you find in order, as well as proof of payment of the amount due to you.

We expect to receive delivery of the title deed from the Deeds Office in approximately 3 months' time which will be forwarded to you for safekeeping.

We thank you for your co-operation herein.

Yours faithfully
BURGERS & VAN NOORDWYK



I. S. VAN NOORDWYK

(In Association with / In Assosiasie met MICHAEL RANGE & ASSOCIATES)

Tel (028) 312-1127/8/9 Fax/Faks (028) 312-1420

P O Box / Posbus 50, HERMANUS, 7200, 7 Warrington Place 7, 8 Harbour Road/Haweweg 8, Doceux 4, Hermanus

E-mail/E-pos bvnprok@hermanus.co.za

VAT / BTW Reg. No 4030114443

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Redbuild Trust

IT2386/98

VAT No 4230246102

address for notices and serving of documents:
makepeace.hermanus@gmail.com

27 January 2022

BY EMAIL

Attention:Ms Loretta Gillion, Overstrand Municipality. Email: Loretta@overstrand.gov.zaWITHOUT PREJUDICE

Dear Ms Gillion,

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER: APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD) "The Brewery"**Introduction**

I, John Makepeace, am an interested and affected party, and address you in the following capacity:

Sole Trustee of Redbuild Trust, the owner of:

Farm Re. 338 of the Farm Onrust River no. 581 & RE. portion 2 of the Farm Glenfruin 578 ("the farm").

The farm is currently a leisure / nature farm approximately 38ha in extent. It has been in the ownership of the trust for 19 years having been acquired in 2003.

It is the first farm on the left as one enters the Hemel & Aarde Valley and extends up to the 1 km marker up the R320 with the bulk of the land lying at the top of the overlooking the applicant property and, somewhat more pleasantly, the Glenfruin Meadows country residential housing estate which once formed part of it.

The 700mt of southern boundary of the farm is river frontage along the Onrus river and the land then rises to the farm buildings which lie in the shadow of the hill behind. The farm has stunning views of Walker Bay and Fernkloof Nature Reserve Maanschynkop, Babylonstoring mountains and the lower, central and upper Hemel & Aarde Valley all the way to Shaw's Pass.

Over the years of ownership we have enjoyed the privilege of witnessing many events from our mountain top vantage points such as the passing of comets, lunar and solar eclipses and very specially the passing of the International Space Station with our very own Mark Shuttleworth aboard.

Across the river is Glenfruin Meadows, a housing and "equestrian" estate comprising beautiful large country properties ranging in sizes from +/- 2000m² to 6000m² and whose common grounds comprising meadows, riverside walkways, paddocks and stables - Redbuild Trust shares ownership in through the HOA.

Sadly, even though the applicant's boundary is more than 370mt from the southern boundary, 400mt from the farm buildings and from 700 - 900mt from the ridge looking down on the applicant property, it is so badly affected by the noise nuisance emanating from the applicant property that, were the departure to be granted, the enjoyment of this relatively unspoilt piece of land so close to the urban area would, to all intents and purposes, be destroyed for ever.

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To create an analogy and to give an indication of the gravity of the situation should the applicant's departure be granted, it would be like walking on the beautiful trails in the Fernkloof Nature Reserve, whilst live music is blasted at you from the Fernkloof residential area down below.

If past experience of the threat that the application represents of the *noise sensitive activity* and the *disturbing noise nuisance* thus produced by the applicant, is any indication of what is to be expected in the future (but much more frequently) then the departure applied for is totally out of keeping and in total conflict to the peace and quiet a reasonable person would expect to enjoy on this property.

For these reasons and all those outlined below we consider the departure to be totally undesirable.

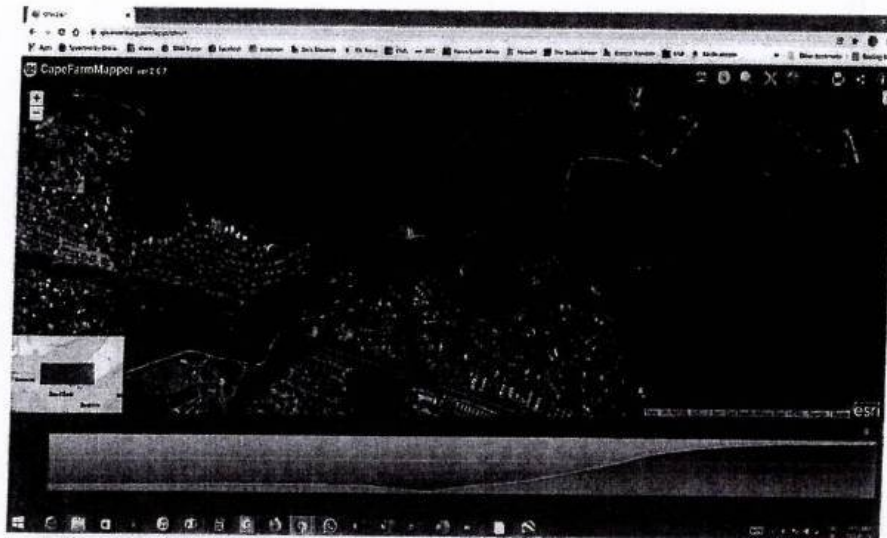
1. Noise Impact of Place of Entertainment and Noise Impact Assessment supporting application (NIA)

The noise nuisance generated by the applicant by holding heavily amplified live and reproduced music outdoors is most disturbing.

Based upon the representations made in the NIA supporting the application, the disturbing noise generated by the applicant should not be audible above the ambient noise level experienced over the top of the hill and totally out of line of site of the applicant property.

The NIA states that at the point M2 on the applicant property the noise measured is 55 dBA with source at 95 dBA. This point is approximately 60mt from source – band stand (actual distance not provided in NIA).

Simple attenuation calculations show that, if the applicant was projecting noise at source that was on or near the maximum that the NIA indicates as permissible – 92 dBA, purely as the crow flies i.e. without other obstacles such as mountains bush etc in between, noise if measurable at the point indicated on the image below would be in the region of 32 dBA.



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Given all the sound absorption materials in between, it is therefore highly unlikely that the Rivertones Band would be audible at all, at this point.

BUT THEY WERE CLEARLY AUDIBLE – on both recent occasions and historically too!

As the live entertainment is to be predominantly outdoors, it is also to be noted that the NIA and the application in general do not indicate any attempts whatsoever to limit or mitigate the disturbing noise pollution and nuisance posed, despite the long history of complaints by fellow property owners of which I am aware.

As pointed out in comments submitted in my letter relating to 22 Glenfruin Meadows (erf4366), the lack of participation, the methodology, findings and therefore the permissible noise levels identified therein is also to be challenged.

Although the NIA findings indicate that maximum noise levels are exceeded. The application does not contain or propose any noise mitigation factors that the applicant should or is willing to undertake other than a recommendation to the effect they must take steps not to exceed the limit and this is unacceptable.

The application does not provide any answers to the following key considerations and questions:

- Is a place of entertainment desirable in an environment where people have made huge investments in properties and a lifestyle where nature and peace and quiet can be enjoyed without the disturbing noise of loud music and the noise nuisance that it represents?
- Is a reasonable expectation of peace and quiet having located ourselves here not a right that needs to be protected?
- If the venue is to be limited to certain maximum sound levels, how will the sound levels be managed with regard to the different musicians and sound systems used?
- Who will ensure that these noise levels are enforced?
- Would I and other affected property owners have to complain to the authorities every time that we perceive the noise to be a nuisance?
- Is this a fair burden to be placing on us?
- Our local authority does not have the measuring instruments to ensure compliance with regard to decibel levels.
- Are we going to be forced to police the issue by spending copious amounts of money bringing in experts when we experience abuse?
- Will all of this not in itself deprive us of our rights to enjoy peace and quiet?

We do not believe that the noise issue has been dealt with satisfactorily in the application and given that this is probably one of the key aspects of the operation of a place of entertainment where amplified music is to be played outdoors, potentially 7 days a week, we find this unacceptable and that at the very least this aspect needs to be re-visited.

We refer also to the detailed submissions with regard to noise in the objection submitted by me for Erf Hon 4366 - 22 Glenfruin Meadows: –

“6. Noise in the context of this application and the Noise Impact Assessment submitted in support thereof”

For these and other reasons the departure is undesirable.

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2. Fire and Safety

The farm has as its only access legally and most importantly in respect of fire - geographically - the servitude road running through Glenfruin Meadows and then the H&A Village.

This road is effectively a cul de sac for the entire area.

There is no other access or egress!

Once you have entered there is no other way out except the way you came in!

In addition our farm is located in an extremely high fire risk zone for wildfires.

As owners we have a significant and onerous responsibility placed upon us by legislation concerning the spread of fire from our property and the concomitant fallout and damage to other surrounding properties.

For this reason, and as frequently discussed with the fire authorities, planning clearing and access for fire fighters and other emergency vehicles is critical at all times, particularly during fire season (Dec- Apr) which coincides with the summer holiday/festive season.

Frequent fires in the mountain within the last few years are well documented.

It is submitted that by granting this departure in any form that allows the applicant to draw large crowds, that are in excess of its licensed capacity, by holding events that bring in large volumes of additional traffic and people into - what is effectively a cul de sac - would be extremely irresponsible and represent a major threat of death or injury, of not only owners and occupants of properties for whom this is the only way in or out but also to the vast numbers of the general public in attendance.

Historically where events have been held in the H&A Village, vehicles have completely blocked the roads and have parked everywhere including in no-stopping zones, the middle of the road and frequently even blocked the access or egress from the residential and agricultural properties.

This aspect is well documented along with photographic evidence in my objection in respect of Erf 4366 – 22 Glenfruin Meadows.

There is no traffic impact assessment in support of the application and it needs to be noted that a reasonable expectation of fire needs to be one of the main considerations were one to be done.

For these and other reasons we submit that the departure is undesirable.

3. Location in H&A Village which is a Special Zone with it's own Scheme Regulations

The applicant property is located in the H&A Village which has a municipal zoning of "Special Zone".

Their unique Scheme Regulations define their properties' primary use as "Tourism Business/Cottage Industry & Dwelling House" with the only additional consent use being for flats.

It is clear from the Scheme Regulations as well as the Design Manual that a calm country environment was intended with site use including activities such as restaurants, guesthouses, guestrooms, winery, souvenir shops, tourist information centres, antique shops, arts & crafts shops, art galleries, interior decorators, travel bureau, conference facilities, manufacture of pottery and art and dwelling houses which could be attached to

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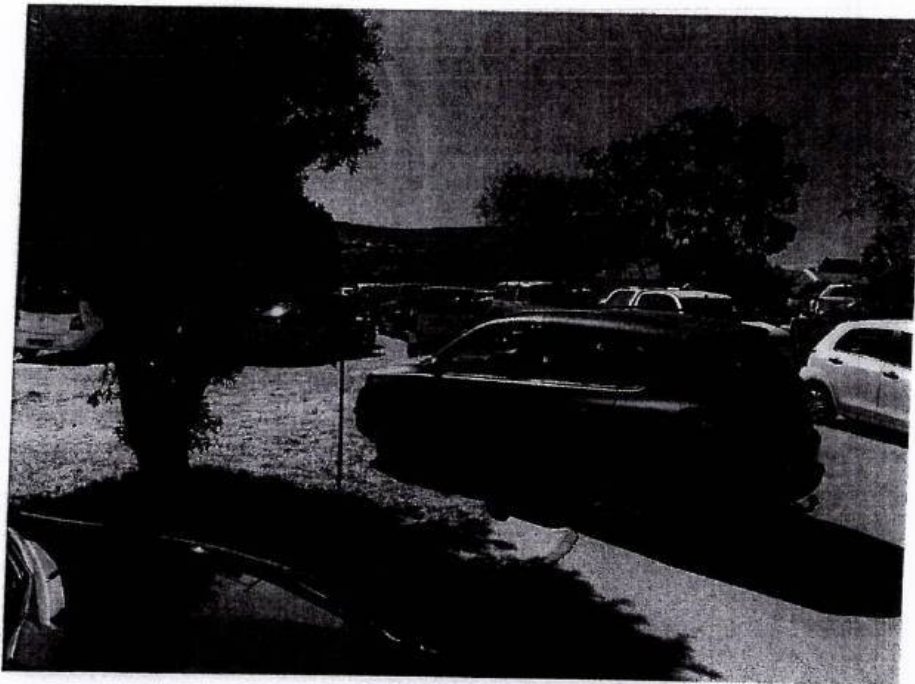
a tourism business or cottage industry concern.

This, in general, could be referred to as the whole ethos of the H&A Village when originally contemplated and given Special Zoning status. It is to be noted that Glenfruin Meadows was also proclaimed around a similar time and that a logical assumption of the compatibility with the H&A Village and surrounds would have been made by the developers and subsequent owners of residential erven.

An application for a departure such as this is therefore out of the ordinary and it is to be noted that, at the outset, this land use was clearly never the intention of the H&A Village developers i.e. to accommodate a place of entertainment in the H&A Village. It will have a negative effect on all the surrounding property owners.

For this and other reasons the departure is undesirable.

4. Access road and traffic



It is the clear intention of the applicant to draw large additional crowds of people to the venue during not only current normal operations (which is their right) but potentially thousands of additional people and extensive additional vehicular traffic when hosting or participating with neighbouring properties in holding big events.

The access road into H&A Village intersects with the main road to Caledon (R320) and is situated directly opposite the large Hemel en Aarde Estate entrance. The traffic light on the main road to Hermanus (R43) as well as the first bend in the road towards Caledon are both approximately 150 meters away from the stop

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street, making access onto the R320 difficult, even under normal traffic situations. The application is also not supported by a Traffic Impact Assessment (TIA) assessing the suitability of the venue to host events.

The approach to Glenfruin Meadows is over a servitude area in H&A Village (Erf 4159) which comprises a single lane road (no road markings) coming off the R320 and runs past the H&A Village retail and office area and the applicant property on the south side of the road and Whalehaven Winery on the north side.

It is to be noted that this is a very narrow road of less than 6.0m overall width in most places, and that it is the only access and egress for numerous properties that include the following:
The H&A Village Shopping Centre, the applicant property, Whalehaven Winery, the balance of the businesses and residential areas in the H&A Village, Glenfruin Meadows, various smallholdings across the Onrus River and farmland in excess of 200ha.

This is effectively a cul de sac! Once you have entered there is no other way out except the way you came in!

It must be noted that large areas of the H&A Village are not yet developed - 13 properties in total and at least 4 that are not developed as of yet. Many of the developed properties located therein are not at their maximum bulk and therefore there is scope for significant additional commercial development and additional traffic.

There are 2 undeveloped properties within Glenfruin Meadows and significant scope for new and additional development of properties across the river which could well include full scale agricultural activities as is their primary zoning rights.

There is no roadside parking on this servitude road (erf 4159) and there are no stopping areas for vehicles.

Despite the very significant foot traffic of workers and other members of the general public and the fact that this is the only access to all the properties referred to above, there is no pedestrian access nor pedestrian walkways provided, other than by walking along the road or through what are essentially private properties that could be fenced off at any given time.

This area is also the access to the very popular Hermanus Mountain Bike and walking trails.

The ground immediately adjacent to the road has large rocks, trees, signs, electricity boxes, streetlamps etc. on either side. There is often insufficient space for a motorcar and truck to pass each other safely in opposite directions and it is often necessary for vehicles to move off the road to make way for each other.

The road is unmarked and badly maintained and at times poses a danger to motorists, pedestrians and cyclists (of which there are a number). The traffic authorities have no jurisdiction or control over this road as, although it is a public roadway, it is located on private property and they will not police the area by issuing fines, towing vehicles away when illegally parked etc.

The roadway currently carries a voluminous amount of traffic including large delivery vehicles servicing the various businesses including, bakeries, including the two wineries, nursery and furniture/décor businesses and whatever else is still to come.

The road network is probably already inadequate or the bare minimum necessary to support the normal existing traffic.

In this sense all vehicles that come in must be able to exit on the same roadway.

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Granting this departure would enable the applicant to draw large additional crowds and traffic to H&A Village on a regular basis.

For reasons cited above, the venue is not suited to hold events where larger than normal traffic flows are to be generated without going through the necessary applications and being under the control of the excellent Events Policy of the local authority.

This aspect is well documented along with photographic evidence in my objection in respect of Erf 4366 – 22 Glenfruin Meadows.

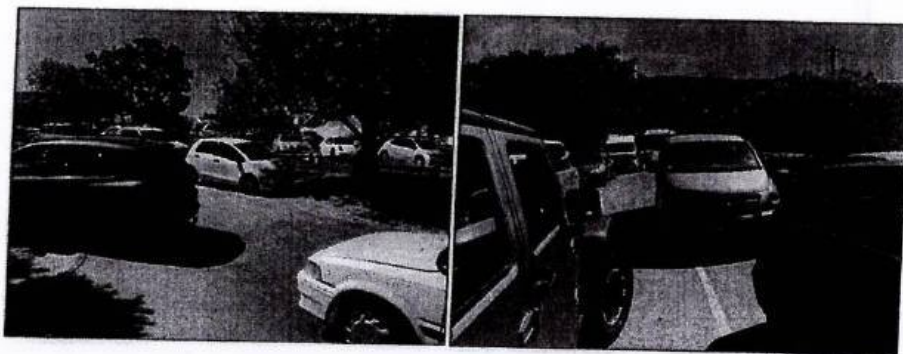
For these and other reasons the departure is undesirable.

6. Business Hours

It is proposed that the applicant is to be permitted to have "live entertainment events strictly to between 7h00 and 22h00 with a maximum of 2 hours per evening and 4 hours during the daytime for events" on any day of the week. In addition, any number of additional hours of PA systems amplifying voices and reproducing music would be permissible.

For these and other reasons the departure is undesirable.

7. Insufficient Parking



Granting this departure would enable the applicant to draw large crowds and additional traffic to H&A Village on a regular basis.

It is to be noted that there is no public or municipal parking servicing the H&A Village at all.

As there is no contemplation of a "place of entertainment" in the Scheme Regulations of H&A Village, there is no mention of parking requirements for such and it follows that the Overstrand Zoning Scheme Regulations 2020 apply.

This states that a "place of entertainment" needs to have 1 off street parking bay per 4 seats. As per the application, the restaurant site can seat approximately 250 people. If patrons are only limited to this number, then 62.5 parking bays would need to be provided i.e., a shortfall of at least 13.5 bays on those proposed in

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the application (49 bays).

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total? If 500, then 76 additional parking bays would be required which would entail the applicant having to purchase another property nearby. The site is fully developed and there is no viable space for any additional parkings.

With respect, it is highly unlikely that the applicant would limit patrons during the normal course of operations to 250 people in total and therefore the parking requirement is grossly understated.

Granting this departure would enable the applicant to draw large crowds and additional traffic to H&A Village on a regular basis and application states "guests can park on adjacent parking areas" (page 23).

It must be noted that adjacent erven are all private property and house commercial enterprises or are undeveloped as yet. The assumption that these areas can be used indefinitely for parking cannot be made. During daytime particularly, neighbouring businesses need their parking for their own staff and customers. Most trade on weekends too.

Access to this additional off-site parking is not a given and unless specifically noted on title deeds as inalienable rights attaching to the applicant property in perpetuity, things can and will change as circumstances and further development and expansion takes place in H&A Village.

For these and other reasons the departure is undesirable.

8. Attracting large numbers of people

Granting this departure would enable the applicant to draw large crowds and additional traffic to H&A Village on a regular basis.

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Again, is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total?

Further on page 23 under "Attracting large numbers of people" it is stated that "The numbers are accordingly limited as part of the management of the business and also in respect of the cooking facilities as well as on-site parking (even though guests can park on adjacent parking areas) resulting that the application site does remain within manageable numbers and control."

Most places of entertainment do not provide a seat for each reveler and the applicant does not always require that patrons eat (and even if they did, this could change at any time), therefore the reference to 250 seats is a misnomer both as regards to controlling numbers, limitations posed by cooking facilities and importantly parking.

In the case of events, there is no consideration with regard to providing a seat for every person nor sufficient parking.

Previous activities have shown that unauthorised events and concerts on the site have drawn large numbers of people with little to no real control over the numbers.

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With regard to "numbers are accordingly limited as part of the management of the business", the site has numerous pedestrian entrances on all sides of the property for patrons to enter. There are no gates and where there are walls, they are approximately knee high.

Currently, live music events are free and do not necessarily require a booking or a ticket (refer to social media advertisements).

There is no guarantee that management will control the number - the business is profit driven, meaning the more people attending, the better the profit for the business.

Considering the above, how is it possible to control the numbers?

For these and other reasons the departure is undesirable.

9. Precedent

If the application is successful in any form, this will set a precedent for businesses already in the H&A Village - many of whom have illegally held large, very loud, live music events, weddings etc. in the past - to apply for place of entertainment departures. (herewith refer to, as recently as 27 Dec 2021, Bottomless Coffee Band at Hermanuspietersfontein Winery as an example).

In addition, this departure may encourage similar businesses to be attracted to the H&A Village and for them to apply for similar departures.

Many of the properties have not been developed to their full extent.... yet, and there are 4 that have not yet been developed or commissioned.

A "place of entertainment" opens the door to just that. Nothing will stop a business owner from next starting a nightclub, strip club, installing slot machines or the like.

For these and other reasons the departure is undesirable.

10. Mitigating Measures

In the inconceivable alternative in that the application is considered favourable in any way, mitigating measures should be imposed that should, inter alia, include:

- I. Limit the place of entertainment and all amplified sound/music/PA systems to the inside of the building or new buildings which are suitably soundproofed.
- II. Require that windows and doors are closed when holding live entertainment after certain hours.
- III. Limit the hours as in how many hours between x and y times during the day and how many hours between x and y times at night that noise can be made.
- IV. Limit the number of days per week/month/year that amplified live or reproduced music is permitted.
- V. Require the installation of sealed and regularly calibrated sound receptors at various points where nearby residential areas are affected, that enable the constant monitoring of noise and the recording of values for subsequent analysis etc.
- VI. Ensure that the required number of parkings are provided for on the basis of those required in the local authority regulations for a place of entertainment on the applicant property based on the actual numbers that it aims to attract and is licenced for (1 bay 4 seats)
- VII. Specifically regulate that no part of the designated parking area and requirement on the applicant property, may be used for any purpose other than parking i.e., no stage, dance floor, tent, gazebo,

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- marquee to accommodate performers, event participants, patrons or exhibitors may be erected in the parking area.
- VIII. Require commitment that crowd control measures are undertaken by the applicant to keep within its regulated capacity "manageable numbers and control".
 - IX. Require the presence of meaningful security to protect members of the general public as well as owners and occupiers of adjacent properties.
 - X. Provide suitably qualified parking attendants with authority to remove illegally parked cars be during times of high attendance so as to prevent blocking/congestion of the narrow access roads and unlawful parking (traffic authorities have no jurisdiction over the roads in H&A Village) (note: traffic authorities claim not have jurisdiction).
 - XI. Provide on site towing services at any event with the authority to remove illegally parked cars (note: traffic authorities claim not have jurisdiction).
 - XII. Require the upgrade of access roads to the H&A Village as a condition of the departure as well as the securing of a binding commitment by the applicant and H&A Village HOA to facilitate negotiations with the relevant parties to the registered Servitude Agreements to attend to the upgrading and ongoing maintenance of the road and infrastructure.
 - XIII. Require that the local authority Event By-Law be applied on an individual application basis for the staging of any event that exceeds the capacity of the applicant on an event by event basis so as to ensure that events are managed safely and effectively in terms of the By-Law.

In conclusion we consider the application for the departure as outlined above to be totally undesirable and we trust that the Tribunal considering the matter will concur.

In the unlikely event that the departure is granted, even with mitigating measures that include the above, it is noted that we reserve our right to appeal.

Please do not hesitate to contact us if you require any further information.

Yours sincerely



Redbuild Trust - John Makepeace - Sole Trustee

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Redbuild Trust

IT2386/98
VAT No 4230246102

27 January 2022

BY EMAIL

Attention:

Ms Loretta Gillion, Overstrand Municipality. Email: Loretta@overstrand.gov.za

WITHOUT PREJUDICE

Dear Ms Gillion,

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER: APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD) "The Brewery"

Introduction

I, John Makepeace, am an interested and affected party, and address you in the following capacity:

Sole Trustee of Redbuild Trust, the owner of 23 Glenfruin Meadows, Onrus River - HON4365; part owner of erf 4368, Onrus River; and part owner of erf 4362, Onrus River through our undivided share in the Glenfruin Meadows HOA.

The email address for notices and serving of documents is Makepeace.Hermanus@gmail.com

23 Glenfruin Meadows HON4365 - is 164 metres from the applicant property.

1. The Application

It is noted that according to the Town Planning Application Form completed by the applicant, the application is for:

Permanent Departure from the provisions of the zoning scheme;
Consent use provided for in the zoning scheme – Section 16(2)(c); and
the Determination of an administrative penalty – Section 16(2)(a).

The application is for a "place of entertainment" which means a place used for commercial entertainment which may attract large numbers of people, operates outside normal business hours or generates noise from music or revelry on a regular basis and includes a cinema, a theatre, an amusement park, a dance hall or a night club and gambling and live music". (Overstrand Municipality Land Use Scheme, 2020).

As per the application on page 20, "the specific request for a departure is to allow live music AND EVENTS on the property".

An "event" is defined as:

(a) a sporting, cultural or entertainment event, including live acts, held outside the venue or building, or which by their nature, size or impact are considered outside the normal use parameters for the venue;" (Overstrand Municipality: Events By-Law).

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2. Location in H&A Village which is a Special Zone with it's own Scheme Regulations

The applicant property is located in the H&A Village which has a municipal zoning of "Special Zone".

Their unique Scheme Regulations define their properties' primary use as "Tourism Business/Cottage Industry & Dwelling House" with the only additional consent use being for flats.

It is clear from the Scheme Regulations as well as the Design Manual that a calm country environment was intended with site use including activities such as restaurants, guesthouses, guestrooms, winery, souvenir shops, tourist information centres, antique shops, arts & crafts shops, art galleries, interior decorators, travel bureau, conference facilities, manufacture of pottery and art and dwelling houses which could be attached to a tourism business or cottage industry concern.

This, in general, could be referred to as the whole ethos of the H&A Village when originally contemplated and given Special Zoning status. It is to be noted that Glenfruin Meadows was also proclaimed around a similar time and that a logical assumption of the compatibility with the H&A Village and surrounds would have been made by the developers and subsequent owners of residential erven.

The applicant is applying for a land use departure for an additional land use that the specific zoning scheme does not provide for. The specific zoning of the property does not have a place of entertainment as a primary right or a consent use, so a departure would be required. Not all departures are undesirable – but in my view this one is - and it needs to be considered in terms of the elements of desirability or not, which are numerous.

I believe it sensible that all purchasers of a property investigate what is allowed and not allowed prior to purchasing any property and can only believe the owners of erf 4156, the applicant, who are now asking for a departure, did their homework beforehand. In other words, they knew what they were buying into and what was allowed under the Special Zoning status. If the applicant wanted to establish a place of entertainment, they should have done so in an area suitably zoned as such i.e. with consent use possibilities of which there are a number in the Overstrand.

It must be noted that the change in use from the current zoning would be an extreme change, unwanted by nearby properties, and which will severely and negatively influence not just the lives of the property owners but also the value of the property they own.

An application for a departure such as this is therefore out of the ordinary and it is to be noted that, at the outset, this land use was clearly never the intention of the H&A Village developers i.e. to accommodate a place of entertainment in the H&A Village. It will have a negative effect on all the surrounding property owners.

For this and other reasons the departure is undesirable.

3. Access road and traffic

It is the clear intention of the applicant to draw large additional crowds of people to the venue during not only current normal operations (which is their right) but potentially thousands of additional people and extensive additional vehicular traffic when hosting or participating with neighbouring properties in holding big events.

The access road into H&A Village intersects with the main road to Caledon (R320) and is situated directly opposite the large Hemel en Aarde Estate entrance. The traffic light on the main road to Hermanus (R43) as well as the first bend in the road towards Caledon are both approximately 150 meters away from the stop street, making access onto the R320 difficult, even under normal traffic situations. The application is also not

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supported by a Traffic Impact Assessment (TIA) assessing the suitability of the venue to host events.

The approach to Glenfruin Meadows is over a servitude area in H&A Village (Erf 4159) which comprises a single lane road (no road markings) coming off the R320 and runs past the H&A Village retail and office area and the applicant property on the south side of the road and Whalehaven Winery on the north side.

It is to be noted that this is a very narrow road of less than 6.0mt overall width in most places, and that it is the only access and egress for numerous properties that include the following:
The H&A Village Shopping Centre, the applicant property, Whalehaven Winery, the balance of the businesses and residential areas in the H&A Village, Glenfruin Meadows, various smallholdings across the Onrus River and farmland in excess of 200ha.

It must be noted that large areas of the H&A Village are not yet developed - 13 properties in total and at least 4 that are not developed as of yet. Many of the developed properties located therein are not at their maximum bulk and therefore there is scope for significant additional commercial development and additional traffic.

There are 2 undeveloped properties within Glenfruin Meadows and significant scope for new and additional development of properties across the river which could well include full scale agricultural activities as is their primary zoning rights.

There is no roadside parking on this servitude road (erf 4159) and there are no stopping areas for vehicles.

Despite the very significant foot traffic of workers and other members of the general public and the fact that this is the only access to all the properties referred to above, there is no pedestrian access nor pedestrian walkways provided, other than by walking along the road or through what are essentially private properties that could be fenced off at any given time.

This area is also the access to the very popular Hermanus Mountain Bike and walking trails.

The ground immediately adjacent to the road has large rocks, trees, signs, electricity boxes, streetlamps etc. on either side. There is often insufficient space for a motorcar and truck to pass each other safely in opposite directions and it is often necessary for vehicles to move off the road to make way for each other.

The road is unmarked and badly maintained and at times poses a danger to motorists, pedestrians and cyclists (of which there are a number). The traffic authorities have no jurisdiction or control over this road as, although it is a public roadway, it is located on private property and they will not police the area by issuing fines, towing vehicles away when illegally parked etc.

The roadway currently carries a voluminous amount of traffic including large delivery vehicles servicing the various businesses including, bakeries, including the two wineries, nursery and furniture/décor businesses and whatever else is still to come.

The road network is probably already inadequate or the bare minimum necessary to support the normal existing traffic.

In this sense all vehicles that come in must be able to exit on the same roadway.

Granting this departure would enable the applicant to draw large additional crowds and traffic to H&A Village on a regular basis.

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For reasons cited above, the venue is not suited to hold events where larger than normal traffic flows are to be generated without going through the necessary applications and being under the control of the excellent Events Policy of the local authority.

This aspect is well documented along with photographic evidence in my objection in respect of Erf 4366 – 22 Glenfruin Meadows.

For these and other reasons the departure is undesirable.

4. Noise Impact of Place of Entertainment

Granting this departure would enable the applicant to draw large crowds and additional traffic to H&A Village on a regular basis, both in the normal course of providing live entertainment on a regular basis, and when hosting even larger events.

The noise nuisance generated by the applicant by holding heavily amplified live and reproduced music outdoors is disturbing, a noise nuisance and impairs the convenience and peace that my family, guests and I, as reasonable people, are entitled to enjoy on our own properties as well as when walking in the common areas of Glenfruin Meadows of which I am part owner and in which we share, which include beautiful country lanes, riverside walks, equestrian areas and the like.

The distance from the applicant property to erf 4368, one of the properties of which I am part owner, is approximately 90 meters.

As a matter of interest, the stables mentioned above are approximately 210 meters from the applicant property and in direct line of sight. The impact on the horses and pets has been significant during the events held illegally over the past year.

Attempting to sleep during live events is challenging and it must be further noted that many of us have a home office, more so since COVID, and attempting to work and concentrate during live events is difficult.

For these and other reasons the departure is undesirable.

5. Noise Impact Assessment (NIA)

Neither I, nor other interested and affected parties with whom we are acquainted, were afforded the opportunity to participate in any way in the scoping and reference of the NIA and accordingly the objectivity of the (NIA) included in support of the application is questionable.

I understand that, as pointed out in comments submitted in my letter relating to 22 Glenfruin Meadows (erf4366), the lack of participation, the methodology, findings and therefore the permissible noise levels identified therein are to be challenged.

As the live entertainment is to be predominantly outdoors, it is also to be noted that the NIA and the application in general do not indicate any attempts whatsoever to limit or mitigate the disturbing noise pollution and nuisance posed despite the long history of complaints by fellow property owners of which I am aware.

The NIA findings indicate that maximum noise levels are exceeded. The application does not contain or propose any noise mitigation factors that the applicant should or is willing to undertake and this is unacceptable.

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If the venue is to be limited to certain maximum sound levels, how will the sound levels be managed with regard to the different musicians and sound systems used?

In addition, who will ensure that these noise levels are enforced?

Would I and other affected property owners have to complain to the authorities every time that we perceive the noise to be a nuisance? Is this a fair burden to be placing on us? Will this not in itself affect our rights to enjoy our peace and quiet?

In this regard it is to be noted that our Municipality does not have the measuring instruments or professional qualifications to ensure compliance with regard to decibel levels.

Are members of our community going to be forced to spend copious amounts of money bringing in experts when they/we experience problems?

The application has numerous plans, pictures and diagrams but is silent as to the location of the stage for musicians or sound/PA system, which direction it would face and whether it would have any noise barriers or sound controls.

The departure applied for is not provided for in the Special Zoning Scheme that applies to the applicant property and in addition, is in close proximity to extensive residential areas many of which are largish country properties where nature and peace and quiet without the disturbing noise of loud music and the noise nuisance that it represents is a reasonable expectation.

From the above we consider that the noise issue has not been dealt with satisfactorily in the application and given that this is probably one of the key aspects of the operation of a place of entertainment where amplified music is to be played outdoors, potentially 7 days a week, we find this unacceptable and that at the very least this aspect needs to be re-visited.

Please refer to the detailed submissions with regard to noise in the objection submitted by me for Erf Hon 4366 - 22 Glenfruin Meadows: -

"6. Noise in the context of this application and the Noise Impact Assessment submitted in support thereof"

For these and other reasons the departure is undesirable.

6. Business Hours

It is proposed that the applicant is to be permitted to have "live entertainment events strictly to between 7h00 and 22h00 with a maximum of 2 hours per evening and 4 hours during the daytime for events" on any day of the week. In addition, any number of additional hours of PA systems amplifying voices and reproducing music would be permissible.

For these and other reasons the departure is undesirable.

7. Insufficient Parking

Granting this departure would enable the applicant to draw large crowds and additional traffic to H&A Village on a regular basis.

It is to be noted that there is no public or municipal parking servicing the H&A Village at all.

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As there is no contemplation of a "place of entertainment" in the Scheme Regulations of H&A Village, there is no mention of parking requirements for such and it follows that the Overstrand Zoning Scheme Regulations 2020 apply.

This states that a "place of entertainment" needs to have 1 off street parking bay per 4 seats. As per the application, the restaurant site can seat approximately 250 people. If patrons are only limited to this number, then 62.5 parking bays would need to be provided i.e., a shortfall of at least 13.5 bays on those proposed in the application (49 bays).

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total? If 500, then 76 additional parking bays would be required which would entail the applicant having to purchase another property nearby. The site is fully developed and there is no viable space for any additional parkings.

With respect, it is highly unlikely that the applicant would limit patrons during the normal course of operations to 250 people in total and therefore the parking requirement is grossly understated.

Granting this departure would enable the applicant to draw large crowds and additional traffic to H&A Village on a regular basis and application states "guests can park on adjacent parking areas" (page 23).

It must be noted that adjacent erven are all private property and house commercial enterprises or are undeveloped as yet. The assumption that these areas can be used indefinitely for parking cannot be made. During daytime particularly, neighbouring businesses need their parking for their own staff and customers. Most trade on weekends too.

Access to this additional off-site parking is not a given and unless specifically noted on title deeds as inalienable rights attaching to the applicant property in perpetuity, things can and will change as circumstances and further development and expansion takes place in H&A Village.

This aspect is well documented along with photographic evidence in my objection in respect of Erf 4366 – 22 Glenfruin Meadows.

For these and other reasons the departure is undesirable.

8. Attracting large numbers of people

Granting this departure would enable the applicant to draw large crowds and additional traffic to H&A Village on a regular basis.

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Again, is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total?

Further on page 23 under "Attracting large numbers of people" it is stated that "The numbers are accordingly limited as part of the management of the business and also in respect of the cooking facilities as well as on-site parking (even though guests can park on adjacent parking areas) resulting that the application site does remain within manageable numbers and control."

Most places of entertainment do not provide a seat for each reveler and the applicant does not always

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require that patrons eat (and even if they did, this could change at any time), therefore the reference to 250 seats is a misnomer both as regards to controlling numbers, limitations posed by cooking facilities and importantly parking.

In the case of events, there is no consideration with regard to providing a seat for every person nor sufficient parking.

Previous activities have shown that unauthorised events and concerts on the site have drawn large numbers of people with little to no real control over the numbers.

With regard to "numbers are accordingly limited as part of the management of the business", the site has numerous pedestrian entrances on all sides of the property for patrons to enter. There are no gates and where there are walls, they are approximately knee high.

Currently, live music events are free and do not necessarily require a booking or a ticket (refer to social media advertisements).

There is no guarantee that management will control the number - the business is profit driven, meaning the more people attending, the better the profit for the business.

Considering the above, how is it possible to control the numbers?

For these and other reasons the departure is undesirable.

9. Setting of a Precedent

If the application is successful in any form, this will set a precedent for businesses already in the H&A Village - many of whom have illegally held large, very loud, live music events, weddings etc. in the past - to apply for place of entertainment departures. (herewith refer to, as recently as 27 Dec 2021, Bottomless Coffee Band at Hermanuspietersfontein Winery as an example).

In addition, this departure may encourage similar businesses to be attracted to the H&A Village and for them to apply for similar departures.

Many of the properties have not been developed to their full extent.... yet, and there are 4 that have not yet been developed or commissioned.

Two of the undeveloped erven border Glenfruin Meadows and the Equestrian Centre/horse stables and pose a huge threat of a ripple of applications for departures to operate as places of entertainment.

It is likely that the H&A Village HOA, and therefore most of their property owners, are in support of this application. In other words, it is possible that they would condone, support and perhaps encourage other/similar applications for land use departures in the future, in the belief that this opens the door for similar departures on their own properties and perhaps adding to their market value.

A "place of entertainment" opens the door to just that. Nothing will stop a business owner from next starting a nightclub, strip club, installing slot machines or the like.

For these and other reasons the departure is undesirable.

10. Fire and Safety

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Granting this departure would enable the applicant to draw large crowds and additional traffic to H&A Village on a regular basis and this would pose serious threats to the safety and well-being of the properties, patrons and occupants within H&A Village as well as those that have the same road as their only form of access and egress.

The agricultural land and mountains above the urban edge of the residential developments accessed through the H&A Village are regarded by the authorities as an extremely high fire risk zone for wildfires and for this reason access for fire fighters and other emergency vehicles is critical at all times, particularly during fire season (Dec- Apr) which coincides with the summer holiday/festive season.

Historically where events have been held in the H&A Village, vehicles have completely blocked the roads and have parked everywhere including in no-stopping zones, the middle of the road and on occasion, even blocking access or egress from the residential and agricultural properties.

This aspect is well documented along with photographic evidence in my objection in respect of Erf 4366 – 22 Glenfruin Meadows.

For these and other reasons the departure is undesirable.

11. Mitigating Measures

In the inconceivable alternative in that the application is considered favourable in any way, mitigating measures should be imposed that should, inter alia, include:

- I. Limit the place of entertainment and all amplified sound/music/PA systems to the inside of the building or new buildings which are suitably soundproofed.
- II. Require that windows and doors are closed when holding live entertainment after certain hours.
- III. Limit the hours as in how many hours between x and y times during the day and how many hours between x and y times at night that noise can be made.
- IV. Limit the number of days per week/month/year that amplified live or reproduced music is permitted.
- V. Require the installation of sealed and regularly calibrated sound receptors at various points where nearby residential areas are affected, that enable the constant monitoring of noise and the recording of values for subsequent analysis etc.
- VI. Ensure that the required number of parkings are provided for on the basis of those required in the local authority regulations for a place of entertainment on the applicant property based on the actual numbers that it aims to attract and is licenced for (1 bay 4 seats)
- VII. Specifically regulate that no part of the designated parking area and requirement on the applicant property, may be used for any purpose other than parking i.e., no stage, dance floor, tent, gazebo, marquee to accommodate performers, event participants, patrons or exhibitors may be erected in the parking area.
- VIII. Require commitment that crowd control measures are undertaken by the applicant to keep within it's regulated capacity "manageable numbers and control".
- IX. Require the presence of meaningful security to protect members of the general public as well as owners and occupiers of adjacent properties.
- X. Provide suitably qualified parking attendants with authority to remove illegally parked cars be during times of high attendance so as to prevent blocking/congestion of the narrow access roads and unlawful parking (traffic authorities have no jurisdiction over the roads in H&A Village) (note: traffic authorities claim not have jurisdiction).
- XI. Provide on site towing services at any event with the authority to remove illegally parked cars (note: traffic authorities claim not have jurisdiction).

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- XII. Require the upgrade of access roads to the H&A Village as a condition of the departure as well as the securing of a binding commitment by the applicant and H&A Village HOA to facilitate negotiations with the relevant parties to the registered Servitude Agreements to attend to the upgrading and ongoing maintenance of the road and infrastructure.
- XIII. Require that the local authority Event By-Law be applied on an individual application basis for the staging of any event that exceeds the capacity of the applicant on an event by event basis so as to ensure that events are managed safely and effectively in terms of the By-Law.

In conclusion we consider the application for the departure as outlined above to be totally undesirable and we trust that the Tribunal considering the matter will concur.

In the unlikely event that the departure is granted, even with mitigating measures that include the above, it is noted that we reserve our right to appeal.

Please do not hesitate to contact us if you require any further information.

Yours sincerely



Redbuild Trust - John Makepeace – Sole Trustee



26 January 2022

Attention: Ms Loretta Gillion, Overstrand Municipality. Email: Loretta@overstrand.gov.za

WITHOUT PREJUDICE

Dear Loretta,

FILE NO:	153/214 EF 4156
APPLICANT:	H&A Village Onrus
LABORATOR NO:	John
	1633732

TP. A. Inoort
(H. Olivier)

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER: APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING (obo HERMANUS MICROBREWERY (PTY) LTD) "the applicant"

We address you in the following capacity:

John and Louise Makepeace

Joint owners and resident at 22 Glenfruin Meadows, erf 4366 Onrus River and as part owners of erf 4368 and erf 4362, Onrus River through our undivided share in the Glenfruin Meadows HOA.

The email addresses for notices and serving of documents is: _____ and _____

1. Introduction

We have lived permanently at the above address for nearly 20 years. We are now semi-retired, are very active and love spending time in our home and garden walking in the Glenfruin Meadows commonage as well as on other nature "reserve" properties in the immediate vicinity that we have own/have an interest in as trustees and beneficiaries of the Redbuild Trust - +/- 210ha of mountain fynbos.

We also spend a large amount of time in our home offices attending to all our own administration with regard to our investment businesses.

Our residence is approximately 80 (eighty) meters from the applicant site, hereinafter referred to as the applicant, and we have a servitude right of way to traverse through H&A Village and past the applicant to get to our property.

Glenfruin Meadows, developed in 1995, is a peaceful, country style private estate with commonage areas including river frontage, bridle trails and an equestrian centre which serves as a community facility for outsiders too.

2. The Application

It is noted that according to the Town Planning Application Form completed by the applicant, the application is for:

Permanent Departure from the provisions of the zoning scheme;
Consent use provided for in the zoning scheme – Section 16(2)(o); and
the Determination of an administrative penalty – Section 16(2)(q).

The application is for a "place of entertainment" which means a place used for commercial entertainment which may attract large numbers of people, operates outside normal business hours or generates noise from

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music or revelry on a regular basis and includes a cinema, a theatre, an amusement park, a dance hall or a night club and gambling and live music". (Overstrand Municipality Land Use Scheme, 2020).

As per the application on page 20, "the specific request for a departure is to allow live music and events on the property. The proposal involves to restrict these live entertainment events strictly to between 7h00 and 22h00 with a maximum of 2 hours per evening for music and 4 hours during day time for events".

An "event" is defined as:

(a) a sporting, cultural or entertainment event, including live acts, held outside the venue or building, or which by their nature, size or impact are considered outside the normal use parameters for the venue;" (Overstrand Municipality: Events By-Law).

3. Location in H&A Village which is a Special Zone with it's own Scheme Regulations

The applicant is located in the H&A Village. In terms of the Overstrand Municipality Land Use Scheme 2020, H&A Village is defined as a Special Zone (SZ).

Their unique Scheme Regulations define their properties' primary use as "Tourism Business/Cottage Industry & Dwelling House" with the only additional consent use being for flats.

It is clear from the Scheme Regulations as well as the Design Manual that a calm country environment was intended with site use including activities such as restaurants, guesthouses, guestrooms, winery, souvenir shops, tourist information centres, antique shops, arts & crafts shops, art galleries, interior decorators, travel bureau, conference facilities, manufacture of pottery and art and dwelling houses which could be attached to a tourism business or cottage industry concern.

This, in general, could be referred to as the whole ethos of the H&A Village when originally contemplated and given Special Zoning status. It is to be noted that Glenfruin Meadows was also proclaimed around a similar time and that a logical assumption of the compatibility with the H&A Village and surrounds would have been made by the developers and subsequent owners of residential erven.

The applicant is applying for a land use departure for an additional land use that the specific zoning scheme does not provide for. The specific zoning of the property does not have a place of entertainment as a primary right or a consent use, so a departure would be required. Not all departures are undesirable – but in my view this one is - and it needs to be considered in terms of the elements of desirability or not, which are numerous.

I believe it sensible that all purchasers of a property investigate what is allowed and not allowed prior to purchasing any property and can only believe the owners of erf 4156, the applicant, who are now asking for a departure, did their homework beforehand. In other words, they knew what they were buying into and what was allowed under the Special Zoning status. If the applicant wanted to establish a place of entertainment, they should have done so in an area suitably zoned as such i.e. with consent use possibilities of which there are a number in the Overstrand.

It must be noted that the change in use from the current zoning would be an extreme change, unwanted by the nearby properties, and which will severely and negatively influence not just the lives of the property owners but also the value of the property they own.

An application for a departure such as this is therefore out of the ordinary and it is to be noted that, at the outset, this land use was clearly never the intention of the H&A Village developers i.e. to accommodate a place of entertainment in the H&A Village. It will have a negative effect on all the surrounding property owners.

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Interestingly, an expert on property matters who consults and advises privately mentioned the number of discussions he has had with interested property buyers regarding the Scheme Regulations of H&A Village in terms of what type of business activity is permitted there and how difficult it should be to get a departure.

Investment in time and money by all surrounding property owners has been done in good faith trusting that we can rely on the Municipality to protect our interests and preserve our peace and quiet. It's inconceivable that the municipality would consider accepting the application for a departure and overriding the H&A Village Scheme Regulations.

We contend that considerably wide latitude has already been allowed but a departure for a place of entertainment would clearly be unacceptable and in direct contrast to the ethos of the H&A Village.

For this and other reasons the departure is undesirable.

4. Access road and traffic

It is the clear intention of the applicant to draw large additional crowds of people to the venue during not only their permitted licenced day to day operations but in addition, potentially thousands of additional people and extensive additional vehicular traffic on a regular basis when hosting or participating with neighbouring properties in holding big events.

The access road into H&A Village intersects with the main road to Caledon (R320) and is situated directly opposite the large Hemel en Aarde Estate entrance. The traffic light on the main road to Hermanus (R43) as well as the first bend in the road towards Caledon are both approximately 150 meters away from the stop street, making access onto the R320 difficult, even under normal traffic situations. The application is also not supported by a Traffic Impact Assessment (TIA) assessing the suitability of the venue to host events.

The approach to Glenfruin Meadows is over a servitude area in H&A Village (Erf 4159) which comprises a single lane road (no road markings) coming off the R320 and runs past the H&A Village retail and office area and the applicant on the south side of the road and Whalehaven Winery on the north side.

It is to be noted that this is a very narrow road of less than 6.0mt overall width in most places, and that it is the only access and egress for numerous properties that include the following:

The H&A Village Shopping Centre, the applicant, Whalehaven Winery, the balance of the businesses and residential areas in the H&A Village, Glenfruin Meadows, various smallholdings across the Onrus River and farmland in excess of 200ha.

It must be noted that large areas of the H&A Village are not yet developed - 13 properties in total and at least 4 that are not developed as of yet. Many of the developed properties located therein are not at their maximum bulk and therefore there is scope for significant additional commercial development and additional traffic.

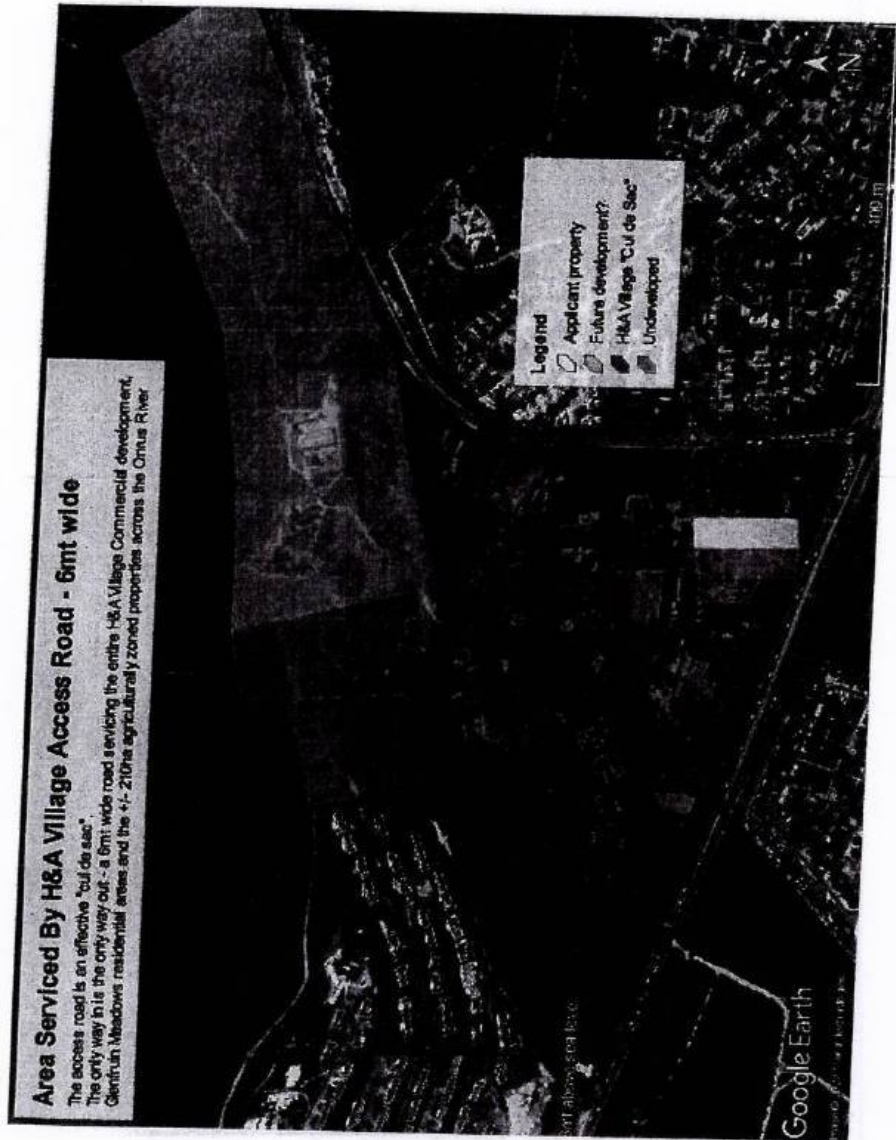
There are 2 undeveloped properties within Glenfruin Meadows and significant scope for new and additional development of properties across the river which could well include full scale agricultural activities as is their primary zoning rights.

The roadway currently carries a voluminous amount of traffic including large delivery vehicles servicing the various businesses including, the applicant property, restaurants, coffee shops, bakeries, two wineries, nursery and furniture/décor businesses, building materials for future development and whatever else is still to come.

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The road network is probably already inadequate or the bare minimum necessary to support the normal existing traffic.

In this sense all vehicles that come in must be able to exit on the same roadway – a cul de sac.



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There is no roadside parking on this servitude road (erf 4159) and there are no stopping areas for vehicles.

Despite the very significant foot traffic of workers and other members of the general public and the fact that this is the only access to all the properties referred to above, there is no pedestrian access nor pedestrian walkways provided, other than by walking along the road or through what are essentially private properties that could be fenced off at any given time.

This area is also the access to the very popular Hermanus Mountain Bike and walking trails.

The ground immediately adjacent to the road has large rocks, trees, signs, electricity boxes, streetlamps etc. on either side. There is often insufficient space for a motorcar and truck to pass each other safely in opposite directions and it is often necessary for vehicles to move off the road to make way for each other.

The road is unmarked and badly maintained and at times poses a danger to motorists, pedestrians and cyclists (of which there are a number). The traffic authorities have no jurisdiction or control over this road as, although it is a public roadway, it is located on private property and they will not police the area by issuing fines, towing vehicles away when illegally parked etc.

Granting this departure would enable the applicant to draw large additional crowds and traffic to H&A Village on a regular basis.

For reasons cited above, the venue is not suited to hold events where larger than normal traffic flows are to be generated without going through the necessary applications and being under the control of the excellent Events Policy of the local authority.

For these and other reasons the departure is undesirable.

5. Insufficient Parking

Granting this departure would enable the applicant to draw large crowds and additional traffic to H&A Village on a regular basis.

In part 2 b of the application, the comment is that the parking is "consistent" with the existing zoning. We contend that it is not sufficient for the land use departure applied for.

No further parking is to be provided other than "guests can park on adjacent parking areas" (page 23). It is to be noted that there is no public or municipal parking servicing the H&A Village at all.

As there is no contemplation of a "place of entertainment" in the Scheme Regulations of H&A Village, there is no mention of parking requirements for such and it follows that the Overstrand Zoning Scheme Regulations 2020 apply.

This states that a "place of entertainment" needs to have 1 off street parking bay per 4 seats. As per the application, the restaurant site can seat approximately 250 people. If patrons are only limited to this number, then 62.5 parking bays would need to be provided i.e., a shortfall of at least 13.5 bays on those proposed in the application (49 bays).

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

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Is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total? If 500, then 76 additional parking bays would be required which would entail the applicant having to purchase another property nearby. The site is fully developed and there is no viable space for any additional parkings.

With respect, it is highly unlikely that the applicant would limit patrons during the normal course of operations to 250 people in total and therefore the parking requirement is grossly understated.

Granting this departure would enable the applicant to draw large crowds and additional traffic to H&A Village on a regular basis and application states "guests can park on adjacent parking areas" (page 23).

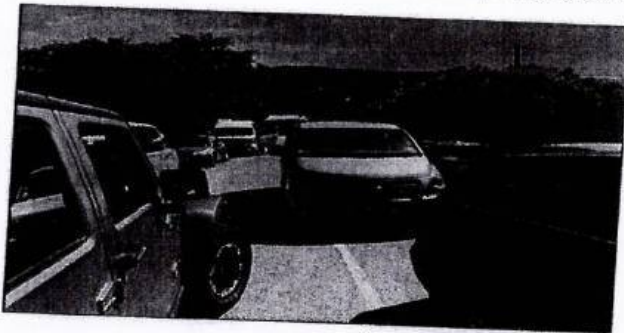
It must be noted that adjacent erven are all private property and house commercial enterprises or are undeveloped as yet. The assumption that these areas can be used indefinitely for parking cannot be made. During daytime particularly, neighbouring businesses need their parking for their own staff and customers. Most trade on weekends too.

Access to this additional off-site parking is not a given and unless specifically noted on title deeds as inalienable rights attaching to the applicant property in perpetuity, things can and will change as circumstances and further development and expansion takes place in H&A Village.

Historically there have been parking pressures in most parts of the H&A Village. At this stage, nine out of the 13 properties have been developed at least fully or partially. Casual overflow parking onto neighbours parking and empty or erven not fully developed (which has been common place for quite a while) cannot be relied upon to alleviate the parking shortage of most of the business in the village.

It is well known that although loose arrangements have been made with regard to temporary parking, these cannot be banked on. At one time, the owner of a couple of empty erven withdrew such permission at a moment's notice resulting in severe parking pressure and traffic congestion at the popular Saturday morning market some years back.

Further the application states that many of the surrounding businesses operate during the daytime. However, the surrounding businesses may well have concurrent activities with the applicant at any time particularly during daytime events and hence their parking areas may well not be available for the patrons of the applicant. Further a number of businesses have reserved parking signs on their premises' parking bays.



The above photo showing the access road to H&A Village at a busy time clearly depicts the lack of available parking. Note that the vehicles on the side of the road are parked in what are essentially no stopping areas.

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It is submitted that if it was ever the intention of the Scheme Regulations to draw large crowds to the H&A Village, then allowance would have been made for more parking, less buildings as well as commonage area for both parking and recreation.

Clearly a more reliable and realistic parking alleviation strategy would need to be enforced if the application were to be successful.

For these and other reasons the departure is undesirable.

Please also refer to APPENDIX A - Timeline of Significant Happenings & Advertising Thereof

6. Noise in the context of this application and the Noise Impact Assessment submitted in support thereof

The issue is with regard to live, heavily amplified music including multi member bands that perform outdoors and completely in the open. In addition to the above, there are numerous events held using DJ's with huge screen TV's, also out in the open. See Appendix A.

Although the Covid-19 Lockdown certainly curtailed the activities on the applicant property, we have been extremely frustrated and disturbed by the undesirable noise pollution that has been generated at times by the business. Having been exposed to noise from various music activities since the business commenced, we know full well what the extent of the undesirable impact is going to be on the enjoyment of our properties if the application as it stands is successful.

At the outset we need to examine the relevant legislation and the relevance thereof to this application:

To this end we refer specifically to the-

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT AND PLANNING ENVIRONMENT CONSERVATION ACT, 1989 WESTERN CAPE NOISE REGULATIONS ("the noise regulations")

6.1 Extracts - Schedule Clause 1. - Definitions:

"disturbing noise" means a noise (b) exceeds the residual noise level by 3 DBA

We believe that, as will be illustrated later in the discussion on residual noise, the applicant's illegal operation as a de facto place of entertainment does and will, if the application to legalise this as submitted is successful, generate noise that is classified as "disturbing noise", as it will exceed what should be the *realistic residual noise* as relevant to the "complainant" and the nearby residential areas by substantially more than 3 dBA (in other words the realistic measurement of residual noise level would be likely to be substantially lower than the "rating level" as per the NIA of the applicant property).

"noise nuisance" - means any sound which impairs or may impair the convenience or peace of a reasonable person;"

There is no question that the applicant's illegal activities as currently and historically carried out and, if the application is successful, to be carried out in future – "impairs or may impair the convenience or peace of a reasonable person".

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We challenge any reasonable person to put themselves in our position, where one cannot relax and have an afternoon braai around the pool with family and friends for example, without being subjected to the disturbance and noise nuisance produced by the applicant's heavily amplified live music.

It is submitted that our, and other affected parties, experience of what we consider to be an undesirable activity productive of "disturbing noise", can only be described as being conclusions drawn by "a reasonable person".

"noise sensitive activity" means any activity that could be negatively impacted by noise including, residential, healthcare, educational

We believe that as owners of residential property, we are negatively impacted by the noise sensitive activity as conducted by the applicant and further that the applicant is currently and has historically been in breach of this regulation and if the application is successful, will in all likelihood continue to be.

"public event" means any event – (a) to which the public or any section thereof has access, includingmusic concert, festival, sports or any similar event; and (b) at which any amplified music is played or reproduced;

We believe that we are negatively impacted by the noise sensitive activity and noise nuisance when events are conducted by the applicant such as the Brewery to Brewery cycling event where a commentator "shouts" into a heavily amplified PA system from early in the morning to late in the afternoon, and further that the applicant is currently and has historically been in breach of this regulation and if the application is successful, will continue to be.

Prohibition of disturbing noise – clause 2. Of the noise regulations

"A person may not-
(a) cause a disturbing noise; or
(b) allow a disturbing noise to be caused by any person....."

We are of the opinion that the applicant is currently and has historically been in breach of this regulation and if the application is successful, will continue to be.

Prohibition of noise nuisance – clause 3. of the noise regulations

"In so far as it causes or is likely to cause a noise nuisance, a person may not-
(a) operate or play or allow to be operated or played, a radio.....gramophone, recording device, drum, musical instrument, sound amplifier, or loudspeaker system, or any similar device producing, reproducing or amplifying sound....."

We are of the opinion that the applicant is currently and has historically been in breach of this regulation and if the application is successful, will continue to be.

6.2 Noise Impact Assessment ("NIA") as submitted in support of the application:

a) Land use - clause 4. of the noise regulations refer:

"4. (1) (a) the local authority.....may instruct the applicant to conduct and submit as part of the application a noise impact assessment in accordance with SANS 10328....."

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In reference to SANS 10328, which inter alia outlines the methodology for conducting noise impact assessments ("NIA") attention is drawn to the following:

"SANS 10328" "Methods for environmental noise impact assessments"

under SCOPE – NOTE 2 thereof:

"The responsibility rests with the relevant authority (see 3.19) or applicant (see NOTE 3(a), in cooperation with the environmental assessment practitioner (where relevant), and the interested or affected parties under the direction of the officer, agent or consultant conducting the noise impact investigation, to stipulate the scope of the investigation (for example, the noise sources to be investigated), the format and content of the report and the detail regarding the input data (for example, measuring results, calculations, assumptions and estimates)."

Further NOTE 3 a) – states that:

"It is the responsibility of the applicant to:-..... ensure that all interested or affected parties..... are given the opportunity to participate in all the relevant procedures contemplated in the relevant regulations."

It is to be noted that this has not been done and interested and /or affected parties were not made aware of nor were offered any access to the process of conducting the NIA at all.

It is submitted that particularly given the weight of the NIA in consideration of the Departure and the possible future outcomes for the parties, this is highly prejudicial to the interests of the interested and affected parties and indeed displays lack of objectivity and bias in the results of the NIA that are skewed in favour of the applicant.

This omission is further aggravated by the fact that the NIA report makes reference at various points to "the complainants" (with photographic representation even as to where historic complaints originate from).

In other words this is an Application with known complainants and a background history of total disregard of their historic complaints as well as the law, with the applicant having been served with legal process notices relating to sections 84 (1) (a) and (c) of the Overstrand Municipality By-Law on Municipal Land Use Planning 2020 and then subsequently disregarding them.

Note that with reference to transgressions as noted in section 84(1), if one is found guilty of an offence they may be liable upon conviction to a fine or imprisonment not exceeding a period of 20 years or to both a fine and such imprisonment.

Clearly transgressions are treated in a serious light and are criminal offences. This has not in any way deterred the applicant.

We cannot see any plausible explanation for this omission - i.e. not consulting with or giving the "complainant" and other residential property owners that, any reasonable person would clearly realise could be affected by the outcome - the opportunity to participate.

Given the history of disregard and abuse, this omission can only lead a reasonable person to the conclusion that by including the "complainants" and others in the NIA proceedings, the applicant would not achieve the desired outcome and that for this reason they were excluded.

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b) Clause 4. (3) of the noise regulations read with 4. (1)

"Where the results of an assessment undertaken in terms of subregulation (1) indicate that the applicable noise rating levels referred to in that subregulation will likely be exceeded, or will not be exceeded but will likely exceed the existing residual noise levels by 5dBA or more –

the applicant must provide a noise management plan, clearly specifying appropriate mitigation measures to the satisfaction of the local authority, before the application is decided; and

implementation of those mitigation measurements may be imposed as a condition of approval of the application."

Whilst the applicant's NIA acknowledges that the applicant is likely to exceed the adjusted rating level as per the NIA – note that we contest this determination of the applicable noise level *see - Measurement and calculation procedures - clause 8. of the noise regulations below* - the applicant has refrained from proposing a noise management plan and mitigation measures as part of the Application. To the contrary - in 4.5.1 d. iii they state that:

"The implementation of noise mitigation by means of noise control barriers for this venue will be impractical as it will affect the aesthetics of the venue and the venue will require very high structures to give sufficient noise control."

With respect, what possible bearing can the aesthetics of the applicant's venue have on the plight of the "complainant" and other interested and affected parties?

We submit that this statement alone indicates the total unsuitability of the venue for the proposed use as described in the Departure.

Be that as it may, we believe that the choice of the Residual Noise measurement spot is critical to the NIA and therefore this Application and that, as will be shown below, the Residual Noise is likely to be substantially less than the Rating Level applicable to the applicant's property (perhaps more than 15 dBA lower), the consequences of which would be that the Residual Noise for purposes of the NIA could well be 40 – 45 dBA and therefore with the factor of 5 DBA added 45 – 50 dBA

If this is indeed the case then the applicant is compelled to submit a suitable noise management plan to the satisfaction of the authorities and this should be made a condition of the approval in the likely event that this application is successful, as per 4. (3) (a) and (b) of the Noise regulations.

c) Measurement and calculation procedures - clause 8. of the noise regulations

"8. (2) (a) The person taking the measurement may in his or her discretion determine the measurement or calculation point as- (a) a point where the complainant is most affected by the noise; or (b) a point on the property projection plain of the premises concerned that is representative of the noise matter concerned."

Rating Level / Residual Noise – measurement or calculation point

It is to be noted and emphasised that the point at which the Residual Noise is to be measured is possibly the most important part of the NIA as it could indeed determine all future maximum permissible noise levels were the Application to be successful in it's current form.

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Sound Perception

Change In Sound Level	Perception
3 dB	Barely perceptible
5 dB	Clearly perceptible
10 dB	Twice as loud

For purposes of this aspect of our objection please see the selection of the point at which to measure the "Residual Noise" (refer to the NIA point 3.2 and point 3.1.1 - measurement point "M4") as used in the NIA.

It is submitted that the selection of this - point M4 - is totally non-representative of the reality and does not comply with the requirements as set out in the noise regulations.

Clearly point M4 and indeed the entire southern boundary is not on the *noise projection plain* of the applicant.

See diagram below of more realistic noise projection plain and therefore point to measure Residual Noise. This aspect casts serious doubts on the objectivity and relevance of the entire NIA in its current form to this Application.

Our reasons for this contention are that point "M4" is located immediately adjacent to the R43 arterial coming into Hermanus from Cape Town and the areas to the East of Hermanus, right on the applicant's southern boundary, no more than 10mt from the curb side of the road and within 100mt of the "Engen / Caledon" intersection. It is further to be noted that at this point the R43 is 6 lanes including turning lanes.

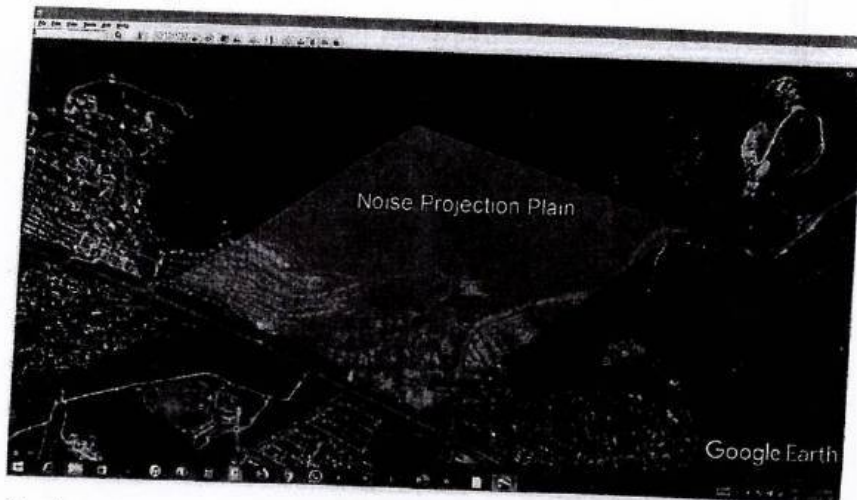
It is submitted that this is possibly one of the busiest and therefore noisiest spots in Hermanus. Furthermore it is submitted that this location for measuring Residual Noise has most likely been "selected" by the applicant and/or their consultants specifically so as to derive a Residual Noise level, that is as close as possible to the highest possible Rating Level for an Urban district - see table in SANS 10103:2008 - more specifically 60dBA day-time and 50dBA night-time.

Note that the reading at this point is submitted as being 67 dBA and therefore after the required adjustment for music the maximum permissible noise level is 62 dBA.

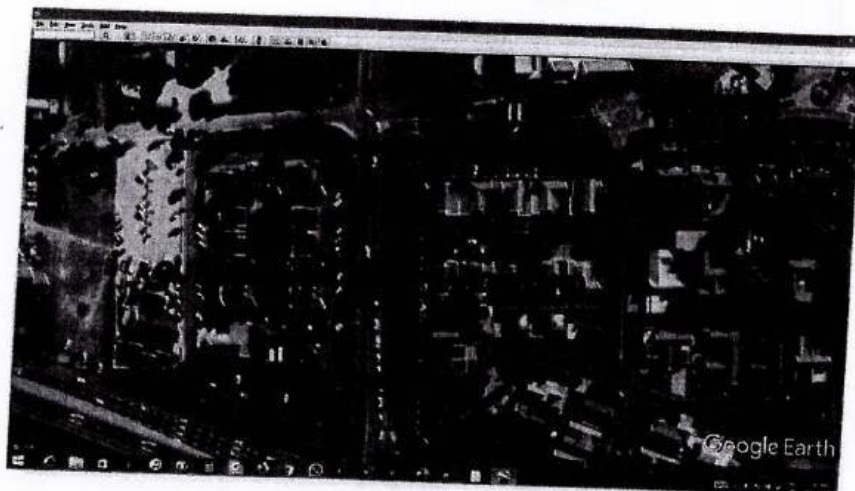
The location of this point for measuring the Residual Noise level has no bearing to the location of "the complainant" (as frequently referred to in the NIA) and indeed all areas immediately surrounding the applicant property, that are residential areas current and future (refer - Spatial Development plans of the Overstrand Municipality / Proposed RDA) and this is borne out by the applicant's reference to the undeveloped land to the south of the venue i.e. across the R43 as being earmarked for retail development.

These properties - such as Glenfruin Meadows, The Hemel & Aarde Estate, Kidbrooke, residential agricultural erven below Onrus Mountain, residential erven in Hemel & Aarde Village etc. are situate to the North / North-East and North - West of the applicant property.

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It is submitted that the only objective and unbiased point to measure Residual Noise is on the noise projection plain i.e. the Northern boundary - say at point M2 - which is some 110 mt away from that "chosen" for purposes of the NIA (M4) and one that is representative of the closest proximity of the noise source to the bulk of the surrounding residential properties (and "the complainant") and would thus satisfy the requirement as set-out in clause 8.2 of the noise regulations.



As an example, in support of the contention that this measuring point is not representative, it should be noted that in another recent NIA performed by the same consultants as used by the applicant's to perform the NIA (i.e. Mackenzie Hoy Consulting Engineers) in a very similar situation and application, with the applicant property bordering the R43, but with the interested and affected parties on the opposite side of the applicant property away from the R43 - just as in this case - the measurement of the Residual

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Noise was conducted on the boundary closest to the bulk of the residential area and totally away from the noisy R43 - thus not biasing the outcome of the results in favour of the applicant in that case.

It is further submitted that the Outdoors Residual Noise level at point M2 on the applicant's Northern boundary is most likely to be in the region of 40 - 45 dBA day-time and in the late 30s dBA Night-time.

Although not professionally measured this has, more or less, been confirmed by readings taken by us with tools that are available to laypersons, it again being noted and emphasised that - as interested and affected parties - we have not been given access to nor consulted during the NIA process.

It is a given that the chosen location of the point on the applicant property used to determine the Residual Noise is critical and has a tremendous bearing on what would be considered to be a "disturbing noise" in the applicable legislation.

Were the closest point on the applicant's boundaries to the bulk of residential properties to be used - M2 and not M4 - it is apparent that the Residual Noise used as a factor for determining the maximum permissible sound levels, would be significantly below the Rating Level applicable to the applicant property and that, after increasing this by 3 dBA and reducing it by 5 dBA (refer to noise regulations regarding music) that the maximum day and night time levels that would be permissible were this application to succeed would be **nowhere near the 62 dBA and 52 dBA** as stated in 4.4 of the NIA.

It is worthwhile to consider the following chart when considering the impact of changes in noise levels on a person's perception of the disturbance or noise nuisance, and therefore how critical what could seem like small increases in dBA levels are to the level of disturbance and the nuisance that the noise represents.

This is what makes the accuracy, representivity and the conclusions to be drawn from an NIA so critical.

Sound Perception

Change in Sound Level	Perception
3 dB	Barely perceptible
5 dB	Clearly perceptible
10 dB	Twice as loud

d) Meteorological, topographical and other conditions relative to the noise sensitive activity

Although we are of the opinion that the permitted maximum noise levels as determined in the NIA are not relevant or representative of the reality relating to the "complainant" and other interested and affected parties and are therefore to be challenged, it is submitted that not enough, if any, cognisance has been given to the modelling of noise projections based on the peculiarities of the actual site.

The applicant venue, the "complainant" and interested and affected party properties lie at the foot of the Hemel & Aarde Valley in a natural bowl created by the Onrus and Fernkloof Mountains.

Based on many years of ownership of various properties in the close proximity to the applicant property (6 in total) including mountain farms that form the backdrop to the applicant venue, we have vast experience of the noise and the vagaries of how the noise travels and the conditions that give effect to

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totally differing noise conditions experienced: at different times of the day and night; different wind directions and strengths; high and low humidity conditions; temperature inversions etc.

On many occasions, the noise generated by live music on the applicant property (no doubt excessive in legal terms), can be clearly heard way above all other ambient noise, more than 1 000mt away from the source and totally out of line of site being over the top of the mountain.

For example, although not nearly the loudest that we have heard from the applicant venue (the worst being the Watershed concert on 3rd January 2020), the Rivertones reggae band that performed on the applicant property on 30th December 2021 and again on 12 January 2022 was so loud and clear, that one could actually sing and dance to the music at a point 990 mt away from the applicant venue!

On some occasions the noise experienced on one of our properties 522 mt away from the source is significantly louder than that experienced on another property only 170 mt away.

What makes the noise nuisance even more disturbing is how the conditions cause it to fade and then come back very loud seconds later, at these larger distances.

e) NIA – professional consultant disclaimer

The NIA contains a disclaimer to the effect that the measurements are taken for “design and evaluation purposes” and further that they may not necessarily form the basis for legal action should there be any subsequent legal dispute.

With respect, of what use - other than a *guideline as to what could be* - is the applicant's NIA in the investigation, decision making process and into what is by all intents and purposes - a Land Use Departure of significant gravity, one that goes to the very constitutional rights of the “complainant” and other interested and affected parties?

A scrutiny of many NIAs undertaken for Environmental Impact Assessments reveals that rarely if ever is such a disclosure part of the very detailed NIA's required by such processes.

Indeed what such a study does reveal is that the NIA is, at best, a very bargain basement one that has been commissioned by the applicant to support their Application.

As mentioned elsewhere, this process did not even include the participation of the “complainant” and other interested and affected parties - many of whom have a long record of noise complaints made against the applicant in the past.

This is further illustrated by the fact that no evaluation and measurements of *actual events* conducted by the applicant (illegally in most cases) have been included in the NIA and we can only draw the conclusion that they have not been conducted by the consultants. We are of the opinion that the results, were this to be the case, would present a very different set of findings that are not consistent with the NIA in support of the Application.

We are also aware that in the industry it is acknowledged that it is highly unlikely that 2 sets of consultants will achieve the same results given a certain scenario.

It is definitely our contention that the conditions referred to above are not suited to heavily amplified outdoor music, whether live or not and that, if this is to be the case, then the applicant must extend the NIA by placing receptors at many strategic points and greatly extending the scope of the NIA to arrive at a

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solution that is not in contravention of the noise legislation and is acceptable to the complainant and other interested and affected parties.

Unless and until this is done, we are of the opinion that the application can be challenged and should not be approved.

6.3 Noise - the reality of the actual noise nuisance produced by the applicant's activities vs. theoretical

At a point some 990mt from the sound source (see diagram image below), observations on the ground during the recent live outdoor music events held on 30th December 2021 and then again on 12 January 2022 where the 4 piece Rivertones reggae band was playing, were that the music was clearly audible and in fact quite disturbing at this point on Farm 581/338.

This point is not in line of sight and some 130mt higher than the noise nuisance source (see elevation image depicted below).



In fact observations made on these days were that at a point even further than that indicated above - approximately 1200 mt away from the source - the disturbing noise was still audible above the "ambient noise" experienced at that point.

The NIA states that at the point M2 on the applicant property the noise measured is 55 dBA with source at 95 dBA. This point is approximately 60mt from source – band stand (actual distance not provided in NIA). Simple attenuation calculations show that if the applicant was projecting noise at source that was on or near the maximum that the NIA indicates as permissible, purely as the crow flies i.e. without other obstacles such as mountains bush etc in between, noise if measurable at the point indicated by green x above would be in the region of 32 dBA.

Note that the normal ambient noise at this point is higher than 32 dBA (admittedly confirmed with layman tools and a bit of common sense). Given all the sound absorption materials in between, it is therefore highly unlikely that the Rivertones Band would be audible at all at this point.

BUT THEY WERE CLEARLY AUDIBLE – on both recent occasions and historically too!

Attenuation calculations show that for the sound spikes/peaks resulting from these concerts to be clearly heard above the ambient noise levels at a distance of even 1200mt from the source the source reading DBA would need to be in the region of 110 dBA!

As an example of a source sound at 117 dBA i.e. 22 dBA higher than the NIA source level used

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the right hand column of the table shows what the dBA reading would be at distances from the source.

Attenuation by distance.

Distance from noise source (metres)	Sound Pressure Level dB(A)
10	89
20	83
40	77
80	71
160	65
320	59
640	53
1280	47

What this could mean in reality is that to be heard at the distances where our observations were taken referenced above, the applicant's actual concerts such as Rivertones, Watershed etc would need to be producing levels at source significantly higher than the 92 dBA the NIA asserts is representative of the applicant's scenario and therefore at the closest boundary of the applicant to the "complainant" where pressure was measured - M2 - significantly higher than at the point on the applicant's boundary closest to the "complainant" (point M2) during the region of 75 dBA at - 20 dBA higher than that as shown in the results of the NIA.

In addition, this would be much higher than the Rating level based on the location of the applicant 60 dBA day-time (see Table 2 SANS 10103:2008) and even higher than the maximum rating level of an industrial area - 70dBA day-time (see Table 2 SANS 10103:2008)!



Again we refer to the chart to reflect on what is a person's sound perception of noise changes at different decibels.

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Sound Perception

Change in Sound Level	Perception
3 dB	Barely perceptible
5 dB	Clearly perceptible
10 dB	Twice as loud

It is further to be noted that the noise disturbance generated by the Rivertones concerts discussed above is nothing in comparison to the noise levels generated by for e.g. the Watershed band. This, as well as many other factors such as meteorological conditions and the lack of good faith as demonstrated by the applicant in the past and therefore the likelihood of the applicant not adhering to any future limits etc., indicates the total unsuitability of an open air venue in this location.

6.4 The historical attitude displayed by the applicant whilst knowingly conducting illegal activities

It is of grave concern to note that - even during the period for objection and comment on the application, and even though the applicant is in defiance of the notices served on them by the authorities to cease the unlawful activity and therefore the committing criminal offences - the applicant cannot be relied upon or trusted at all to adhere to any limits set or to even conduct themselves in accordance with the representations made on their behalf in the application, were it to be granted. See Appendix A B for evidence of illegal live outdoor entertainment over the years.

In the early days of the noise nuisance problem, the owner / manager Mr Marc de Maudave Bestel of the applicant was contacted by WhatsApp and then eventually visited personally at the applicant property where I was treated with a fair degree of hostility (note that I was shouted at and verbally abused in front of customers at this meeting).

Subsequently he calmed down and we agreed to cooperate and communicate further on whatsapp. Initially, he made some effort to move the location of the live performers in order to reduce the impact of the noise on my properties.

However, when it became clear that an acceptable reduction in noise level could not be achieved and he insisted on continuing with the activity, he ceased co-operation and showed total disregard for the issues raised thereafter and an indifference to our plight..

He was invited to come and experience the nuisance on our property whilst carrying out the historical illegal activity. Needless to say the invitations were not taken up (see below).

As an example of this refer we refer to various extracts from historical Whatsapp conversations between myself ("me") and Marc de Maudave Bestel "MdMB" - representing the applicant:

Me - 27th Dec 2019 - "Sadly noise really bad today...!" no reply till the next day, then

MdMB - 28th Dec 2019: "Faced the same way. South. Not sure what to do now. Any suggestions?"

Me - 28th Dec 2019 (one man band) - "It's definitely better that way. The wind was probably the issue yesterday. At times it was fine and at others very intrusive. A resident closer to the gate, said it was really bad there too. You should come and stand at the gates and you will see what we mean."

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And eventually –

3rd January 2020 – the *Watershed Concert* (indeed a watershed moment for us and many of our neighbours).

Me - 4th January 2020 – the very next day - The Rivertones 4 piece reggae band - "Putting aside the absolutely ridiculous noise from last night (*Watershed concert 3rd January 2020*), take a walk to the gates of Glenfruin (now) and ask yourself if this is fair and reasonable and whether you believe that this is a sustainable activity. Your actions are depriving us of the use of our gardens. Unfortunately you leave us no option but to escalate this to whatever level it takes to put an end to it. There are many multi million rand investments in property at stake in Glenfruin alone. You have a handful of customers and you are subjecting us to this. It is a disgrace that you have so little regard for your fellow mankind."

Whereas previously we had been led to believe when contacting the venue about noise that the venue did have local authority permission to play live amplified outdoor music (i.e. operate as a place of entertainment), a discussion in January 2020 between the then chairperson of the H&A Village POA regarding the noise of the applicant revealed that this was not the case at all and that he personally had warned MdMB that he and his actions - by operating the applicant as a place of entertainment - were putting his liquor licence at risk.

(Note that the applicant does not have the necessary endorsement required to its restaurant liquor licence and by operating as a de facto place of entertainment has and is in **contravention** of its liquor licence – again showing disrespect and totally flouting the law.)

Only on discovering that the activity was indeed illegal (the applicant operating as a de facto place of entertainment without the necessary Land use right) and also that in actual fact the applicant was fully aware of this - did we start the process of reporting the issue to the local authority and demand that they do something about it.

It is our contention that the applicant could not be trusted to act in good faith and comply with any noise control measures that are made a condition of the land departure were it to be granted and that for this reason alone, it should be rejected by the local authority.

Please refer to APPENDIX A - Timeline of Significant Happenings & Advertising Thereof

6.5 Conclusions on the NIA and the whole noise issue surrounding the application

As discussed above there are several areas in which we believe the NIA needs to be challenged (not necessarily related to the actual measurements equipment or qualifications of those performing it) and we believe that these will have a direct bearing on the noise levels permitted for this venue; in the unlikely event that this application were ever to be considered desirable.

Accordingly, it is our contention that the NIA in its current format should be ignored for the purposes of the Application and that to this end therefore the current application be rejected altogether.

In the alternative, in the unlikely event that this application were ever to be considered desirable in some altered form at the very least, the NIA needs to be referred back to the applicant and the applicant, in consultation with "the complainant", other interested and affected parties and seeking the advice and input of a meteorological expert as well, commission a truly objective and impartial NIA with all the required participation afforded to the interested and affected parties.

This obviously to be conducted at the applicant's cost and to the satisfaction of the local authority.

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There is no indication in the design layout of the applicant venue of measures to be taken to attenuate the noise impacts of the applicant's activities with regards to outdoor heavily amplified live music even though there is a long history of illegal activity and significant complaints.

There is no attempt made in the application to commit to identify or suggest measures that could be put in place to mitigate the noise nuisance.

It is further to be noted that the application seems to be two-fold in that whereas it is a land use departure to operate as a "place of entertainment", it also seems to perhaps be an attempt to create a scenario where the applicant is exempt from certain aspects of the Western Cape Noise Control Regulations (regulation 12.) and/or an application for the exemption from the requirement of the local authorities to stage a public event or, the provisions of the noise control regulations for the conducting such events.

This is not made clear in the application at all and the application needs to be revisited to clarify this point. We do not believe that the lay people comprising many residential property owners are even vaguely aware of what this entails nor are they equipped to deal with the minefield of regulations that cross over the two distinct applications.

To this end it is a reasonable expectation of ours that the local authority will protect us from the undesirable consequences that the acceptance of this application in it's current form would result in.

In closing on this point, if the venue is to be limited to certain maximum sound levels, how will the sound levels be managed with regard to the different musicians and sound systems used?

In addition, who will ensure that these noise levels are enforced?

Would we and other affected property owners have to complain to the authorities every time that we perceive the noise to be a nuisance? Is this a fair burden to be placing on us?

Will this not in itself affect our rights to enjoy our peace and quiet?
In this regard it is to be noted that our Municipality does not have the measuring instruments or professional qualifications to ensure compliance with regard to decibel levels.

Are members of our community going to be forced to spend copious amounts of money bringing in experts when they/we experience problems?

The application has numerous plans, pictures and diagrams but is silent as to the location of the stage for musicians or sound/PA system, which direction it would face and whether it would have any noise barriers or sound controls.

There is no mention as to whether the source of the noise (M5) is proposed to be in a fixed place.

On the site plan there is no indication of a stage area. The application has numerous plans, pictures and diagrams but is silent as to the location of the stage for musicians or sound/PA system, which direction it would face and whether it would have any noise barriers or sound controls.

We are also gravely concerned as to the effect that this undesirable noise poses to the future value of our property and investment apart from the enjoyment of our property if this application, as presented, is successful.

For these and so many other reasons the departure applied for is totally undesirable.

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7. Area that applicant is located in is not only a business area

In the application's conclusion it is stated that the application will serve as a "catalyst for business and economic growth in the respective business sectors *without compromising on the non-business land-uses* in the vicinity of the application area".

This statement is absurd and incorrect and shows total disregard and disrespect for all the current *non-business land-uses* being the neighboring residential areas who are by far in the majority and house thousands of rate paying residents.

The application focuses heavily on the business activities in the study area and makes little mention of residential areas.

However, within 300 meters of the site there are vast residential areas including parts of Sandbaai, H&A Estate, H&A Village and Glenfruin Meadows and also many accommodation establishments all offering tourists and other visitors a peaceful environment.

The applicant is within earshot of many residential complexes who will attest to numerous occasions when they have been subjected to noise nuisance from H&A Village over the years. These include Kidbrooke Place (retirement village with frail care centre), Glenfruin Meadows, H&A Estate, Tambali Village, Sundew Villas, The Avenues and Protea Park. All of these have all or at least part of their development within 500 metres of the applicant property.

The application refers to the vacant portion of land directly south (erf 1447, Sandbaai) as being "planned for more retail facilities". This is not the case at all and with the property currently being zoned as "smallholding".

Indeed the second and last application in December 2018 to develop it into a shopping centre was unsuccessful/withdrawn.

Is it not possible then that this becomes a high density residential area like the neighbouring erven (Sundew Villas, The Avenues) if it were, then at 4.8 hectares it could accommodate many households who would be directly subjected to the proposed noise nuisance.

8. Attracting large numbers of people

It is the clear intention of the applicant to draw large additional crowds of people to the venue during not only their permitted licenced day to day operations but in addition, potentially thousands of additional people and extensive additional vehicular traffic on a regular basis when hosting or participating with neighbouring properties in holding big events.

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Again, is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total?

Further on page 23 under "Attracting large numbers of people" it is stated that "The numbers are accordingly limited as part of the management of the business and also in respect of the cooking facilities as well as on-site parking (even though guests can park on adjacent parking areas) resulting that the application site does remain within manageable numbers and control."

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Most places of entertainment do not provide a seat for each reveler and the applicant does not always require that patrons eat (and even if they did, this could change at any time), therefore the reference to 250 seats is a misnomer both as regards to controlling numbers, limitations posed by cooking facilities and importantly parking.

In the case of events, there is no consideration with regard to providing a seat for every person nor sufficient parking.

Previous activities have shown that unauthorised events and concerts on the site have drawn large numbers of people with little to no real control over the numbers.

With regard to "numbers are accordingly limited as part of the management of the business", the site has numerous pedestrian entrances on all sides of the property for patrons to enter. There are no gates and where there are walls, they are approximately knee high.

Currently, live music events are free and do not necessarily require a booking or a ticket (refer to social media advertisements).

There is no guarantee that management will control the number - the business is profit driven, meaning the more people attending, the better the profit for the business.

Considering the above, how is it possible to control the numbers?

For these and other reasons the departure is undesirable

9. Business hours

On page 23 of the application, the operating hours of the business are stated as being Monday to Friday 8h00 to 22h00 on weekdays and over weekends between 8h00 to 0h00.

On page 23, it states operating hours till 23h00.

Point 2.3 in the NIA states that the venue operates during Monday to Saturday 11am until 10pm and Sunday 11am until 5pm.

Also on page 23, second last paragraph, there is mention of Machoy's NIA report and outdoor events to be held at night, 22h00 - 6h00. Is this an error?

This needs to be confirmed as both the above are in contradiction with past history.

The application states on page 20 that "The specific request for a departure is to allow live music and events on the property. The proposal involves to restrict these live entertainment events strictly to between 7h00 and 22h00 with a maximum of 2 hours per evening for music and 4 hours during day time for events".

Is live music specifically excluded during the day?

Or rather it would be interpreted to mean live music for 4+2=6 hours a day, any day and possibly every day?

Apart from music in the evenings, PA systems (with presenters shouting out the arrival of event competitors and playing amplified music in between) during daytime, particularly weekends severely impact the enjoyment of our leisure time.

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10. Fire and Safety

It is the clear intention of the applicant to draw large additional crowds of people to the venue during not only their permitted licenced day to day operations but in addition, potentially thousands of additional people and extensive additional vehicular traffic on a regular basis when hosting or participating with neighbouring properties in holding big events.

If the authorities do approve this departure this would pose a serious threat to the safety and well-being of the properties, patrons and occupants within H&A Village as well as others that have the road as their only form of access and egress to their property – refer to diagram in 4. Access road and traffic Page 3.

In reality, the authority could be paving the way for a disaster that could threaten life and limb, never mind extensive loss of movable property. In other words, the authorities could be opening themselves up for massive public liability claims as well as civil and criminal actions for negligence.

The agricultural land and mountains above the urban edge of the residential developments only accessible through the H&A Village are regarded by the authorities as an extremely high fire risk zone for wildfires and for this reason access for fire fighters and other emergency vehicles is critical at all times, particularly during fire season (Dec- Apr) which coincides with the summer holiday/festive season.

Fires in the mountains are well documented in Hermanus. The threat that they pose to life and limb is enormous and one can say that we have been extremely fortunate to mainly experience the loss of property in recent times and not the loss of life. Logic says that this will not always be so.

The speed with which wildfires move through an area is alarming and anyone who has experienced this first hand will actually appreciate the very real risk that exists for a major disaster.

Historically where events have been held in the H&A Village, vehicles have completely blocked the roads and have parked everywhere including in no-stopping zones, the middle of the road and on occasion, even blocking access or egress from the residential and agricultural properties.

As an example of the threat posed by one of the events that the applicant was a participant in, please see the following photos. The first one depicts the corner of the road leading to Glenfruin Meadows and the properties across the Onrus River at the intersection where it joins the access road to the H&A village.

This gridlock lasted for most of a Saturday morning. It was on a Red High Fire Risk day as notified by the GoFPA - the local NPO that is involved in preventing and fighting fires in the area shoulder to shoulder with our municipal fire fighters. This was not a one-off unique occurrence. Similar congestion is experienced during most events.

For these and other reasons the departure is undesirable.



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11. Land Use Departure vs Events Permit

We contend that the applicant has never applied for an Events Permit as required and provided for by the Municipality's Events Policy. Why not?

Based on the local authority requirements as set out, it is unlikely that such a licence would be approved particularly with respect to, but not limited to, the following clauses in the Events policy:
 clause 13 (f) – necessary land use rights must be in place;
 clause 15 vi - nuisance and noise concerns not satisfactorily addressed and
 clause 18. Noise Control requirements.

How then, can an application for a land use departure - which may be in existence for at least 10 years - be applied for and seriously considered without any mitigating measures being provided by the applicant?

12. Events

We believe that the request for a departure to hold events deserves separate consideration on an event by event basis.

For any event that falls out of the description of a 250 seater restaurant, the applicant should need to apply for an Events Permit. Or would the granting of the application imply that the venue is suitable for an event in excess of 250 capacity? For example, could they hold events with attendee/size greater than the category in Annexure A of the Events Policy?

On Sat 29 Feb 2020, the Hemel en Aarde Marathon (42,2km) which was run from Caledon to Hermanus finished in the H&A Village. At 10h41 the congestion (as evidenced in photos of another objection) was significant. The roads were gridlocked at times. In this case, there were 2080 entrants and 1568 finishers. (Source: Roadrunning.co.za). Photos indicate that the applicant was clearly part of the event. None of their parking spaces were available for parking because the area was fully taken up with tents, vendors, sponsors, promoters etc.

Bus transport was made available to competitors in order to transport them back to their vehicles in Caledon so a significant proportion of the vehicles relating to the competitors would not have been at the finish. This event was on a Saturday morning where parking on neighbouring trading businesses' properties would not have been available. Vehicles were parked everywhere including in the road servitude area.

The same marathon is scheduled to take place on Sat 5 March 2022. This time the number of entrants is to be capped at 3000. According to the website, the venue for the race is still to be confirmed.

The applicant site is clearly not suitable for the holding of large events from a traffic, parking and safety point of view.

13. Setting a Precedent

If the application is successful in any form, this will set a precedent for businesses already in the H&A Village - many of whom have illegally held large, very loud, live music events, weddings etc. in the past - to apply for place of entertainment departures. (herewith refer to, as recently as 27 Dec 2021, Bottomless Coffee Band at Hermanuspietersfontein Winery as an example).

In addition, this departure may encourage similar businesses to be attracted to the H&A Village and for them to apply for similar departures.

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Many of the properties have not been developed to their full extent.... yet, and there are 4 that have not yet been developed or commissioned.

Two of the undeveloped even border Glenfruin Meadows and the Equestrian Centre/horse stables and pose a huge threat of a ripple of applications for departures to operate as places of entertainment.

It is possible/probable that the H&A Village HOA or members thereof, would be in support of this application. In other words, it is possible that they would condone, support and perhaps encourage other/similar applications for land use departures in the future, in the belief that this opens the door for similar departures on their own properties and perhaps adding to their market value.

A "place of entertainment" opens the door to just that. Nothing will stop a business owner from next starting a nightclub, strip club, installing slot machines or the like.

For these and other reasons the departure is undesirable.

14. History of Illegal Operations and Disregard of Legal Notices and Complaints

There is an undisputable history of outdoor live entertainment taking place at the applicant site and resultant complaints.

Please refer to APPENDIX A - Timeline of Significant Happenings & Advertising Thereof

Initially, the owner manager Mr Marc de Maudave Bestel of the applicant was contacted by WhatsApp and also visited personally at the applicant property where I was treated with a fair degree of hostility (note that I was shouted at and verbally abused in front of customers at this meeting).

Subsequently he calmed down and we agreed to communicate on whatsapp. He made some to move the source of the live performers in order to reduce the impact of the noise on my properties.

However, when it became clear that an acceptable reduction in noise level could not be achieved and he insisted on continuing with the activity, he ceased co-operation and showed total disregard for the issues raised thereafter. (See above for more detail on this).

The matter was taken up with the Municipality and the following correspondence ensued:

On 2 March 2020 a letter to Mr Kurt Thomas - Town Planner: Land Use Management and Compliance, CC Ms Penelope Aplon, Overstrand Municipality.
and CC Mr Helgaardt Boshoff - Town Planner, Town & Spatial Planning Department.

A letter dated 5 March 2020 from the Glenfruin Meadows HOA was sent to Mr K Thomas and Mr H Boshoff mentioning concerned residents are being affected by the noise and asking if the applicant had permission to have live entertainment. We understand other letters/emails were also sent in by concerned residents at this time.

On 9 March 2020, we received an email from Mr Kurt Thomas confirming that the activity is illegal and that he will issue a First Notice for the activity to cease.

Shortly after this on 26 March 2020, the government declared the unfortunate Covid-19 total Lockdown.

On 30th June 2020, after numerous attempts to get confirmation, Mr Thomas admitted that no notice had

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been served on the applicant and that he would be meeting with them.

On 1st July 2020, he emailed that he "attempted to make contact with the owner of the applicant" "I have subsequently served a notice (via Law Enforcement, per e-mail, as well as registered mail) requesting the activity to cease. The situation will further be monitored in the mean time and if the activity persists, I will have no choice but to involve the municipal prosecutor for further action (within the prescriptions of the Overstrand Municipality By-Law on Municipal Land Use Planning ofcourse)".

After months of quiet, things started to open up with regard to Lockdown and as expected so did the activity at the applicant. Between 1st July 2020 and 14th December 2021 there were a number of live entertainment events. (see Appendix A – adverts and promotions on social media)

We understand, that in direct contradiction to the legal notices issued, the applicant were given permission to hold live outdoor entertainment and events from about 15th Dec to 16th January 2022 (at least 7 were held). This was without any consultation with local residents.

It has been confirmed to us in writing by the Overstrand Municipality that there was no special Event Permit applied for or granted for performances during this time.

On being reported to Law Enforcement and SAPS during the performance on 12 January 2022 by others in Glenfruin Meadows, it was claimed that permission has been granted by the Municipality/ Municipal Manager for the applicant to hold live outdoor music up until 16 January 2022. This has been questioned in writing on 13 January 2022 and we await a response.

It is to be noted that many of the concerts over the years have been marketed with tickets on sale to the public through online ticketing agencies as well as other methods. This despite there being no licences or permissions as far as all our investigations have revealed. In fact, over the years they have without permission operated as a fully fledged "place of entertainment" for which they do not have the necessary consent and that accordingly these additional activities were in contravention of the law.

The establishment has admitted in their application to holding live outdoor entertainment and such is evident on their social media advertising platforms, namely Facebook and Instagram (see Appendix B). Numerous letters and email correspondences with the Municipality bear testament to these activities and the undesirability thereof by neighbours.

15. Administrative Penalty due to transgressions

Section 90 explains the requirement to apply for the determination of an administrative penalty by a person contravening the By-Law. Although the application indicates an application for an administrative penalty, this appears to only be for the transgression relating to the building line encroachment. This should apply to the illegal operation of a place of entertainment too.

Please refer to APPENDIX A - Timeline of Significant Happenings & Advertising Thereof

16. Mitigating Measures

In the inconceivable alternative in that the application is considered favourable in any way, mitigating measures should be imposed on the applicant that should, inter alia, include:

- i. Limit the place of entertainment and all amplified sound/music/PA systems to the inside of the building or new buildings which are suitably soundproofed.

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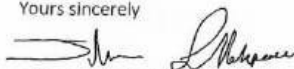
- II. Require that windows and doors are closed when holding live entertainment after certain hours.
- III. Limit the hours as in how many hours between x and y times during the day and how many hours between x and y times at night that noise can be made.
- IV. Limit the number of days per week/month/year that amplified live or reproduced music is permitted.
- V. Require the installation of sealed and regularly calibrated sound receptors at various points where nearby residential areas are affected, that enable the constant monitoring of noise and the recording of values for subsequent analysis etc.
- VI. Ensure that the required number of parkings are provided for on the basis of those required in the local authority regulations for a place of entertainment on the applicant property based on the actual numbers that it aims to attract and is licenced for (1 bay 4 seats)
- VII. Specifically regulate that no part of the designated parking area and requirement on the applicant property, may be used for any purpose other than parking i.e., no stage, dance floor, tent, gazebo, marquee to accommodate performers, event participants, patrons or exhibitors may be erected in the parking area.
- VIII. Require commitment that crowd control measures are undertaken by the applicant to keep within it's regulated capacity "manageable numbers and control".
- IX. Require the presence of meaningful security to protect members of the general public as well as owners and occupiers of adjacent properties.
- X. Provide suitably qualified parking attendants with authority to remove illegally parked cars be during times of high attendance so as to prevent blocking/congestion of the narrow access roads and unlawful parking (traffic authorities have no jurisdiction over the roads in H&A Village) (note: traffic authorities claim not have jurisdiction).
- XI. Provide on site towing services at any event with the authority to remove illegally parked cars (note: traffic authorities claim not have jurisdiction).
- XII. Require the upgrade of access roads to the H&A Village as a condition of the departure as well as the securing of a binding commitment by the applicant and H&A Village HOA to facilitate negotiations with the relevant parties to the registered Servitude Agreements to attend to the upgrading and ongoing maintenance of the road and infrastructure.
- XIII. Require that the local authority Event By-Law be applied on an individual application basis for the staging of any event that exceeds the capacity of the applicant on an event by event basis so as to ensure that events are managed safely and effectively in terms of the By-Law.
- XIV. Withdraw the rights at any time where any deviation from of the obligations of the applicant is noted.

In conclusion we consider the application for the departure as outlined above to be totally undesirable and we trust that the Tribunal considering the matter will concur.

In the unlikely event that the departure is granted, even with mitigating measures that include the above, it is noted that we reserve our right to appeal.

Please do not hesitate to contact us if you require any further information.

Yours sincerely



John and Louise Makepeace

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APPENDIX A

Additional information in support of objection for:

ERVEN Hon4366 / Hon4365 / Hon4179, Erf 283, Rem. 338 of the Farm Onrust River no. 581 and Rem. portion 2 of the Farm Glenfruin 578

Timeline of Significant Happenings & Advertising Thereof

16 Nov 2019	The Rivertones (4 man reggae band) 3pm – 7pm
11 Dec 2019	The Rivertones
18 Dec 2019	The Rivertones
21 Dec 2019	Dirkie van Staden, Rayelle Goodman, Venetia Rose
31 Dec 2019	New Years Eve Party, Twist 'n Shout into 2019; Rewind band 21:00 – 01:00
4 Jan 2020	The Rivertones (4 man reggae band)
10 Jan 2020	Des Bosh (Wednesdays, Thursdays and/or Fridays into Feb)
3 Jan 2020	Watershed (SA's top acoustic band)
1 Feb 2020	Back to the Past
5 Feb 2020	Des Bosh
8 Feb 2020	Andrew Perkins
14 Feb 2020	Valentine's day with live music
29 Feb 2020	Hemel en Aarde Marathon finish with live music
2 Mar 2020	Our Letter of Complaint to various municipal officials. Numerous other complaints were also submitted as well as a letter from the Glenfruin Meadows HOA.
9 Mar 2020	Confirmation received from Mr Kurt Thomas (Town Planner: Land Use Management and Compliance) that illegal activity is existing and a First Notice to cease will be issued by him.
26 Mar 2020	Covid-19 total Lockdown commenced.
30 Jun 2020	Established after a number of enquiries that First Notice had not been issued yet by Mr K Thomas.
1 Jul 2020	Confirmation that First Notice had been served - nearly 4 months after Mr K Thomas advised that illegal activity taking place and will issue notice. Time lapse prejudicial to applicant and complainants.
1 Jul 2020	Rewind
3 Jul 2020	Rewind
3 Oct 2020	Brewery to Brewery finish and Beerfest
25 April 2021	Francois van Coke (of Fokopolisiekar fame), Daniel Green and Kay Roelofse
3 Jul 2021	Vicky Sampson (African evening)
24 Sep 2021	Vicky Sampson and DJ Kim Sharklady McLean (Heritage Day)

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- 14 Dec 2021 Confirmation from Ms N Gerber (Town Planner: Land Use Management and Compliance) that a **Second Notice** had been served and notification that the advertised live outdoor entertainment planned for 14 December 2021 was advertised as being cancelled by the applicant.
- 14 Dec 2021 The Rivertones (cancelled, as confirmed to us in an email by Ms N Gerber, in light of the Second Notice served)
- 24 Dec 2021 The Rivertones
- 30 Dec 2021 The Rivertones
- 31 Dec 2021 New Years Concert, Lydney Crots
- 12 Jan 2022 The Rivertones
- 15 Jan 2022 Reflex Rock Band (4pm-8pm)
- 16 Jan 2022 Reflex Rock Band, 2pm onwards

A few extract screenshots of applicant advertising and events on social media from 5 October 2019 to January 2022 in support of the timeline



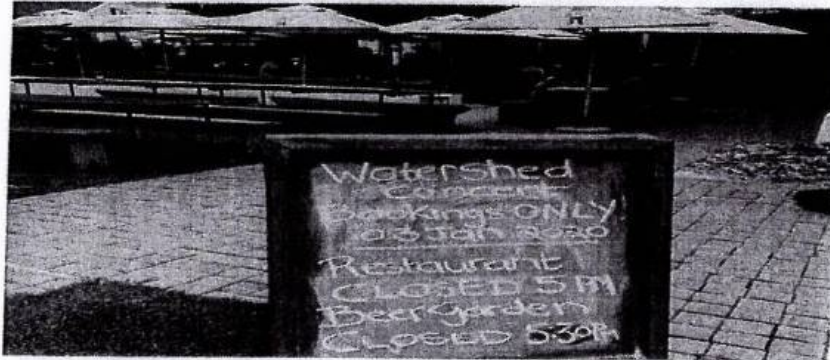
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The Brewery Hemel-en-Aarde
December 31, 2019 · 🌐

Party into the New Decade @THEBREWERY! Option to join after 10h30 with Fabulous Live Band REWIND for R250 PP includes Pizza! #Rewind #Livemusic #nye #thebrewery #hemelenaarde #hermanusbeer



The Brewery Hemel-en-Aarde
3 January · 🌐
Watershed Concert tonight @TheBrewery for Bookings ONLY! #livemusic #hemelenaarde #thebrewery



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The Brewery Hemel-en-Aarde
4 January · 🌐



The Brewery Hemel-en-Aarde
7 January · 🌐
Special Guest - Jan Oud the Man Sinterklaas and Kerst
@TheBreweryAarde #sinterklaas #kerst



The Brewery Hemel-en-Aarde
8 January · 🌐
Des Bosh tomorrow night, Friday, 10th Jan
From 5pm to 8pm
Also happy hour from 6 to 6pm



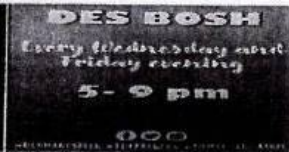
The Brewery Hemel-en-Aarde
22 January at 22:45 · 🌐
Back to the past @THEBREWEERY https://www.quicknet.co.za/events/66457-back-to-the-past-1st-Feb-2020/#thebrewery #hermanusbeer #hemelenaarde



The Brewery Hemel-en-Aarde
January 10, 2020 · 🌐
You know the BREWERY! All day openings, Live Music - Rock, Jazz, Funk, Blues, Soul, R&B, Gospel and African music. So don't miss out on the best live music scene. Facebook: #thebreweryhemelenaarde #hemelenaarde



The Brewery Hemel-en-Aarde
5 February at 17:10 · 🌐
Every Wednesday and Thursday night @Thebrewery
Des Bosh
#livemusic #beer #thebrewery #hermanusbeer #whattdo #wednesday #desbosh



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Winkyproms · Monday
#winkyproms #live #rock #music #band #guitar #drums #singer #stage #concert #liveperformance #musician #bandlife #rockon #musician #band #guitar #drums #singer #stage #concert #liveperformance #musician #bandlife #rockon

The Brewery Hemel-en-Aarde
30 June at 10:52

Revised Band live at The Brewery on Wednesday 1st July and Friday 3rd July.
Giving back!
#revisedband
#givingback
#socialdistancing · See more

13 5 shares

The Brewery Hemel-en-Aarde
July 7, 2020

A HUGE thanks to Revised Band for selflessly VOLUNTEERING their time to bring rock 'n roll back to the people on our GRAND OPENING! Revised will be playing from 6.30 this evening, don't miss out!

Book to avoid disappointment!
Call us on 079 887 2643 or 028 316 4836 ... See more



OFFICIAL ATHLETES
WB OUTDOOR
DINNER PARTY

FRANCOIS VANCOKE

SUNDAY 22TH APRIL 2021
18:00 - UNTIL LATE

TICKETS ON SALE NOW

P1807 · 100% LOCAL · 100% ORGANIC · 100% SUSTAINABLE · 100% LOCAL · 100% ORGANIC · 100% SUSTAINABLE · 100% LOCAL · 100% ORGANIC · 100% SUSTAINABLE

www.wb.com.au/outdoor.com

Winkyproms · Friday

Winkyproms Key info for the previous area this weekend, revised will play 6.30 and 8.30. Come and see the band at the Brewery Hemel-en-Aarde this evening Sunday 29th April. It's part of the Rejoice Bay Outdoor Festival music party but there will be some live music to the public. Some live music and have a party with us. Always safe to see when Revised band.

likes 1000

Add a friend



HERITAGE DAY CELEBRATIONS
24 SEPTEMBER 2021

With Vicky Sampson
MY AMERICAN DREAM

FREE LIVE SET WITH COME AND HANG WITH US

THE BIG OLD HAZEL H ARRIE

MEZELIM MAIN

DICK ANDIAN BAKERY & CAFE

SEVEN SPRINGS VINE YARD

WE DON'T ENTERTAIN HERE WITH US WITH SHAKAZEE
SPECIAL DINNER WITH Vicky Sampson My American Dream

Winkyproms · Friday

likes 1000

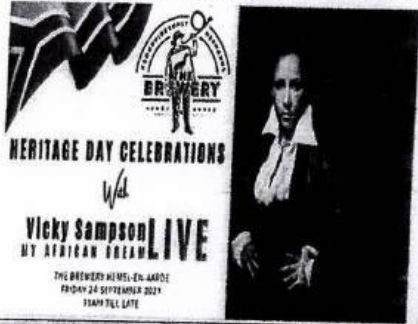
Add a friend

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The Brewery Hemel-en-Aarde Restaurants - Overstrand
 September 11, 2021

Celebrate Heritage Day at The Brewery Hemel-en-Aarde on Friday 24th September 2021 - FREE EVENT- All Welcome

- COME AND BRAAI WITH US!
- MEAT on MAIN Butchery will be selling their delicious Braai Packs, Bone-in Ribs, Bitong and more... they will keep the fires burning all day. You can braai your own meat or we will braai it for you!
- Visit our Pap, Soups and Salad Kiosk to add to your braai
- Biga Artisan Bakery Café will be providing you with the BEST artisan Cobatta Roll... See more



The Brewery Hemel-en-Aarde
 Our sincere apologies to everyone. Unfortunately we had to cancel this event until further notice!

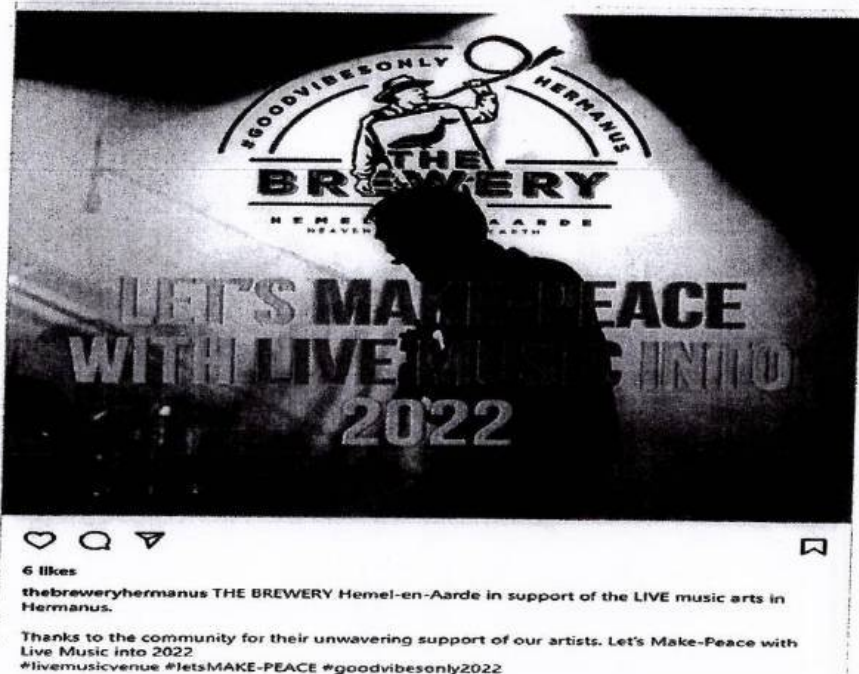


TheBreweryhemel-en-Aarde · Following

TheBreweryhemel-en-Aarde continues to support the Arts with great food, beer and wine from our valley! See you all on the 24th and the 30th of December from 6 - 9 pm!
 #CovidVibesOnly

1 like
 22/09/21 15
 Add a comment...

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The reference in the above to me personally (John Makepeace) did not go unnoticed.....hah hah!

Note though, that having musicians in my family and having attended performances all over the country I am not at war with live music in any way. What is unacceptable is the carrying out of illegal noise sensitive activities and producing a disturbing noise nuisance that affects the peace and quiet of reasonable people.

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TP. n/heat
(M. Olivier)

L Gillion



From: Annelize Toua < >
Sent: Friday, 28 January 2022 10:16
To: L Gillion
Cc: 'Adolf Mohr'
Subject: OBJECTION, Re: Erf 4156, 5 Village Lane: Hemel en Aarde Village, Onrustrivier.
 Application for Departure: Interactive Town and Regional Planning Jobo Hermanus
 Microbrewery (Pty) Ltd

Importance: High

FILE NO:	ERF 4156 ✓
SCAN NO:	Toua
LABORATOR NO:	1633898

To whom this may concern

Michael and Annelize Toua (owners of ERF 4360) hereby object to the proposal of HERMANUS MICROBREWERY (PTY) LTD ("The Brewery")

If you need any further information from us please contact us via email or

We have been living peacefully in Glenfruin Meadows Estate for the past 11 Months, we experienced some of the noise during the festive season of 2021/2022. We feel that the reason we bought this house in Glenfruin Meadows was because of the relaxed country atmosphere feeling far from town. We come from a farm in MP and loved the farm feeling about Glenfruin Meadows because it is quite and it would be awful to experience that kind of noise every other day. Please also take into consideration that we have small children as well as a cottage we rent out for holiday accommodation this will effect our small income as well, as guests come for the peaceful, relaxed atmosphere. We are also quite high up in the Estate and nearest to most of the activities happening at "The Brewery". We have first hand experience of this "party vibe".

I do hope that you take this matter seriously as it will not only have a big impact on Glenfruin Meadows, but also the area around "the Brewery".

Please also see:

1. The Application

It is noted that according to the Town Planning Application Form completed by the applicant, the application is for:
 Permanent Departure from the provisions of the zoning scheme;
 Consent use provided for in the zoning scheme – Section 16(2)(o); and
 the Determination of an administrative penalty – Section 16(2)(q).

The application is for a "place of entertainment" which means a place used for commercial entertainment which may attract large numbers of people, operates outside normal business hours or generates noise from music or revelry on a regular basis and includes a cinema, a theatre, an amusement park, a dance hall or a night club and gambling and live music". (Overstrand Municipality Land Use Scheme, 2020).

As per the application on page 20, "the specific request for a departure is to allow live music and events on the property".

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Historic Complaints

If you have communicated with The Brewery, the Municipality, Law Enforcement, SAPS or anyone else, it will be advantageous to provide details.

2. Location in H&A Village which is a Special Zone with it's own Scheme Regulations

The Brewery is located in H&A Village which has a municipal zoning of "Special Zone".

Their unique Scheme Regulations define their properties' primary use as "Tourism Business/Cottage Industry & Dwelling House" with the only additional consent use being for flats.

It is clear from the Scheme Regulations as well as the Design Manual that a calm country environment was intended with site use including activities such as restaurants, guesthouses, guestrooms, winery, souvenir shops, tourist information centres, antique shops, arts & crafts shops, art galleries, interior decorators, travel bureau, conference facilities, manufacture of pottery and art and dwelling houses which could be attached to a tourism business or cottage industry concern.

This, in general, could be referred to as the whole ethos of the H&A Village when originally contemplated and given Special Zoning status. It is to be noted that Glenfruin Meadows was also proclaimed around a similar time and that a logical assumption of the compatibility with the H&A Village and surrounds would have been made by the developers and subsequent owners of residential erven.

The Brewery is applying for a land use departure for an additional land use that the specific zoning scheme does not provide for. The specific zoning of the property does not have a place of entertainment as a primary right or a consent use, so a departure would be required. Not all departures are undesirable – but in my view this one is - and it needs to be considered in terms of the elements of desirability or not, which are numerous.

I believe it sensible that all purchasers of a property investigate what is allowed and not allowed prior to purchasing any property and can only believe the owners of erf 4156, The Brewery, who are now asking for a departure, did their homework beforehand. In other words, they knew what they were buying into and what was allowed under the Special Zoning status. If the applicant wanted to establish a place of entertainment, they should have done so in an area suitably zoned as such i.e. with consent use possibilities of which there are a number in the Overstrand.

It must be noted that the change in use from the current zoning would be an extreme change, unwanted by the nearby properties, and which will severely and negatively influence not just the lives of the property owners but also the value of the property they own.

An application for a departure such as this is therefore out of the ordinary and it is to be noted that, at the outset, this land use was clearly never the intention of the H&A Village developers i.e. to accommodate a place of entertainment in the H&A Village. It will have a negative effect on all the surrounding property owners.

For this and other reasons the departure is undesirable.

3. Access road and traffic

It is the clear intention of The Brewery to draw large additional crowds of people to the venue during not only current normal operations (which is their right) but potentially thousands of

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additional people and extensive additional vehicular traffic when hosting or participating with neighbouring properties in holding big events.

The access road into H&A Village intersects with the main road to Caledon (R320) and is situated directly opposite the large Hemel en Aarde Estate entrance. The traffic light on the main road to Hermanus (R43) as well as the first bend in the road towards Caledon are both approximately 150 meters away from the stop street, making access onto the R320 difficult, even under normal traffic situations. The application is also not supported by a Traffic Impact Assessment (TIA) assessing the suitability of the venue to host events.

The approach to Glenfruin Meadows is over a servitude area in H&A Village (Erf 4159) which comprises a single lane road (no road markings) coming off the R320 and runs past the H&A Village retail and office area and The Brewery on the south side of the road and Whalehaven Winery on the north side.

It is to be noted that this is a very narrow road of less than 6.0m overall width in most places, and that it is the only access and egress for numerous properties that include the following: The H&A Village Shopping Centre, The Brewery, Whalehaven Winery, the balance of the businesses and residential areas in the H&A Village, Glenfruin Meadows, various smallholdings across the Onrus River and farmland in excess of 200ha.

It must be noted that large areas of the H&A Village are not yet developed - 13 properties in total and at least 4 that are not developed as of yet. Many of the developed properties located therein are not at their maximum bulk and therefore there is scope for significant additional commercial development and additional traffic.

There are 2 undeveloped properties within Glenfruin Meadows and significant scope for new and additional development of properties across the river which could well include full scale agricultural activities as is their primary zoning rights.

There is no roadside parking on this servitude road (erf 4159) and there are no stopping areas for vehicles.

Despite the very significant foot traffic of workers and other members of the general public and the fact that this is the only access to all the properties referred to above, there is no pedestrian access nor pedestrian walkways provided, other than by walking along the road or through what are essentially private properties that could be fenced off at any given time.

This area is also the access to the very popular Hermanus Mountain Bike and walking trails.

The ground immediately adjacent to the road has large rocks, trees, signs, electricity boxes, streetlamps etc. on either side. There is often insufficient space for a motorcar and truck to pass each other safely in opposite directions and it is often necessary for vehicles to move off the road to make way for each other.

The road is unmarked and badly maintained and at times poses a danger to motorists, pedestrians and cyclists (of which there are a number). The traffic authorities have no jurisdiction or control over this road as, although it is a public roadway, it is located on private property and they will not police the area by issuing fines, towing vehicles away when illegally parked etc.

The roadway currently carries a voluminous amount of traffic including large delivery vehicles servicing the various businesses including, bakeries, including the two wineries, nursery and furniture/décor businesses and whatever else is still to come.

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The road network is probably already inadequate or the bare minimum necessary to support the normal existing traffic.

In this sense all vehicles that come in must be able to exit on the same roadway.

Granting this departure would enable The Brewery to draw large additional crowds and traffic to H&A Village on a regular basis.

For reasons cited above, the venue is not suited to hold events where larger than normal traffic flows are to be generated without going through the necessary applications and being under the control of the excellent Events Policy of the local authority.

For these and other reasons the departure is undesirable.

4. Noise Impact of Place of Entertainment

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis, both in the normal course of providing live entertainment on a regular basis, and when hosting even larger events.

The noise nuisance generated by The Brewery by holding heavily amplified live and reproduced music outdoors is disturbing, a noise nuisance and impairs the convenience and peace that my family, guests and I, as reasonable people, are entitled to enjoy on our own properties as well as when walking in the common areas of Glenfruin Meadows of which I am part owner and in which we share, which include beautiful country lanes, riverside walks, equestrian areas and the like.

The distance from the applicant property to erf 4368, one of the properties of which I am part owner, is approximately 90 meters.

As a matter of interest, the stables mentioned above are approximately 210 meters from The Brewery and in direct line of sight. The impact on the horses and pets has been significant during the events held illegally over the past year.

Attempting to sleep during live events is challenging and it must be further noted that many of us have a home office, more so since COVID, and attempting to work and concentrate during live events is difficult.

For these and other reasons the departure is undesirable.

5. Noise Impact Assessment (NIA)

Neither I, nor other interested and affected parties with whom we are acquainted, were afforded the opportunity to participate in any way in the scoping and reference of the NIA and accordingly the objectivity of the (NIA) included in support of the application is questionable.

I understand that, as will be pointed out in comments submitted from other interested and affected parties, the lack of participation, the methodology, findings and therefore the permissible noise levels identified therein are to be challenged.

As the live entertainment is to be predominantly outdoors, it is also to be noted that the NIA and the application in general do not indicate any attempts whatsoever to limit or mitigate the disturbing noise pollution and nuisance posed despite the long history of complaints by fellow property owners of which I am aware.

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The NIA findings indicate that maximum noise levels are exceeded. The application does not contain or propose any noise mitigation factors that the applicant should or is willing to undertake and this is unacceptable.

If the venue is to be limited to certain maximum sound levels, how will the sound levels be managed with regard to the different musicians and sound systems used?
In addition, who will ensure that these noise levels are enforced?
Would I and other affected property owners have to complain to the authorities every time that we perceive the noise to be a nuisance? Is this a fair burden to be placing on us? Will this not in itself affect our rights to enjoy our peace and quiet?

In this regard it is to be noted that our Municipality does not have the measuring instruments or professional qualifications to ensure compliance with regard to decibel levels.

Are members of our community going to be forced to spend copious amounts of money bringing in experts when they/we experience problems?

The application has numerous plans, pictures and diagrams but is silent as to the location of the stage for musicians or sound/PA system, which direction it would face and whether it would have any noise barriers or sound controls.

The departure applied for is not provided for in the Special Zoning Scheme that applies to the applicant property and in addition, is in close proximity to extensive residential areas many of which are largish country properties where nature and peace and quiet without the disturbing noise of loud music and the noise nuisance that it represents is a reasonable expectation.

From the above we consider that the noise issue has not been dealt with satisfactorily in the application and given that this is probably one of the key aspects of the operation of a place of entertainment where amplified music is to be played outdoors, potentially 7 days a week, we find this unacceptable and that at the very least this aspect needs to be re-visited.

For these and other reasons the departure is undesirable.

6. Business Hours

It is proposed that the applicant is to be permitted to have "live entertainment events strictly to between 7h00 and 22h00 with a maximum of 2 hours per evening and 4 hours during the daytime for events" on any day of the week. In addition, any number of additional hours of PA systems amplifying voices and reproducing music would be permissible.

For these and other reasons the departure is undesirable.

7. Insufficient Parking

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis.

It is to be noted that there is no public or municipal parking servicing the H&A Village at all.

As there is no contemplation of a "place of entertainment" in the Scheme Regulations of H&A Village, there is no mention of parking requirements for such and it follows that the Overstrand Zoning Scheme Regulations 2020 apply.

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This states that a "place of entertainment" needs to have 1 off street parking bay per 4 seats. As per the application, the restaurant site can seat approximately 250 people. If patrons are only limited to this number, then 62.5 parking bays would need to be provided i.e., a shortfall of at least 13.5 bays on those proposed in the application (49 bays).

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building". Is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total? If 500, then 76 additional parking bays would be required which would entail the applicant having to purchase another property nearby. The site is fully developed and there is no viable space for any additional parkings.

With respect, it is highly unlikely that the applicant would limit patrons during the normal course of operations to 250 people in total and therefore the parking requirement is grossly understated.

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis and application states "guests can park on adjacent parking areas" (page 23).

It must be noted that adjacent erven are all private property and house commercial enterprises or are undeveloped as yet. The assumption that these areas can be used indefinitely for parking cannot be made. During daytime particularly, neighbouring businesses need their parking for their own staff and customers. Most trade on weekends too.

Access to this additional off-site parking is not a given and unless specifically noted on title deeds as inalienable rights attaching to the applicant property in perpetuity, things can and will change as circumstances and further development and expansion takes place in H&A Village.

For these and other reasons the departure is undesirable.

8. Attracting large numbers of people

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis.

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Again, is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total?

Further on page 23 under "Attracting large numbers of people" it is stated that "The numbers are accordingly limited as part of the management of the business and also in respect of the cooking facilities as well as on-site parking (even though guests can park on adjacent parking areas) resulting that the application site does remain within manageable numbers and control."

Most places of entertainment do not provide a seat for each reveler and the applicant does not always require that patrons eat (and even if they did, this could change at any time), therefore the reference to 250 seats is a misnomer both as regards to controlling numbers, limitations posed by cooking facilities and importantly parking.

In the case of events, there is no consideration with regard to providing a seat for every person nor sufficient parking.

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Previous activities have shown that unauthorised events and concerts on the site have drawn large numbers of people with little to no real control over the numbers.

With regard to "numbers are accordingly limited as part of the management of the business", the site has numerous pedestrian entrances on all sides of the property for patrons to enter. There are no gates and where there are walls, they are approximately knee high.

Currently, live music events are free and do not necessarily require a booking or a ticket (refer to social media advertisements).

There is no guarantee that management will control the number - the business is profit driven, meaning the more people attending, the better the profit for the business.

Considering the above, how is it possible to control the numbers?

For these and other reasons the departure is undesirable.

9. Setting of a Precedent

If the application is successful in any form, this will set a precedent for businesses already in the H&A Village - many of whom have illegally held large, very loud, live music events, weddings etc. in the past - to apply for place of entertainment departures. (herewith refer to, as recently as 27 Dec 2021, Bottomless Coffee Band at Hermanuspietersfontein Winery as an example).

In addition, this departure may encourage similar businesses to be attracted to the H&A Village and for them to apply for similar departures.

Many of the properties have not been developed to their full extent... yet, and there are 4 that have not yet been developed or commissioned.

Two of the undeveloped erven border Glenfruin Meadows and the Equestrian Centre/horse stables and pose a huge threat of a ripple of applications for departures to operate as places of entertainment.

It is **highly likely** that the H&A Village HOA, and therefore most of their property owners, are in support of this application. In other words, it is possible that they would condone, support and perhaps encourage other/similar applications for land use departures in the future, in the belief that this opens the door for similar departures on their own properties and perhaps adding to their market value.

A "place of entertainment" opens the door to just that. Nothing will stop a business owner from next starting a nightclub, strip club, installing slot machines or the like.

For these and other reasons the departure is undesirable.

10. Fire and Safety

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis and this would pose serious threats to the safety and well-being of the properties, patrons and occupants within H&A Village as well as those that have the road as their only form of access and egress.

The agricultural land and mountains above the urban edge of the residential developments accessed through the H&A Village are regarded by the authorities as an extremely high fire risk

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zone for wildfires and for this reason access for fire fighters and other emergency vehicles is critical at all times, particularly during fire season (Dec- Apr) which coincides with the summer holiday/festive season.

Historically where events have been held in the H&A Village, vehicles have completely blocked the roads and have parked everywhere including in no-stopping zones, the middle of the road and on occasion, even blocking access or egress from the residential and agricultural properties.

We believe that this will be well documented along with photographic evidence in other comment by interested and affected parties and we refer thereto.

For these and other reasons the departure is undesirable.

11. Mitigating Measures

In the alternative in that the application is considered favourable in any way, mitigating measures should be imposed that for inter alia include:

- Limit the place of entertainment and all amplified sound/music/PA systems to the inside of the building or new buildings which are suitably soundproofed.
- Require that windows and doors are closed when holding live entertainment after certain hours.
- Limit the hours as in how many hours between x and y times during the day and how many hours between x and y times at night that noise can be made.
- Limit the number of days per week/month/year that amplified live or reproduced music is permitted.
- Require the installation of sealed and regularly calibrated sound receptors at various points where nearby residential areas are affected, that enable the constant monitoring of noise and the recording of values for subsequent analysis etc.
- Specifically regulate that no part of the designated parking area and requirement on the applicant property, may be used for any purpose other than parking i.e., no stage, dance floor, tent, gazebo, marquee to accommodate performers, event participants, patrons or exhibitors may be erected in the parking area.
- Require commitment that crowd control measures are undertaken by the applicant to keep within "manageable numbers and control".
- Require the presence of meaningful security to protect members of the general public as well as owners and occupiers of adjacent properties.
- Require qualified parking attendants with authority to be appointed during times of high attendance so as to prevent blocking/congestion of the narrow access roads and unlawful parking (traffic authorities have no jurisdiction over the roads in H&A Village).
- Require the upgrade of access roads to the H&A Village as a condition of the departure as well as the securing of a binding commitment by the applicant and H&A Village HOA to facilitate negotiations with the relevant parties to the registered Servitude Agreements to attend to the upgrading and ongoing maintenance of the road and infrastructure.
- Require that the local authority Event By-Law be applied on an individual application basis for the staging of any event that exceeds the capacity of The Brewery on an event by event basis so as to ensure that events are managed safely and effectively in terms of the By-Law.

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ANNELIZE TOUA

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IT'S A JUNGLE IN HERE

BUNDU

MIKE TOUA

DIRECTOR

IT'S A JUNGLE IN HERE

BUNDU

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To Whom it may Concern.

TP. n. Ahear
(M. Olivia)



I wish to record my objection to the below mentioned application.

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER;
APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING
(obo HERMANUS MICROBREWERY (PTY) LTD ("The Brewery"))

My Details as follows:

Name : Roger Maarschalk. (As an Interested and Affected party)

Email Address :

My interest in the application is as a neighbouring property owner.

Physical address :

Erf number 4348.

Estimated distance from Brewery : 250 metres.

I am a Part Owner of erf 4368 and 4362, Onrus River.

I have owned and lived at these premises with my wife for the past 6 years as a retired individual seeking the peace and quiet and natural beauty that Glenfruin Meadows offers.

1. The Application

It is noted that according to the Town Planning Application Form completed by the applicant, the application is for:

Permanent Departure from the provisions of the zoning scheme;

Consent use provided for in the zoning scheme – Section 16(2)(o); and

the Determination of an administrative penalty – Section 16(2)(q).

The application is for a "place of entertainment" which means a place used for commercial entertainment which may attract large numbers of people, operates outside normal business hours or generates noise from music or revelry on a regular basis and includes a cinema, a

FILE NO:	Sf Wsb
CAN NO:	118 n Village Onrus
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LABORATOR NO:	1634227

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theatre, an amusement park, a dance hall or a night club and gambling and live music". (Overstrand Municipality Land Use Scheme, 2020).

As per the application on page 20, "the specific request for a departure is to allow live music and events on the property".

Historic Complaints

If recent history of live events is to be taken into account then I object to this application as on occasion the volume of music does impede on the peace and quiet of the environment and the additional traffic volume and limited parking is of concern. It is noted that adjacent properties are currently utilised for overflow parking, however, if this application is granted there is no future guarantee that the owners of the adjacent properties would continue to permit this and then parking would be a huge problem. It must be noted that the Traffic Department has no jurisdiction in The Hemel and Aarde Village as it is private property.

2. Location in H&A Village which is a Special Zone with its own Scheme Regulations

The Brewery is located in H&A Village which has a municipal zoning of "Special Zone".

Their unique Scheme Regulations define their properties' primary use as "Tourism Business/Cottage Industry & Dwelling House" with the only additional consent use being for flats.

It is clear from the Scheme Regulations as well as the Design Manual that a calm country environment was intended with site use including activities such as restaurants, guesthouses, guestrooms, winery, souvenir shops, tourist information centres, antique shops, arts & crafts shops, art galleries, interior decorators, travel bureau, conference facilities, manufacture of pottery and art and dwelling houses which could be attached to a tourism business or cottage industry concern.

This, in general, could be referred to as the whole ethos of the H&A Village when originally contemplated and given Special Zoning status. It is to be noted that Glenfruin Meadows was also proclaimed around a similar time and that a logical assumption of the compatibility with the H&A Village and surrounds would have been made by the developers and subsequent owners of residential erven.

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I believe it sensible that all purchasers of a property investigate what is allowed and not allowed prior to purchasing any property and can only believe the owners of erf 4156, The Brewery, who are now asking for a departure, did their homework beforehand. In other words, they knew what they were buying into and what was allowed under the Special Zoning status. If the applicant wanted to establish a place of entertainment, they should have done so in an area suitably zoned as such i.e. with consent use possibilities of which there are a number in the Overstrand.

It must be noted that the change in use from the current zoning would be an extreme change, unwanted by the nearby properties, and which will severely and negatively influence not just the lives of the property owners but also the value of the property they own.

At the time of this objection I am currently attempting to sell my property for unrelated reasons and now find that I am obliged, if not compelled, to disclose to potential buyers that there is an application for "live entertainment" and "events" on our doorstep. This does not bode well for my ability to sell my property and would most likely cause me financial loss of value.

I object to the fact that the intent of the application can only be to improve the profit and gains of the Brewery and yet is has no consideration whatsoever for any financial compromises to neighbouring properties such as mine.

An application for a departure such as this is therefore out of the ordinary and it is to be noted that, at the outset, this land use was clearly never the intention of the H&A Village developers i.e. to accommodate a place of entertainment and events in the H&A Village. It will have a negative effect on all the surrounding property owners.

For this and other reasons the departure is undesirable.

3. Access road and traffic

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It is the clear intention of The Brewery to draw large additional crowds of people to the venue during not only current normal operations (which is their right) but potentially thousands of additional people and extensive additional vehicular traffic when hosting or participating with neighbouring properties in holding big events.

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There is no roadside parking on this servitude road (erf 4159) and there are no stopping areas for vehicles.

Despite the very significant foot traffic of workers and other members of the general public and the fact that this is the only access to all the properties referred to above, there is no pedestrian access nor pedestrian walkways provided, other than by walking along the road or through what are essentially private properties that could be fenced off at any given time.

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The roadway currently carries a voluminous amount of traffic including large delivery vehicles servicing the various businesses including, bakeries, including the two wineries, nursery and furniture/décor businesses and whatever else is still to come.

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In this sense all vehicles that come in must be able to exit on the same roadway.

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For reasons cited above, the venue is not suited to hold events where larger than normal traffic flows are to be generated without going through the necessary applications and being under the control of the excellent Events Policy of the local authority.

For these and other reasons the departure is undesirable.

4. Noise Impact of Place of Entertainment

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The noise nuisance generated by The Brewery by holding heavily amplified live and reproduced music outdoors is disturbing, a noise nuisance and impairs the convenience and peace that my family, guests and I, as reasonable people, are entitled to enjoy on our own properties as well as when walking in the common areas of Glenfruin Meadows of which I am part owner and in which we share, which include beautiful country lanes, riverside walks, equestrian areas and the like.

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In addition, who will ensure that these noise levels are enforced?

Would I and other affected property owners have to complain to the authorities every time that we perceive the noise to be a nuisance? Is this a fair burden to be placing on us? Will this not in itself affect our rights to enjoy our peace and quiet?

In this regard it is to be noted that our Municipality does not have the measuring instruments or professional qualifications to ensure compliance with regard to decibel levels.

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Are members of our community going to be forced to spend copious amounts of money bringing in experts when they/we experience problems?

The application has numerous plans, pictures and diagrams but is silent as to the location of the stage for musicians or sound/PA system, which direction it would face and whether it would have any noise barriers or sound controls.

The departure applied for is not provided for in the Special Zoning Scheme that applies to the applicant property and in addition, is in close proximity to extensive residential areas many of which are largish country properties where nature and peace and quiet without the disturbing noise of loud music and the noise nuisance that it represents is a reasonable expectation.

From the above we consider that the noise issue has not been dealt with satisfactorily in the application and given that this is probably one of the key aspects of the operation of a place of entertainment where amplified music is to be played outdoors, potentially 7 days a week, we find this unacceptable and that at the very least this aspect needs to be re-visited.

For these and other reasons the departure is undesirable.

6. Business Hours

It is proposed that the applicant is to be permitted to have "live entertainment events strictly to between 7h00 and 22h00 with a maximum of 2 hours per evening and 4 hours during the daytime for events" on any day of the week. In addition, any number of additional hours of PA systems amplifying voices and reproducing music would be permissible.

For these and other reasons the departure is undesirable.

7. Insufficient Parking

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Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis.

It is to be noted that there is no public or municipal parking servicing the H&A Village at all.

As there is no contemplation of a "place of entertainment" in the Scheme Regulations of H&A Village, there is no mention of parking requirements for such and it follows that the Overstrand Zoning Scheme Regulations 2020 apply.

This states that a "place of entertainment" needs to have 1 off street parking bay per 4 seats. As per the application, the restaurant site can seat approximately 250 people. If patrons are only limited to this number, then 62.5 parking bays would need to be provided i.e., a shortfall of at least 13.5 bays on those proposed in the application (49 bays).

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total? If 500, then 76 additional parking bays would be required which would entail the applicant having to purchase another property nearby. The site is fully developed and there is no viable space for any additional parkings.

With respect, it is highly unlikely that the applicant would limit patrons during the normal course of operations to 250 people in total and therefore the parking requirement is grossly understated.

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis and application states "guests can park on adjacent parking areas" (page 23).

It must be noted that adjacent erven are all private property and house commercial enterprises or are undeveloped as yet. The assumption that these areas can be used

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indefinitely for parking cannot be made. During daytime particularly, neighbouring businesses need their parking for their own staff and customers. Most trade on weekends too.

Access to this additional off-site parking is not a given and unless specifically noted on title deeds as inalienable rights attaching to the applicant property in perpetuity, things can and will change as circumstances and further development and expansion takes place in H&A Village.

For these and other reasons the departure is undesirable.

8. Attracting large numbers of people

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis.

Mention is made numerous times in the application that the premises "can comfortably accommodate 250 people inside as well as outside of the building".

Again, is this to be interpreted as 250 inside and 250 outside i.e. 500 people or to mean 250 total?

Further on page 23 under "Attracting large numbers of people" it is stated that "The numbers are accordingly limited as part of the management of the business and also in respect of the cooking facilities as well as on-site parking (even though guests can park on adjacent parking areas) resulting that the application site does remain within manageable numbers and control."

Most places of entertainment do not provide a seat for each reveller and the applicant does not always require that patrons eat (and even if they did, this could change at any time), therefore the reference to 250 seats is a misnomer both as regards to controlling numbers, limitations posed by cooking facilities and importantly parking.

205/214

In the case of events, there is no consideration with regard to providing a seat for every person nor sufficient parking.

Previous activities have shown that unauthorised events and concerts on the site have drawn large numbers of people with little to no real control over the numbers.

With regard to "numbers are accordingly limited as part of the management of the business", the site has numerous pedestrian entrances on all sides of the property for patrons to enter. There are no gates and where there are walls, they are approximately knee high.

Currently, live music events are free and do not necessarily require a booking or a ticket (refer to social media advertisements).

There is no guarantee that management will control the number - the business is profit driven, meaning the more people attending, the better the profit for the business.

Considering the above, how is it possible to control the numbers?

For these and other reasons the departure is undesirable.

9. Setting of a Precedent

If the application is successful in any form, this will set a precedent for businesses already in the H&A Village - many of whom have illegally held large, very loud, live music events, weddings etc. in the past - to apply for place of entertainment departures. (herewith refer to, as recently as 27 Dec 2021, Bottomless Coffee Band at Hermanuspietersfontein Winery as an example).

26/2/14

In addition, this departure may encourage similar businesses to be attracted to the H&A Village and for them to apply for similar departures.

Many of the properties have not been developed to their full extent.... yet, and there are 4 that have not yet been developed or commissioned.

Two of the undeveloped erven border Glenfruin Meadows and the Equestrian Centre/horse stables and pose a huge threat of a ripple of applications for departures to operate as places of entertainment.

It is **highly likely** that the H&A Village HOA, and therefore most of their property owners, are in support of this application. In other words, it is possible that they would condone, support and perhaps encourage other/similar applications for land use departures in the future, in the belief that this opens the door for similar departures on their own properties and perhaps adding to their market value.

A "place of entertainment" opens the door to just that. Nothing will stop a business owner from next starting a nightclub, strip club, installing slot machines or the like.

For these and other reasons the departure is undesirable.

10. Fire and Safety

Granting this departure would enable The Brewery to draw large crowds and additional traffic to H&A Village on a regular basis and this would pose serious threats to the safety and well-being of the properties, patrons and occupants within H&A Village as well as those that have the road as their only form of access and egress.

The agricultural land and mountains above the urban edge of the residential developments accessed through the H&A Village are regarded by the authorities as an extremely high fire risk zone for wildfires and for this reason access for fire fighters and other emergency

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vehicles is critical at all times, particularly during fire season (Dec- Apr) which coincides with the summer holiday/festive season.

Historically where events have been held in the H&A Village, vehicles have completely blocked the roads and have parked everywhere including in no-stopping zones, the middle of the road and on occasion, even blocking access or egress from the residential and agricultural properties.

We believe that this will be well documented along with photographic evidence in other comment by interested and affected parties and we refer thereto.

For these and other reasons the departure is undesirable.

11. Mitigating Measures

In the alternative in that the application is considered favourable in any way, mitigating measures should be imposed that for inter alia include:

- Limit the place of entertainment and all amplified sound/music/PA systems to the inside of the building or new buildings which are suitably soundproofed.
- Require that windows and doors are closed when holding live entertainment after certain hours.
- Limit the hours as in how many hours between x and y times during the day and how many hours between x and y times at night that noise can be made.
- Limit the number of days per week/month/year that amplified live or reproduced music is permitted.
- Require the installation of sealed and regularly calibrated sound receptors at various points where nearby residential areas are affected, that enable the constant monitoring of noise and the recording of values for subsequent analysis etc.
- Specifically regulate that no part of the designated parking area and requirement on the applicant property, may be used for any purpose other than parking i.e., no stage, dance

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floor, tent, gazebo, marquee to accommodate performers, event participants, patrons or exhibitors may be erected in the parking area.

- Require commitment that crowd control measures are undertaken by the applicant to keep within "manageable numbers and control".
- Require the presence of meaningful security to protect members of the general public as well as owners and occupiers of adjacent properties.
- Require qualified parking attendants with authority to be appointed during times of high attendance so as to prevent blocking/congestion of the narrow access roads and unlawful parking (traffic authorities have no jurisdiction over the roads in H&A Village).
- Require the upgrade of access roads to the H&A Village as a condition of the departure as well as the securing of a binding commitment by the applicant and H&A Village HOA to facilitate negotiations with the relevant parties to the registered Servitude Agreements to attend to the upgrading and ongoing maintenance of the road and infrastructure.
- Require that the local authority Event By-Law be applied on an individual application basis for the staging of any event that exceeds the capacity of The Brewery on an event by event basis so as to ensure that events are managed safely and effectively in terms of the By-Law.

209/214



ONRUST MOUNTAIN CONSERVANCY



TP. N. Inoo
(A. Olivier)

28 January 2022

BY EMAIL

Attention:

Ms Loretta Gillion, Overstrand Municipality. Email: Loretta@overstrand.gov.za
Dear Ms Gillion,

**ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE VILLAGE, ONRUSTRIVIER:
APPLICATION FOR DEPARTURE: INTERACTIVE TOWN AND REGIONAL PLANNING
(obo HERMANUS MICROBREWERY (PTY) LTD) "The Brewery"**

Introduction

We, Dr Frank Raimondo and Mrs Louise Makepeace, the Chairperson and Treasurer/Secretary respectively, represent the interested and affected party known as the Onrust Mountain Conservancy (hereinafter referred to as the OMC) on behalf of our members.

The email addresses for notices and serving of documents is frankraimondo@gmail.com and Makepeace.Lou@gmail.com.

The Constitution of the OMC states that it "is a voluntary association of landowners with property on or adjacent to the Onrust Mountain range and is established with the aim of improving and managing the environment to the benefit of all the members and the surrounding communities".

The OMC has 20 members who together own over 2500 hectares of land.

With regard to the application for a Permanent Departure from the provisions of the Overstrand Zoning Scheme for a "place of entertainment", we herewith object.

Our reasons for objecting are:

Precedent

The unique Scheme Regulations of the H&A Village as a Special Zone, in which the applicant property is located, do not provide for a place of entertainment as a primary right or consent use. This is for good reason and this kind of business would be undesirable in the H&A Village. A precedent would be set and a ripple effect would mean more such businesses would start up or be drawn to locate in the H&A Village which is unsuitable for such businesses for various reasons.

31 JAN 2022

FILE NO:	21 4156
CAN NO:	H&A Village Onrus
LABORATOR NO:	118

210/214

Noise

The very real noise nuisance, as has already been experienced on numerous nearby mountain properties belonging to members of the OMC, is inconsiderate and undesirable.

The simple Noise Impactment Assessment conducted indicates that maximum noise levels are exceeded. The application does not contain or propose any noise mitigation factors that the applicant should, or is willing to undertake, and this is unacceptable.

The Onrust Mountains and adjoining nature areas are widely used for recreational purposes including hiking, walking, cycling, picnicking and chilling in general. It is widely accepted that many people find natural noises soothing. Researchers have discovered that natural sounds relax us because they are constant noises of a pleasant pitch. Our brain interprets them as non-threatening noises, which helps reduce our fight-or-flight response. This lowers our stress level and helps us become more relaxed. Natural havens are known to have significant benefits for both physical and mental health. Peace and quiet in nature are hard to find these days as the sound of human activity blares out around us. Disturbing noise from live outdoor entertainment, particularly during leisure times (afterhours and weekends) in such close proximity to nature will contribute to drowning out natural noise and nullifying these benefits. It is unwanted harmful sound in this context and therefore it is undesirable.

Fire and Access

Parking on the applicant property is inadequate and there is no public parking in the vicinity. The access road into H&A Village and the applicant property is inadequate, unsafe and badly maintained and is already not coping with the volume of traffic including large delivery vehicles.

Further congestion will inhibit the access for emergency vehicles, which particularly in the case of fire (a very real threat) could have dire consequences. Entering the H&A Village is effectively entering a cul-de-sac – the only way in (for all businesses located there, visitors and delivery vehicles as well as numerous residential properties and farms) is the only way out.

Whilst there have been numerous wildfires recently in the high risk Overstrand area, the Onrust Mountains directly to the north of the applicant site have not burnt for approximately 60 years. Although it is widely acknowledged that Cape fynbos should burn periodically, the risk here is that in the event of a wildfire, the access roads from the R320 in particular will be under enormous strain. Factor in a place of entertainment (and more would follow as a ripple effect) whose aim is to regularly attract large crowds of people and the result could be disastrous.

In a fire emergency, the properties across the Onrus River (erf 4179, erf 4180, RCAL 581/338, RCAL 578/2), Glenfruin Meadows Estate (25 properties), the horses in the Equestrian Centre and all the businesses in Hemel en Aarde Village would need to evacuate through one narrow road – this whilst fire engines and emergency services would be trying to come in to fight the fire and protect lives and property.

Planning for fire season including clearing firebreaks and creating access is frequently discussed by our members with the fire authorities. As landowners of substantial tracts of

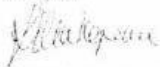
21/214

land including cultivated agricultural land, dwellings, infrastructure and indigenous fynbos, our members have a significant and onerous responsibility placed upon them by legislation concerning the spread of fire from their property onto neighbours and the concomitant fallout and damage to other surrounding properties. Hence it is critical that fires can be accessed, attacked and brought under control from every practical side as quickly and effectively as possible.

Examining the area as a whole, it is very concerning to realise that the access from the R320 is already wholly inadequate. Further, the roads in H&A Village are private property (although public right of way) and the maintenance and control thereof falls squarely on those who own the property along with others who are party to servitude agreements.

We trust the Municipality and Tribunal will give due consideration to our concerns.

Yours sincerely,



Frank Raimondo and Louise Makepeace
for the OMC

212/214

TR n. (head)
(I. Olivia)

18 JAN 2022

L Gillio

From: Pat Bagnall <
Sent: Monday, 17 January 2022 22:16
To: L Gillion
Subject: FW: The Brewery - application for a place of entertainment

FILE NO:	ER 4156
CAN NO:	Hemel & Aarde Village
	Chris
	104
LABORATOR NO:	1629024

ERF 4156, 5 VILLAGE LANE, HEMEL EN AARDE DEPARTURE: INTERACTIVE TOWN AND REGIONAL (PTY) LTD)

The following information was received from the Hemel & Aarde HOA with a closure date of 28/01/2022.

The following objections to the proposal to departure are:

1. Noise levels:

While this may appear acceptable, what guarantees and enforcement will be in place to ensure these proposals would be adhered to?

Currently residents of Hemel & Aarde estate are regularly subjected to loud music and loud hailers more specifically over weekends (day & night) when the regular daytime traffic/noise levels are minimal. This noise has a tendency to resound during the quieter traffic noise periods. This noise appears to have become louder & more frequent over the last two - three years with no consequences.

Does this mean that those noise levels are acceptable?

What happens when the Brewery proposals are accepted and not adhered to.

How will the hours of live music and activities be monitored by the owners? And how will they monitor or report on their live music/entertainment hours and to whom?

"Live music is limited to maximum at 22h00 in the evening & noise levels measured and managed by owners of facility.

"Reference is made to preliminary calculations to be held (at night 22h00 - 06h00) at Hemel & Aarde Brewery will not be in contravention of W Cape noise control regulations. What activities will be taking place during those hours???"

2. Traffic and parking:

Increased traffic on the R320 to Caledon and the entrance/exit to Hemel & Aarde Estate and Hemel & Aarde Village are already at unacceptable levels at peak periods creating a traffic nightmare. The situation will worsen if large events increase in their frequency from the Brewery.

The traffic situation will require urgent attention prior to any approval as the intersection on the R320 is too close to the R43 road intersection at Engen, and the dangerous curve from Caledon side, where motorists regularly exceed the speed limits causing dangerous traffic situations which will only increase with added events taking place.

17 JAN 2022

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The intersection on the R320 has also become problematic and dangerous as hitch hikers use this intersection to seek lifts from motorists. There are no pull off/stopping areas in an already dangerous traffic situation.

The road infrastructure is currently insufficient to cope with regular increased volume of traffic which would arise from large events being held. There is only one entrance/exit to the Hemel & Aarde Village which is currently quite congested without added events. Residents from Hemel & Aarde Estate are also battling to enter & exit from the STOP sign, often waiting long periods to enter the R320 in the Engen direction and waiting for 2-3 robot changes to enter at the R43 intersection.

The road infrastructure cannot accommodate excess numbers of motorists especially if events are to take place during normal business hours as motorists already battle to manoeuvre with ease through the complex. Added to that are the narrow roads, non-existent sidewalks, no place to pull off and congested traffic at most times of a normal working day as it has become a very busy "village centre" without the added live music and events!

3. Soup kitchen:

While there is no objection, in principle, to the Brewery providing a soup kitchen to aid/supplement the needs and distribution of soup to other existing soup kitchens, it is not in the interest of the residential or business sectors to encourage an active soup kitchen in this particular area. It will be more beneficial to prepare & supply soup to the existing kitchens which have been identified and set up in the required areas already identified by the communities.

There are many soup kitchens spread throughout the informal settlements which are assisted by the numerous organizations such as community leaders, churches and businesses and have taken much planning and creativity to set up. They would welcome the assistance and supplementation of soup from the Brewery soup kitchen to supplement their resources.

A permanent structure to supply soup on a needs basis, could well attract numerous unwanted loiterers and beggars and lead to possible health hazards, poor sanitization and criminal activities.

This would certainly detract from the intended attraction of visitors and tourists to Hermanus, who already patronize the Hemel & Aarde Village and Brewery.

While the idea is well intended it could result in the opposite outcome for the community at large in the long term.

4. Large Events:

It is not in the interest of the local residents and owners within complexes surrounding the Brewery, to entertain live music and large events in the intended area. The relative peace and tranquility which currently abounds and is enjoyed by residents after hours and on weekends, will forever be spoiled, if this were to be approved.

Visitor & tourists come & go, but local residents and business live in the community and pay the rates and taxes!

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While there may be traffic noise in the area, this too, reduces after hours and on weekends and we certainly do not require increased noise levels emanating from large events and live music - however acceptable it may be deemed by the proposal.

Amazingly, sound travels - especially at night!!!!

This is very evident from other noise levels experienced over the past years - there is no evidence of whether this is legal/acceptable or not - but certainly a disturbance to the peaceful ambience and tranquility of this community!

There are already a number of venues in and around Hermanus which offer live music, entertainment and events.

The Hermanus Country Market is but one of these venues offering live music and extra night markets. While these may have been enjoyed by the organisers and public in attendance, complaints were noted on Facebook that the noise levels impacted negatively on surrounding residents.

One always has to take into account that home owners never envisaged that their lives and tranquility would be turned upside down by these so called large and live events.

Important:

While traffic and other noise can often be heard during the day and occasionally at night, today, Wednesday evening 12th January 2022 at 19h05 - 21h30, absolute peace and tranquility reigned in our surrounds.

No sounds, no sirens, no traffic, no disturbances. Absolute bliss!

Once live entertainment, along with big events, are added to the daily traffic noise, sirens and other disturbances, along with high winds, the situation will forever be changed!

Not necessarily, for the improvement of the community.

Your sincerely

Pat Bagnall

Mail Collection 176
Hemel & Aarde Estate
Hermanus
7200

Tel : 028 316 4223
Cell : 083 336 0557

Email : patbagnall@telkomsa.net

From: Reception | Hemel-en-Aarde Estate [mailto:reception@estatehna.co.za]
Sent: Thursday, 23 December 2021 13:53

Erb 8104 Hemel + Aarde Estate

Annexure E

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR DEPARTURE: ERF 4156, HEMEL & AARDE VILLAGE**

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

Conditions

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that should additional services connections be required, the owner will be responsible for the payment of bulk services levies;
3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to minimum requirements of SANS 10400 – P:2010: Drainage;
4. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;
5. that stormwater be allowed to discharge through Erf 4156, Hemel & Aarde Village, unobstructed;
6. that any additional and / or extended vehicles entrances will be for the owner's account;
7. that no on-street parking be allowed.

p.p. A. Oude
DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

30-11-2021
DATE

Annexure F1/E

Naudica Gerber

From: Glen Klein
Sent: Tuesday, 15 February 2022 08:06
To: Naudica Gerber
Subject: ERF 4156- HERMANUS BREWERY
Attachments: IMG_20220214_105438.jpg; IMG_20220214_105529.jpg; IMG_20220214_104953.jpg; IMG_20220214_104803.jpg

Good morning, Naudica

Sorry for not coming back yesterday regarding the information of Erf 4156.

See attach images of the structures over the building line. I took measurements to ensure that the information provided to u are correct.

The structures are as follow:

1. Jungle gum (1800mm from boundary)
2. Black container with a car on top (900mm from boundary)
3. Orange Container (800mm from boundary)
4. Wooden deck on the R43 Main Road (1.2 meter high)
5. Water tanks (No access)

Kind Regards,

Glenville Klein
Building Inspector, Building Control
Overstrand municipality
T:028 313 8089 E:gklein@overstrand.gov.za



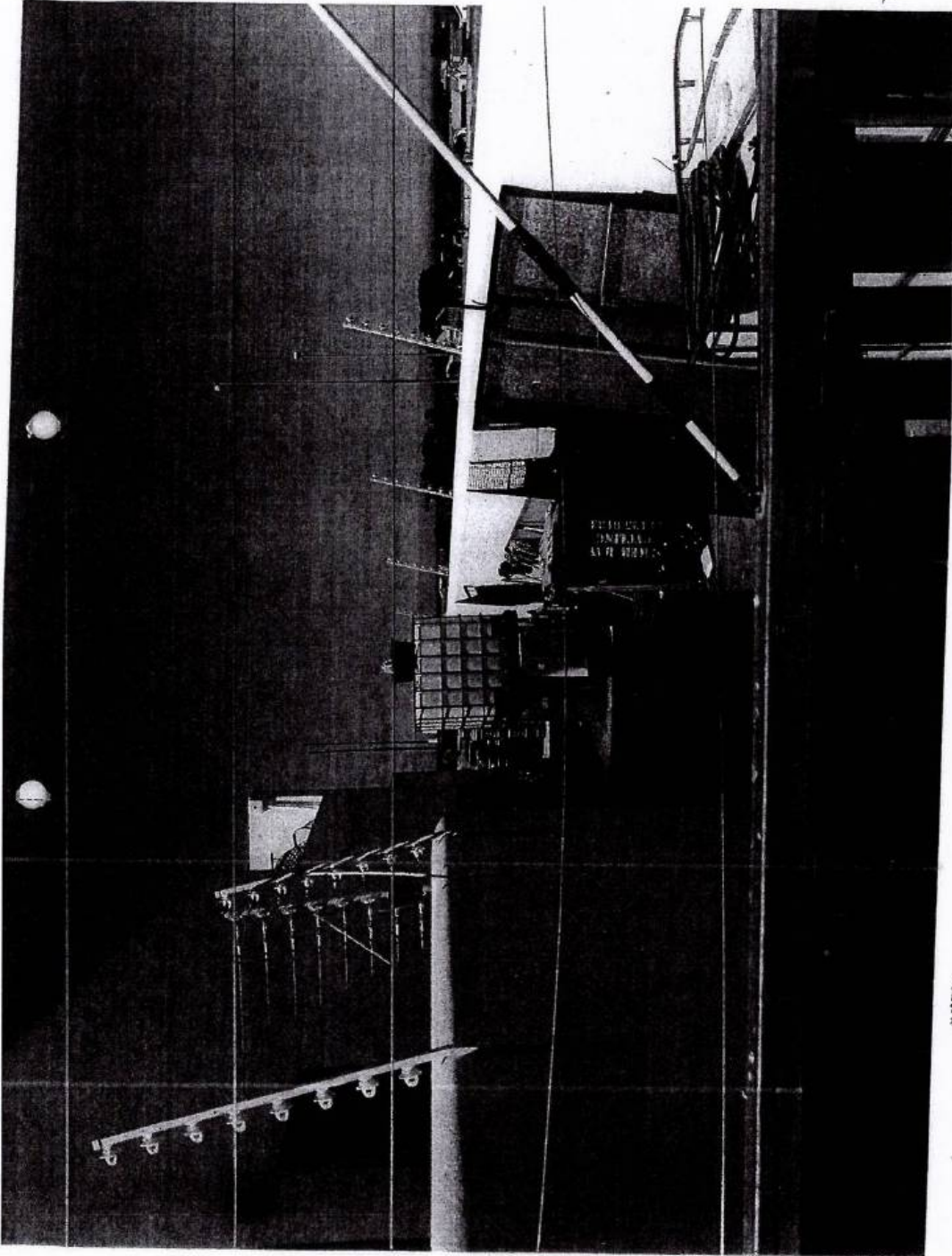
Overstrand Municipality
A: 1 Magnolia Street, Hermanus, 7200 | P: P.O Box 20, Hermanus, 7200
T: +27 (0) 313 8000 | F: +27 (0) 312 1894
E: enquiries@overstrand.gov.za | W: www.overstrand.gov.za

Vision Statement: "To be a centre of excellence for the community"

Disclaimer: This e-mail (including attachments) is subject to the disclaimer published at: <http://www.overstrand.gov.za>
Please read the disclaimer before opening any attachment or taking any other action in terms of this e-mail. disclaimer.
By replying to this e-mail or opening any attachment you agree to be bound by the provisions of the disclaimer

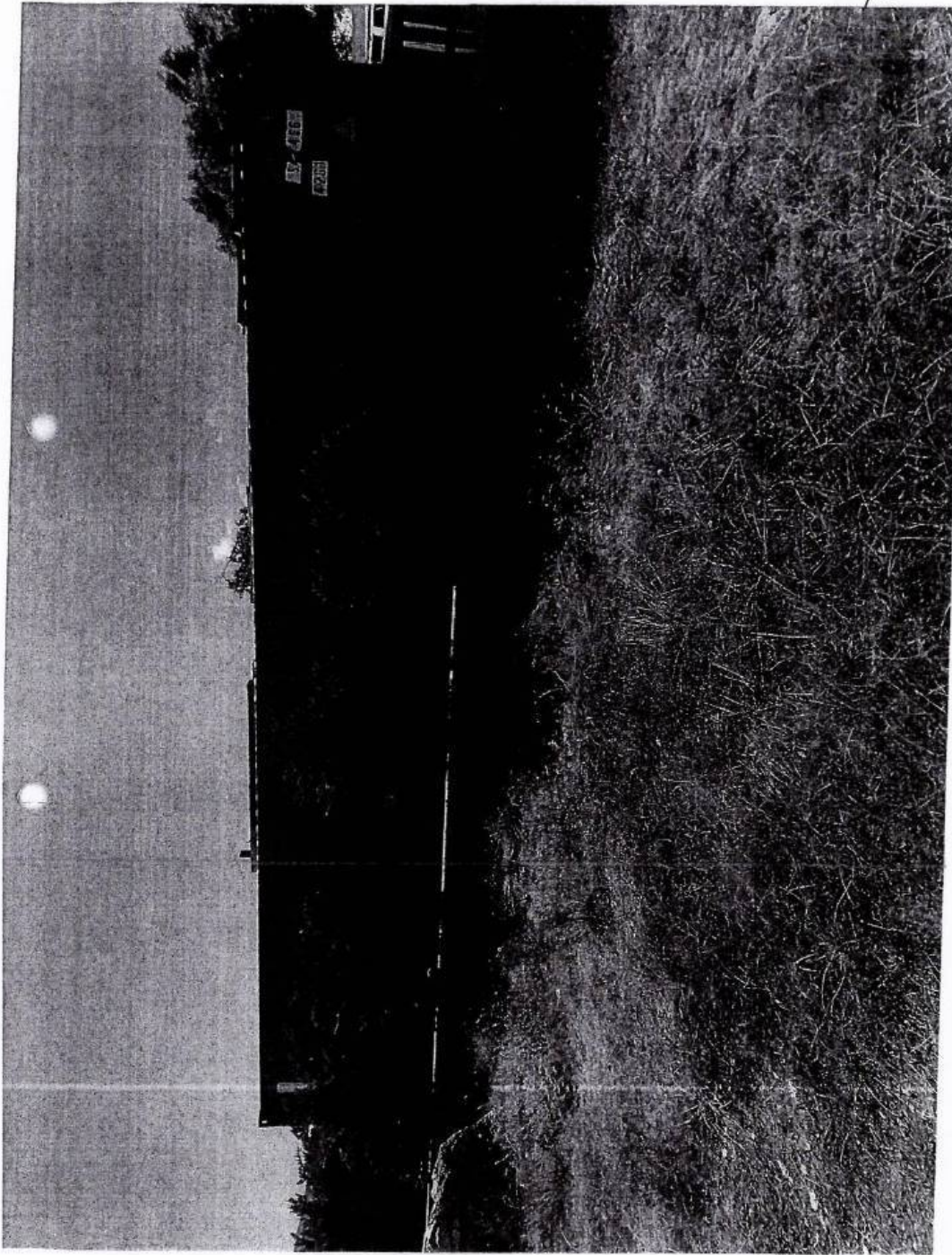
Please consider the environment before printing this correspondence.

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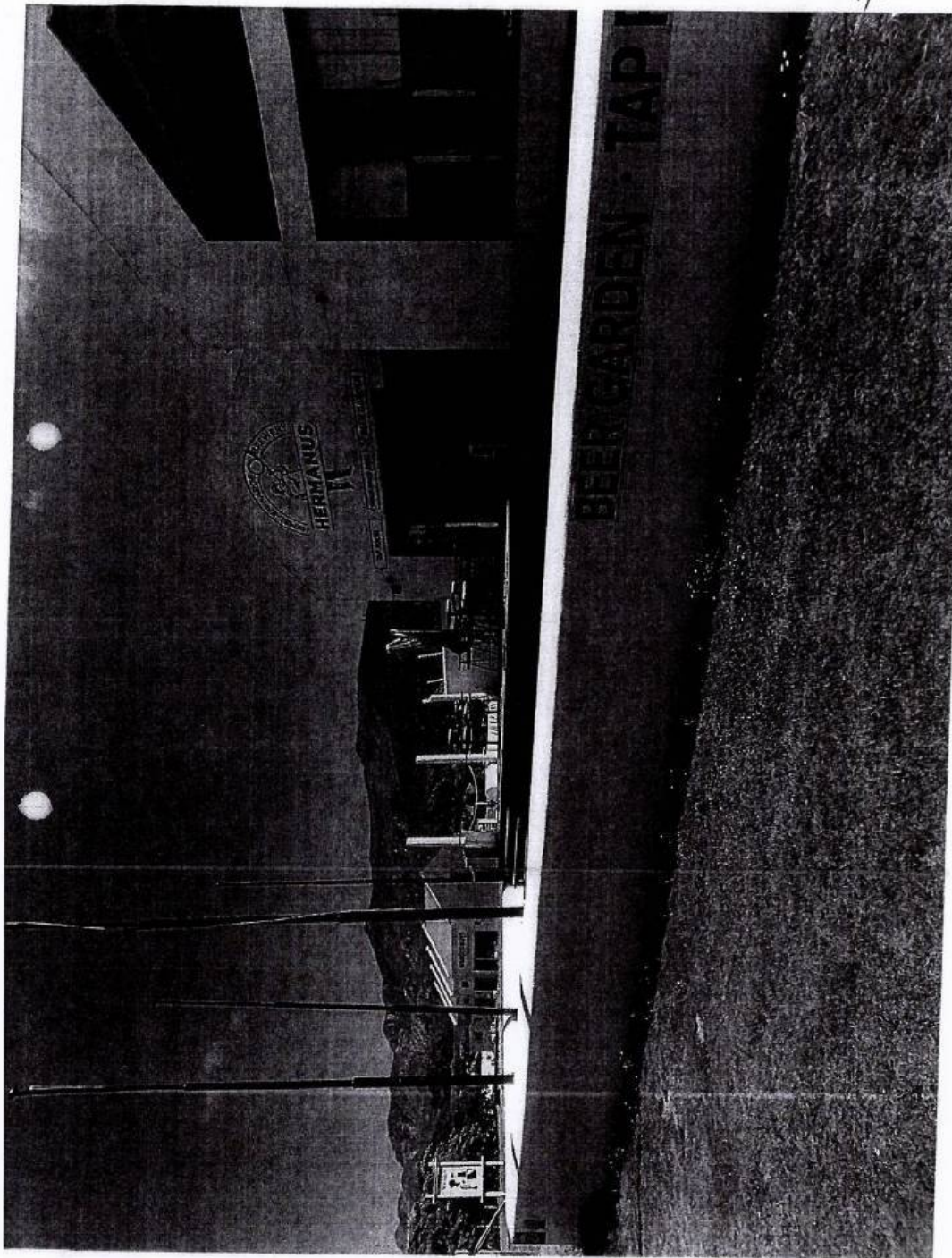


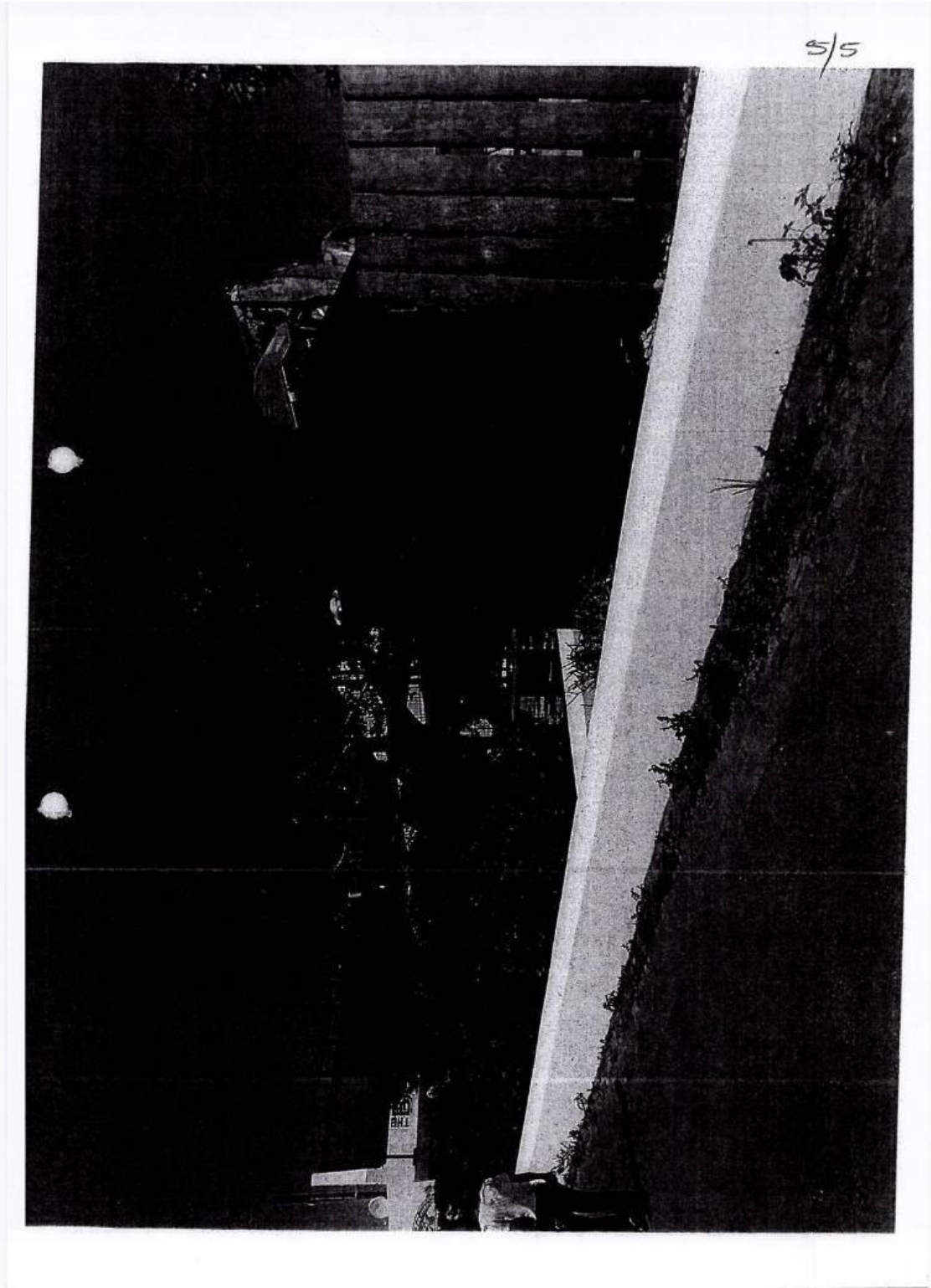
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3/5



4/5





Annexure G1



Western Cape
Government

Transport and Public Works
Grace Swanepoel
Chief Directorate: Road Planning
Grace.Swanepoel@westerncape.gov.za | Tel: 021 483 4669

Ref: TPW/CFS/RP/LUD/REZ/SUB-21/249 (Job 29130)

The Municipal Manager
Overstrand Municipality
PO Box 20
HERMANUS
7200

TP. N. Ahearne
(i.d. Boshoff)



Attention: Mr H Boshoff

Dear Sir

ERF 4156, HEMEL-EN-AARDE VILLAGE, ONRUSRIVIER: TRUNK ROAD 28 SECTION 1: APPLICATION FOR DEPARTURE

1. Your letter 4156 HON dated 19 November 2021 refers.
2. The subject erf is in the Hemel-en-Aarde village and takes access off a municipal street.
3. This application is for a Departure to accommodate a place of entertainment.
4. This Branch offers no objection to the application in terms of the Land Use Planning Act No 3 of 2014.

Yours Sincerely

SW CARSTENS
For DEPUTY DIRECTOR-GENERAL: ROADS
DATE: 12 January 2022

FILE NO:	Er 4156 ✓
	1 Hemel-en-Aarde Village
CAN NO:	Onus
	HON 4156
REGISTRATOR NO:	1625139

12 JAN 2022

2/2

TPW/CFS/RP/LUD/REZ/SUB-21/249 (Job 29130)

ENDORSEMENTS

1. Overstrand Municipality
Attention: Mr H Boshoff (e-mail: hboshoff@overstrand.gov.za)

2. Interactive Town Planning
Attention: A Wiehahn (e-mail: wiehahn.a@gmail.com)

3. District Roads Engineer
Paarl

4. Mr Hein Uys (e-mail)

5. Mr SW Carstens (e-mail)

6. Mr F Fakier (e-mail)

Annexure H/11

(398)

~~ANNEXURE C~~

SCHEME REGULATIONS
HEMEL & AARDE VILLAGE

Primary use: Tourism Business / Cottage Industry & Dwelling House

Consent use: Flats

1. Land Use Restrictions: Tourism Business:

Tourism Business means the utilization of a site, and / or the buildings on the site for business activities, such as deemed by the Council as important to encourage the tourism trade and seen as relevant to the tourism trade and which are related to the tourism trade and includes restaurants, guesthouses, guestrooms, winery, souvenir shops, tourist information centres, antique shops, arts & crafts shops, art galleries, interior decorators, travel bureau's, conference facilities.

Floor Factor: 0.75

Coverage: 50%

Height: Maximum 8m and 2 storeys

Street Building Line: 4.5m

40m along Trunk Road 28 measured from the center of the existing road or as permitted by the District Roads Engineer.
22.5m along Main Road 269, which relates to a 10m building line if the road reserve is 12.5m from the center of the road.

Side Building Lines: A minimum of 2m provided that council may lay down side building lines in the interest of public health or to enforce any law or right.

Parking: For businesses at least one (1) parking bay per 25m² of the total floor space provided on site.

For guesthouses at least 1 parking bay per guestroom and two parking bays for the owner / manager of the guesthouse.

2/19

(399)

~~ANNEX C 3/8~~

For conference facilities at least 1 parking bay per 5 seats that are provided in the building.

2. Land Use Restrictions: Cottage Industry:

Cottage industry refers to a tourist related enterprise where goods are produced on-site, based on a specific skill and offered to the general public and includes the manufacture of products such as pottery, art, jewelry, clothing etc. and the restoration of antique furniture.

Floor Factor: 0.75

Coverage: 50%

Height: Maximum 8m and 2 storeys

Street Building Line: 4.5m

40m along Trunk Road 28 measured from the center of the existing road or as permitted by the District Roads Engineer.

22.5m along Main Road 269, which relates to a 10m building line if the road reserve is 12.5m from the center of the road.

Side Building Lines: A minimum of 2m provided that council may lay down side building lines in the interest of public health or to enforce any law or right.

Parking: For cottage industry at least one (1) parking bay per 25m² of the total floor space provided on site.

3. Land Use Restrictions: Dwelling House:

Dwelling house means a building containing only one dwelling unit, which could be attached to a tourism business or cottage industry concern.

Coverage: 50% with a maximum footprint size of 250m²

Height: Maximum 8m and 2 storeys

3/19

(400)

~~ANNEX C~~ 4/18

Street Building Line: 4.5m
 40m along Trunk Road 28 measured from the center of the existing road or as permitted by the District Roads Engineer
 22.5m along Main Road 269, which relates to a 10m building line if the road reserve is 12.5m from the center of the road.

Side Building Lines: A minimum of 2m provided that council may lay down side building lines in the interest of public health or to enforce any law or right.

Parking: At least two (2) parking bays.

4. Land Use Restrictions: Flats:

Flats means a building containing two or more dwelling units for human habitation, together with such outbuildings as are ordinarily used therewith.

Flats will be of the same size or less than the tourism business or cottage industry.

Floor Factor: 0.70

Coverage: 35%

Height: Maximum 8m 2 storeys

Street Building Line: 4.5m
 40m along Trunk Road 28 measured from the center of the existing road or as permitted by the District Roads Engineer.
 22.5m along Main Road 269, which relates to a 10m building line if the road reserve is 12.5m from the center of the road.

Side Building Lines: A minimum of 2m provided that council may lay down side building lines in the interest of public health or to enforce any law or right.

4/19

(491)

~~ANNEX C~~ 5/2

Parking: At least 1.25 parking bays per dwelling unit, or a greater number than the required number, if so required by council. 25% of the required number of parking bays shall be provided uncovered on the site and shall be clearly indicated by means of a notice board to satisfaction of the council for the exclusive use of visitors.

5. Further Site Requirements

a. Parking and site access

- The vehicular access shall be provided to the satisfaction of the council.
- If the corner at a street intersection is not splayed, vehicular access or exit ways shall be not closer than 10m to such corner.
- Such parking areas shall be duly constructed to the satisfaction of the council.
- Such parking areas shall be used exclusively for the parking of vehicles which are lawfully allowed on them and shall not be used for trading or any other purpose.
- The way in which the parking is intended that vehicles should park and gain access to or exit from such parking area shall be indicated on a plan which shall be submitted to the council, which may approve or reject it or lay down any conditions deemed necessary by it.
- The council may lay down more restrictive requirements than those regulations mentioned above under this section if deemed necessary from a traffic point of view.

b. Site development

- Should a combination of the primary uses and / or secondary uses be developed on a site, a maximum total of 50% coverage will be applicable.
- Only 1 dwelling house will be permitted per erf and inhabited by the owner / employee of the tourism business or cottage industry concern.
- Flats will only be permitted if a tourism business or cottage industry concern exist on the subject erf.
- A dwelling house will only be permitted if a tourism business or cottage industry concern exist on the subject erf.

5/19

(402)

ANNEX C 1/2

- The manufacturing section of a cottage industry concern, will not exceed more than 50% of the floor area of such a concern.
- Any development on a erf will be subject to the approval of a site development plan by council indicating all existing and proposed structures, their use and parking layout indicating the number of parking bays provided.
- All structures will comply with the Hemel & Aarde approved design manual and approved by the appointed overseeing architect.
- All new development proposals and land uses will also be referred to the Hemel & Aarde Home Owners Association for their approval.

6/19

(403)

~~ANNEX C~~ 7/8

6. Definitions

"Arts & craft shop" means the use of a building or portion of a building where handmade goods are produced, displayed and sold to the general public.

"Conference facility" means the usage of a building for the hosting of conferences and can include committee rooms, auditoriums, dining rooms and on-site consumption of alcoholic beverages.

"Cottage Industry" refers to a tourist related enterprise where goods are produced on-site, based on a specific skill and offered to the general public and includes the manufacture of products such as pottery, art, jewelry, clothing etc and the restoration of antique furniture.

"Council" means the Municipal Council of the Overstrand Municipality

"Dwelling House" Dwelling house means a building containing only one dwelling unit.

"Flats" means a building containing two or more dwelling units for human habitation, together with such outbuildings as are ordinarily used therewith.

"Guesthouse" means a building, excluding a hotel, hostel or boarding house, consisting of a number of dwelling units or guest rooms, which are equipped for and may be utilized by travelers or holiday makers which in the opinion of the council are of short term nature, provided that the units or guest rooms are marketed for rental only and which can be licensed in terms of the Liquor Act 1989 (Act 27 of 1989) as amended, for on-site consumption of alcohol and subject to any conditions or restrictions that may be imposed by council, and can include a restaurant, but exclude a cash bar.

"Guest rooms" means rooms, other than rooms occupied by the owner / manager and their families, that are fitted to be used by travelers or holiday makers and which are rented for a short term on a bed-and-breakfast basis.

"Restaurant" means a business which can be licensed or not, where food and refreshments are prepared and served to clients and in which on-site consumption of liquor has been legalized in terms of a liquor license issued, but excludes a tavern.

7/19

(404)

~~ANNEX C~~ 8/2

"Tourism Business" means the utilization of a site, and / or the buildings on the site for business activities, such as deemed by the Council as important to encourage the tourism trade and seen as relevant to the tourism trade and which are related to the tourism trade and includes restaurants, guesthouses, guestrooms, winery, souvenir shops, tourist information centres, antique shops, arts & crafts shops, art galleries, interior decorators, travel bureau's, conference facilities.

8/19

HEMEL EN AARDE

HERMANUS

DESIGN MANUAL

	Barry Doel Associates
	Architects
	P.O. Box 16019, Vlaeberg, 8018.
	97 Keerom Street, Cape Town, 8001. Fax No. 230680 Tel. 238225/6/7.

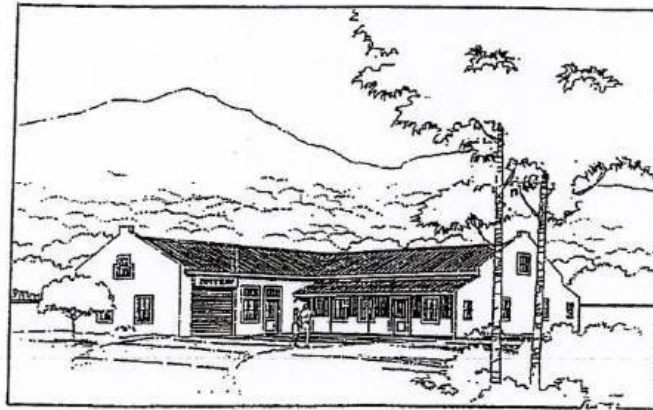
HEMEL EN AARDE : BUILDING DESIGN STANDARDS

In order to ensure that this development retains a uniform character, and that conflicting styles of Architecture do not vie with one another to the detriment of the environment as a whole and the investment value, the developers have adopted an architectural concept to establish and maintain a character for the project.

The implementation and maintenance of a unified character is a condition of purchase of the site. The design criteria set out herein are in addition to the building and town planning regulations imposed by the local authority.

The rationale behind this approach is to permit considerable diversity but through restrictions on certain materials and design parameters to ensure that there is a sufficiently unified design thread running through all of the buildings such that the township is an harmonious whole.

The character to be achieved for the architecture is 'Cape traditional' with large areas of white painted walls, green corrugated, asbestos or metal roofs, with or without parapets, and windows essentially vertical in proportion except where under cover. The scale and design of the building shall be such that the structures are domestic in character. The residential components will have wide verandas on at least two sides.



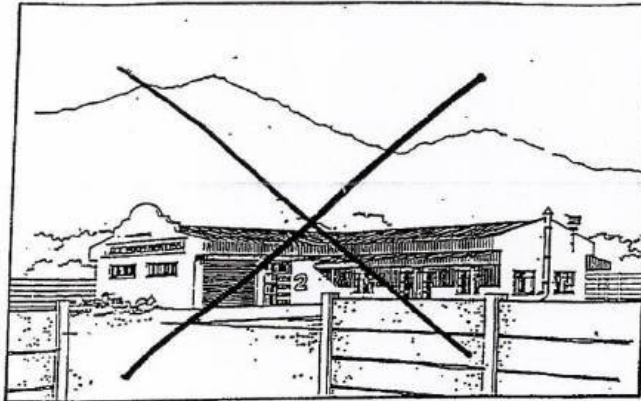
Decoration is limited to plaster mouldings and timber work to verandas and balustrades, door and window surrounds and gable ends. Forms are to be simple and traditional.

Internal design, character and materials are not restricted in any way, nor is there any minimum size or value of building prescribed provided the design criteria are met.

10/19

2

It is desirable that the consistency in the architectural controls is sufficient to establish and maintain an aesthetic theme, albeit with a certain degree of variation. For this reason other "styles" of architecture are expressly excluded.



This document forms part of the deed of sale and will be administered and applied by developers and their consultant architects. The developers and their consultant architects reserve the right to make any additions or alterations to these design standards that, in their opinion, may be needed to preserve the integrity of the architectural style.

The decision as to what is considered acceptable within the framework of the architectural concept is delegated to the developers consultant architects. The decision of the architects as to whether a design is acceptable in the proposed aesthetic may not be vetoed on technical or professional grounds, the developer retains the right to enforce the uniformity of the development in terms of clause 1.2.

The appointed consultant architects are :

Barry Doel Associates
Box 16019
Vlaeberg
Cape Town Tel (021) 238 225
Fax (021) 230 680

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3

1. PLANS APPROVAL

- 1.1 No building may be erected or altered without approval by the Consultant Architect of the aesthetic design of the proposed construction. This does not apply to internal amendments to existing buildings.
- 1.2 All plans for the construction of, or alteration to, buildings must be submitted to the Home Owners Association for approval before being submitted to the Local Authority. Prior to the establishment of a Home Owners Association any plans not prepared by the consultant architect for the construction of, or alteration to buildings, must be submitted to him for approval, for which he shall be entitled to a scrutiny fee.
- 1.3 Where there are existing buildings on adjacent sites these must be considered in the design of the building. Site walling must be coordinated with the adjacent erf.
- 1.4 When the client makes use of the pre-purchased services of the consultant architect in terms of the deed of sale, then concept drawings will be prepared by the consultant architects prior to the preparation of final working drawings which must bear the signature of the consultant architect when submitted to the local authority
- 1.5 Should any provision of this design manual be regarded as contrary to The National Building regulations, then The National Building Regulations shall prevail.
- 1.6 The developers may approve waivers of any mandatory specifications under special circumstances where such waivers are recommended by the Consultant Architect.

2. THE SITE

- 2.1 The building lines are as set by the local authority, and as modified by the consultant architects. The building restrictions in terms of the Overberg Regional Services Council approval reference L/6(Spes 132) are as follows.
 - 2.1.1 Along Trunk Road 28 = 50 meters from the centre of the existing road.
 - 2.1.2 Along Main Road 269 = 22,5 meters (which relates to a 10 meter building line if the road reserve is 12,5m from the centre of the road.
- 2.2 The siting of buildings, and their height must not unreasonably affect the amenities and site lines of adjacent properties. The developer's decision in this regard, until such time as a Home Owners Association is established, will be binding on all concerned.

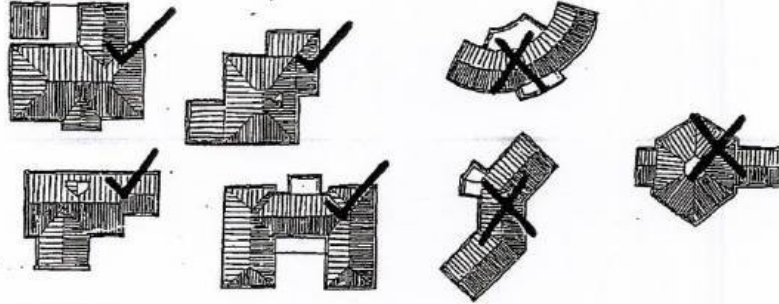
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3. BUILDING FORM

3.1 PLAN FORMS

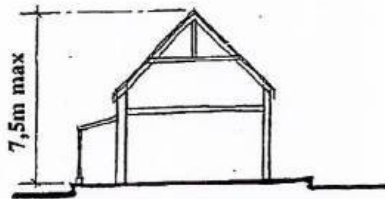
3.1.1 Plan forms must be rectangular, or composed of rectangular or square forms.



3.2 HEIGHT

3.2.1 No building shall exceed two storeys in height at any point. Attic type accommodation in the roof is acceptable.

3.2.2 The maximum height shall be 7,5m from finished ground floor to the apex of the roof.



3.3 LEVELS

3.3.1 No elevation of the ground floor of any building (above the ground) on columns, piers, walls or such like where there is a void below the building, will be permitted:

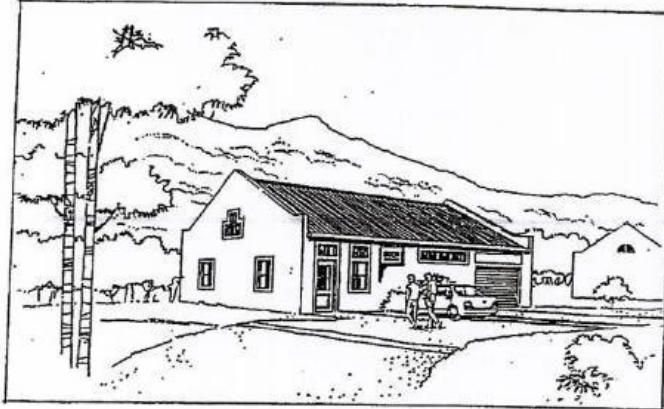
3.3.2 The ground floor shall not be more than 500mm above actual ground on average.

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3.4 INDUSTRIAL BUILDING/SHED

3.4.1 The industrial building shed may not exceed 500m² in total unless approved by the Home Owners Association and relevant Local Authority.

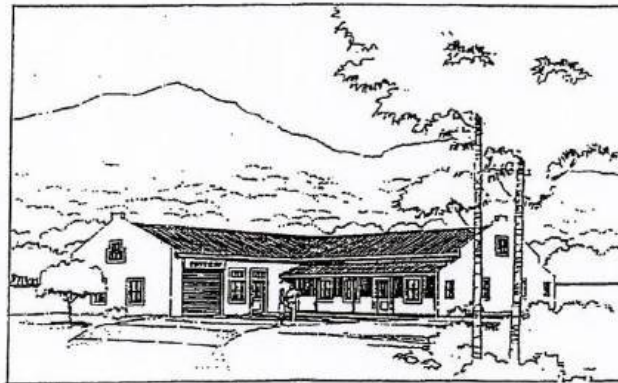


4. CONSTRUCTION AND MATERIALS

4.1 ROOFS

4.1.1 All roofs must be pitched. The pitch shall be within the range 30-45 degrees, except for verandas which may be less. Flat roofs, defined as 5 degrees or less must be concealed behind parapets on all sides.

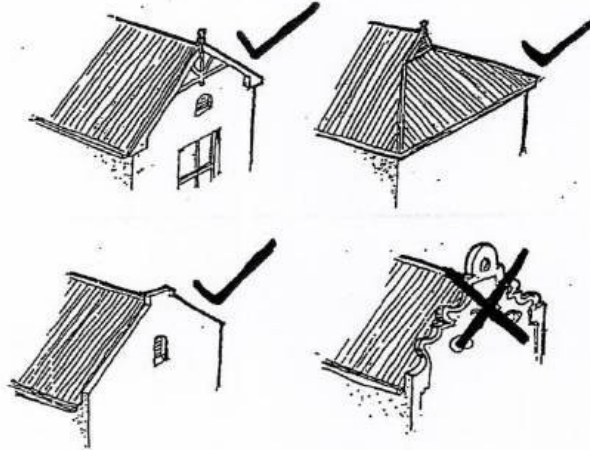
4.1.2 Roofs maybe Hipped or Gabled, rolled sheets may be used.



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4.1.3 Gables where used must be simple. No curved or decorative gables will be accepted.



4.1.4 Overhangs should be restricted to 300mm maximum.

4.1.5 Roofs shall be green in colour.

4.1.6 The following roofing materials are permitted:
Traditional pattern corrugated iron or aluminium
Victorian pattern corrugated asbestos
IBR sheeting

4.1.7 No other roofing materials will be allowed.

4.1.8 All roofing on any one property shall be of the same type, unless by approval of the consultant architect.

4.1.9 Roof forms shall be traditional.

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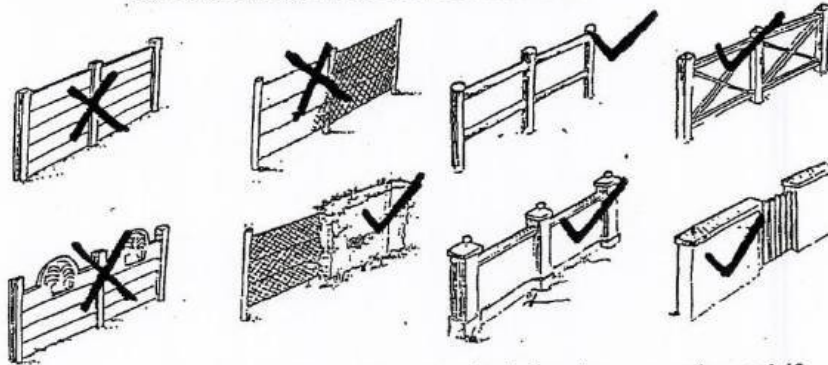
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4.2 WALLS

- 4.2.1 External walls shall be smooth plastered with large clear areas.
- 4.2.2 Face brick of any colour and painted fairfaced brickwork is not permitted.
- 4.2.3 Plaster quoins will be permitted and may be in contrast to the wall colour, but may only be white.
- 4.2.4 All external walls shall be white painted except where the consultant architects approval for pastel shades has been received. Samples must be submitted for approval. The Architects decision with respect to colours will be final.

4.3 SITE WALLS

- 4.3.1 Site walls shall be white painted, plastered brick or blockwork with a weathered plaster coping.
- 4.3.2 No prefabricated walling systems, vibracrete, unplastered blocks, face brick or corrugated sheet fences will be permitted.
- 4.3.3 Wire mesh fencing may be used with specific approval and shall be planted up as a hedge. Razor wire, electrified fencing and other security means may be considered only if aesthetic standards are met. The Consultant Architects decision will be final.



- 4.3.4 These pole fences or other wrought timber fences may be used if painted white or tanalith treated.

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4.4 FENESTRATION AND DOORS

4.4.1 Windows are to be of timber painted white or green, white epoxy coated aluminium, white PVC or white painted, steel frames. Natural or dark anodized aluminium, stained or varnished timber, are not permitted.

4.4.2 The proportion of all windows should be such that there is always a larger vertical dimension.



4.4.3 Large horizontal glazed doors and windows may be used where they occur beneath verandah, pergolas and overhangs in excess of 900mm.

4.4.4 Winblok may be used with fixed glass or openable sections.

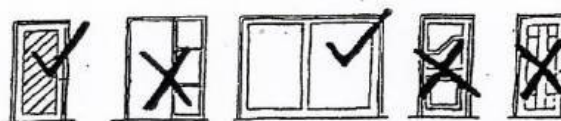
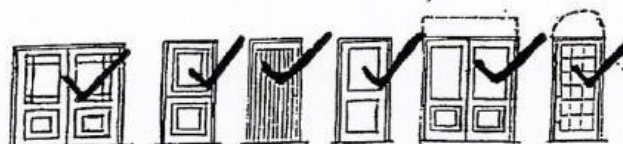
4.4.5 External burglar bars will not be permitted.

4.4.6 Boarded or louvred shutters are recommended.

4.4.7 Doors shall be of traditional proportions and must be painted timber.

4.4.8 Doors must be painted white, green, black. Bright colours will not be permitted.

4.4.9 Roller shutter doors are permitted in the industrial components.

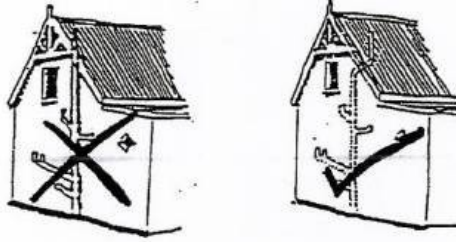


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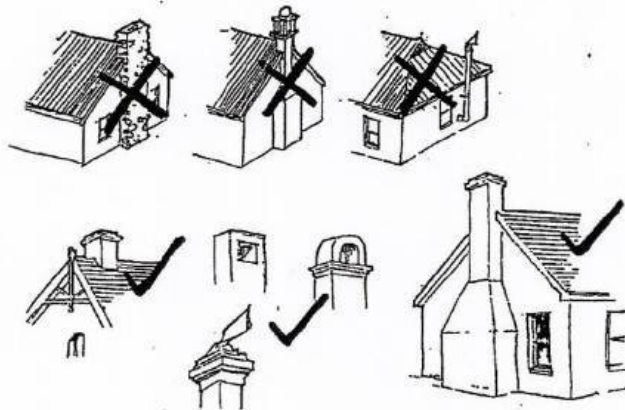
4.5 SOIL AND WASTE PIPES

4.5.1 Soil and waste pipes must all be concealed, unless located in closed courtyards not visible from beyond the site.



4.6 CHIMNEYS

4.6.1 Chimneys must be built of masonry and plastered. Exposed metal flues, stone chimneys and the like are not permitted. Chimney tops should be simply designed and not given to sculptured excesses. Cowls as manufactured by Jetmaster, including the metal flue through the roof and the "H" cowl may be used.



4.7 PERGOLAS AND COVERED TERRACES

- 4.7.1 Pergolas and external timber work to be painted white or green.
- 4.7.2 Pergolas may be constructed with steel pole supports or other steel sections, painted white or green.
- 4.7.3 Pergolas may not be covered with opaque or translucent plastic sheeting unless completely concealed by fascias.
- 4.7.4 Columns to pergolas and verandah should be of light simple timber sections with traditional decorative balustrades and trim or masonry or concrete columns with plaster capping and base.

5. SITE USE

5.1 COMMERCIAL ACTIVITIES

- 5.1.1 The type of commercial activity carried out on the site shall be governed by its environmental acceptability. No activities will be permitted which give rise to any form of pollution including smoke, noxious fumes, noise, spillage of waste and the like. No activity will be allowed that has an industrial type of effluent other than normal wash water that can be treated in a septic tank.
- 5.1.2 The aesthetic acceptability of the activity shall also be a factor for the consideration as no activities or materials or refuse shall be evident from beyond the site.
- 5.1.3 The type of commercial activities considered desirable and suitable include the following, but are not limited to them, and the consultant architects decision, in conjunction with The Hemel en Aarde Village Home Owners Association shall be final: Pottery studios, artists studio's, craft work of most forms, restaurant, guest rooms, winery, professional administration offices, furniture restoration and sales eg. antiques and a nursery.
- 5.1.4 A petrol filling facility with a restaurant will be permitted by the association on erf 13. No wash bays, lubrication bays or workshop will be permitted. The design of the facility will be subject to approval of the consultant architect and the developer. The use of this erf as a petrol filling facility must be submitted to the Local Authority and the District Roads Engineer for approval.

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5.2 LAUNDRY AND REFUSE TO DWELLINGS

- 5.2.1 All dwellings must have an enclosed drying yard. The drying yard and refuse area must be completely enclosed within walls high enough to provide adequate screening. Walls to be of plastered masonry.

5.3 AWNINGS

- 5.3.1 No fixed or moveable, aluminium, plastic or metallic awnings, screens or coverings of any sort will be permitted. Canvas awnings may be erected subject to approval by the consultant architect.

5.4 TELEVISION AERIALS AND SOLAR HEATERS

- 5.4.1 All television aerials must be erected within the roof space. Where adequate reception is not possible specific approval must be obtained for the erection of an external antenna.
- 5.4.2 Solar panels must be flush with the roof and preferably mounted so as to be inconspicuous as possible.

6. SIGNAGE

- 6.1.1 No flashing signs will be permitted. All signage must be approved by the consultant architect, the Hemel and Aarde Home Owners Association and the relevant Local Authority.

7. PARKING

- 7.1.1 Sufficient parking on the site, for use by visitors or clients, must be provided by the registered owner of the property.

Annexure I 1/9

Townplan

From: K Thomas
Sent: Monday, 17 February 2020 08:30
To: H Boshoff
Subject: Fwd: Re: Erf 4156, Hemel en Aarde Village - THE BREWERY

More Bossie

Sal so maak.

Groete,

Kurt Thomas

Town Planner : Land Use Management and Compliance
 Overstrand Municipality
 A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20
 T: 028 313 8900 | F: 028 313 2093 | E: kthomas@overstrand.gov.za

>>> Helgaardt Boshoff 2020/02/17 07:51 AM >>>
 Hi Kurt

Sal jy ondersoek asb. Volgens my kennis het die grondeienaar nie die nodige toestemmings om 'n "place of entertainment" te bedryf nie.

Dankie.

Helgaardt Boshoff

Town Planner, Town & Spatial Planning Department
 Overstrand Municipality
 A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20
 T: 028 313 8900 | F: 028 313 2093 | E: hboshoff@overstrand.gov.za

>>> Louise Makepeace <makepeace.lou@gmail.com> 14 February 2020 >>>
 Thanks very much.

We do have a copy of the Scheme Regulations and understand that a restaurant is a primary right. We have no problem with this at all. There are numerous very good restaurants around us which we enjoy and frequent.

As mentioned, we look forward to hearing whether The Brewery has any permissions/licences/consents to regularly have live singers and bands playing outdoors as well as to hold concert events such as "Watershed" which is described as South Africa's top acoustic rock band.

This event was held on 3 January 2020. Tickets were sold on Quicket. Perhaps they have a "place of entertainment" consent that none of us neighbours know about?

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Kind regards
 Louise Makepeace
 Cell +27 84 506 8486

From: Helgaardt Boshoff <hboshoff@overstrand.gov.za>
Date: Friday, 14 February 2020 at 3:04 PM
To: Louise Makepeace <makepeace.lou@gmail.com>
Cc: Kurt Thomas <kthomas@overstrand.gov.za>, Penelope Aplon <pmichaels@overstrand.gov.za>
Subject: Erf 4156, Hemel en Aarde Village - THE BREWERY

Good day Mrs Makepeace

Your e-mail below refers.

The matter will be dealt with by Mr Kurt Thomas who is in charge of Land Use Management & Compliance. Please direct any further queries in the above regard to Mr Thomas at kthomas@overstrand.gov.za

I will in the meantime take the matter up with him.

With regard to noise complaints, please contact Mrs Penelope Aplon at paplon@overstrand.gov.za who will assist you in this regard.

Please note that a restaurant is a primary right on the above property. The other seemingly unauthorized uses will be handled by Mr Thomas.

Trusting you find the above in order.

Helgaardt Boshoff
 Town Planner, Town & Spatial Planning Department
 Overstrand Municipality
A: 16 Paterson Street, Hermanus, 7200 **P:** P O Box 20
T: 028 313 8900 | **F:** 028 313 2093 | **E:** hboshoff@overstrand.gov.za



Overstrand Municipality
 A: 1 Magnolia Street, Hermanus, 7200 | P: P.O Box 20, Hermanus, 7200
 T: +27 (0) 28 313 8000 | F: +27 (0) 28 312 1894
 E: enquiries@overstrand.gov.za | W: www.overstrand.gov.za

Vision Statement: "To be a centre of excellence for the community"

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Please consider the environment before printing this correspondence.

>>> Louise Makepeace <makepeace.lou@gmail.com> 14 February 2020 >>>
 Good day Mr Boshoff,

3A

I write to you on behalf of the Glenfruin Meadows HOA including stables, junior riding school and a few neighbouring properties.

Please could you advise what licences/permissions/consents does the above-named business have? The business entity is probably called Hermanus Microbrewery (Pty) Ltd.

We understand they operate a "beer garden, taproom brewery and restaurant".

We are particularly interested in what permissions or consent they have to play live outdoor music and hold events.

I look forward to your soonest response.

Kind regards
Louise Makepeace
Cell +27 84 506 8486

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Redbuild Trust

IT2386/98
 VAT No 4230246102
 Box 1415, Hermanus, 7200
 Fax: +27 +86 617 9567
 Cell 084 506 8486
 (Louise Makepeace)
 Cell: 083 700 0079
 (John Makepeace)

2 March 2020

BY EMAIL

Attention: Mr Kurt Thomas - Town Planner : Land Use Management and Compliance,
 Overstrand Municipality. Email: kthomas@overstrand.gov.za

CC Ms Penelope Aplon, Overstrand Municipality. Email: pmichaels@overstrand.gov.za

CC Mr Helgaardt Boshoff - Town Planner, Town & Spatial Planning Department,
 Overstrand Municipality. Email: hboshoff@overstrand.gov.za

Dear Mr Thomas,

Erf 4156, Hemel en Aarde Village – The BREWERY

Introduction

We address you in the following capacities and representing **5 properties** within a radius of one kilometre of the abovenamed business:

John Makepeace as Sole Trustee of Redbuild Trust, the owner of 4 of the properties being HON4179, RCAL578/2, RCAL 581/338 and 23 Glenfruin Meadows, Onrus River (HON4365); and

John and Louise Makepeace, owners of 22 Glenfruin Meadows, Onrus River (HON4366).

We refer to our correspondence and telephone discussions over past weeks regarding The Brewery.

Background and complaint

We are extremely frustrated and disturbed by the noise pollution that is generated by The Brewery on a regular and consistent basis, the effect of which is felt on all 5 of our properties. We are also gravely concerned as to the effect that this poses to the future value of our property and investment if it is allowed to continue unabated.

The issue is with regard to live, heavily amplified music including multi member bands that perform at The Brewery outdoors and **completely in the open**. In addition to the above, there are numerous events held using DJ's with huge screen TV's, also out in the open.

It is to be noted that many of these concerts are heavily marketed (nationally) with tickets on sale to the public through online ticketing agencies as well as other methods.

Whereas we have personally engaged with the owner operator of the venue for over a year on this issue and the distress that it is causing, it is clear and evident that they show scant regard or consideration for our complaints nor the neighboring properties and they have and will continue the operation and indeed escalate it, unless steps are taken to apply the law.

Business operations

It has been confirmed by you that the business has valid liquor licences to operate a micro-brewery (off consumption) and a restaurant (on consumption) and we accept that, in terms of the Scheme Regulations of the Hemel en Aarde Village, they have the primary right to operate a restaurant business.

It is however evident that, whereas they may be operating as a restaurant and possibly a micro-brewery, they are also operating as a fully fledged "**place of entertainment**" for which they do not have the necessary consent and that accordingly these additional activities are in contravention of the law.

Our contention in this respect is supported as follows:

The definition of "business premises" including that of a restaurant, in the Gazetted Overstrand Zoning Scheme Regulations 2013 (attached), **specifically excludes a "place of entertainment"** and this is defined in the Gazetted Overstrand Zoning Scheme Regulations 2013 as follows:

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

Obviously The Brewery has every right to apply for the necessary consents and departures and quite understandably, the requirements are particularly onerous and designed to protect surrounding property owners and occupants as well as property values.

Conclusion

If you are in any doubt as to the scale of their activities and the noise being generated, please consult their Facebook page for photos and videos - The Brewery Hemel-en-Aarde.

Having now established that The Brewery is contravening the law in this respect, it follows that we are not in a position to engage further with them to discuss compromises, as we are neither empowered by law, nor are we willing to do so.

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As advised by our local Councilor and legal opinion, the correct way forward is for us to engage with the Municipality in writing and insist that it applies the regulations and ensures that the business operates within the law.

Accordingly, we respectfully call upon you to act as a matter of urgency, bearing in mind that the Easter weekend is approaching and no doubt plans are underway for an escalation in the outdoor entertainment and quite possibly events and concerts.

In the event that the Brewery does apply for the relevant consent then we expect that we will be included in the process requesting comments from interested and affected parties.

Whilst you have also referred us to your colleague Ms Penelope Aplon who is responsible for dealing with noise complaints, we believe that at this stage the measurement of noise levels is irrelevant as first and foremost they have no consent or permission to operate as a place of entertainment. However, for her consideration, we have copied Ms Aplon on the email which contains this letter.

We understand you will be receiving similar correspondence from other aggrieved parties regarding this situation and we trust that you will deal with the matter swiftly and effectively.

Please do not hesitate to contact us if you require any further information.

Yours sincerely



John and Louise Makepeace

H Boshoff

7/9

From: Peter Beim <Peter@Viewranks.com>
Sent: Wednesday, 04 March 2020 17:42
To: K Thomas
Cc: H Boshoff; IngridMarincowitz
Subject: Ref: Erf 4156, Hemel en Aarde Village – The Brewery.

Dear Mr Thomas

We are the owners of No 20 Glenfruin Meadows and are very much affected by the loud music that is played by bands at the bequest of The Brewery to entertain their customers. We understand they are not legally allowed to do this and are therefore breaking the law.

We are amazed that The Brewery can so openly disregard the planning requirements – not only the Municipality bylaws, but the National laws, including environmental management and control – which specifically excludes amongst other things, generating noise or revelry and loud music.

It is unacceptable that a business can disregard the Municipality's and the National Laws with such open contempt and their immediate neighbours with complete disregard.

We ask that action is taken forthwith to ensure that The Brewery immediately ceases this illegal part of their activities – so our rights as ordinary citizens and as property owners living close to The Brewery, are protected.

Would you please confirm receipt of this email and keep us updated on what action is to be taken.

Thank you.

Ingrid Marincowitz & Peter Beim

Message content scanned using Barracuda Cloud Security.

8/9

Townplan

From: K Thomas
Sent: Monday, 09 March 2020 14:47
To: info@wilarch.co.za
Subject: Re: Erf 4156, Hemel en Aarde Village - THE BREWERY / Non-Compliance - Place of Entertainment

Good afternoon

Herewith confirmation of receipt of your e-mail below.

We are attending to the matter and will provide feedback in due course.

Kind regards,

Kurt Thomas

Town Planner : Land Use Management and Compliance
 Overstrand Municipality

A: 16 Paterson Street, Hermanus, 7200 **P:** P O Box 20

T: 028 313 8900 | **F:** 028 313 2093 | **E:** kthomas@overstrand.gov.za

>>> "Neill Wilson Architects" <info@wilarch.co.za> 2020/03/02 05:00 PM >>>

NEILL WILSON ARCHITECT CC



Corporate Member of the Institute of South African Architects

Chartered Member of the Royal Institute of British Architects

Attention : Mr Kurt Thomas / Town Planning – Land Use Management & Compliance

As an owner of property in the Glenfruin Meadows Estate and an adjoining property to the north, this letter serves to bring to your attention the illegal activities at The Brewery in the Hemel & Aarde Village i.r.o. live entertainment on the premises.

Our home is situated a considerable distance from The Brewery on the other side of the river alongside Kidbrooke Place Retirement Village and the noise levels experienced from The Brewery can be particularly loud depending on the wind direction. We are not even close to the Brewery and it almost sounds as if we are "at the show" sometimes.

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Whilst perhaps not directly impacting on some of our residents at present (those situated on the far side near the R43 bridge), the very unpleasant noise pollution has repercussions on the Estate as a whole and has a seriously detrimental effect on the enjoyment of our homes and the Estate and if allowed to continue would probably result in a devaluation of property values.

We therefore request that you uphold the law with The Brewery in this matter – as you have relentlessly applied the rules to other establishments – and be advised that we will vigorously oppose an application for the licence to operate a place of assembly/live music in a predominately residential area. Please note that to sanction this activity could well open up the 'flood-gates' in future for similar licences to be granted. Whalehaven Wines, possibly even some of the undeveloped erven adjacent to the Estate could also follow suit.

The Brewery to date appears to have shown little interest in our concerns – and as we are not in a position to enforce the law this responsibility is yours.

Please acknowledge receipt of this e-mail by return to : info@wilarch.co.za

Yours sincerely,

Jo Wilson

3 & 26 Glenfruin Meadows, Onrus
Erven 4344 & 4180

17 High Street • P.O. Box 150 Hermanus 7200 • [Tel:028-312 4422](tel:028-3124422) • Fax To Email:086 5353534 • Fax 028 313 0123 • info@wilarch.co.za

Reg. No. CK1994/012413/23
Member: N R Wilson

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Annexure J1/3

INTERNAL MEMOOFFICE OF THE DIRECTOR: INFRASTRUCTURE & PLANNING
TOWN & SPATIAL PLANNING

To: D O'NEILL (MUNICIPAL MANAGER)
 Cc: R KUCHAR (SENIOR MANAGER: TOWN & SPATIAL PLANNING)
 From: N GERBER (TOWN PLANNER: LAND USE MANAGEMENT & COMPLIANCE)
 Date: 17 SEPTEMBER 2021

**UNAUTHORISED EVENT AND LAND USE AT THE BREWERY HEMEL-EN-AARDE VILLAGE:
 ERF 4156 ONRUSTRIVIER**

Please find herewith a report in respect of the above-mentioned matter.

Events:

It has come to our attention that events are continuously being planned by the Brewery of which the Heritage Day Celebration is to take place on 24 September 2021 and Brewery to Brewery Mountain Trail Bike Race on 2 – 3 October 2021, the first of which is the main subject of this discussion.

As advertised on social media, the Heritage Day Celebration event will entail the following:

- It is a free event to which all is welcome.
- A braai for all who want to join.
- Meat on Main Butchery will be selling braai packs, boereworsrolls, biltong and more.
- Fires will be kept burning the entire day for anyone to come and braai or someone will braai meat for event attendees.
- There will be a pap, sous and salad kiosk available to add to the braai.
- Biga Bakery will be providing their variety of goods for purchase.
- Wine tasting with Seven Springs Vineyard and case for purchase.
- A la carte menu on offer from the Brewery.
- All day entertainment with DJ Kim Sharklady.
- Special guest artist – Vicky Sampson.

The Municipal Legal Advisor confirmed that the proposed event is indeed an event as defined in the Overstrand Municipality Events By-Law 2018 (Events By-Law) and an application in terms of this Events By-Law is to be submitted to the Events Committee. In terms of Section 4(c) of the Events By-Law, the planned event may not be advertised before an application has been submitted to the Municipality's Events Committee and the events organiser has been informed that the application has been approved in terms of Section 5(a) of the Events By-Law.

The extent and activities as listed above are indeed an event and necessitates an application for submission to the Events Committee, notwithstanding the zoning of the property.

Place of Entertainment:

The matter in respect of the application to host an event as described above, is separate from the requirement of the Brewery to submit a land use planning application to allow for a place of entertainment. The subject property has permission to operate a restaurant in terms of the Hemel en Aarde Village Scheme and has a valid liquor license.

In February 2020, complaints were submitted relating to live entertainment at the Brewery. A first notice of non-compliance dated 1 July 2020 was served onto the property owner requesting to cease unlawful activities and to submit a land use planning application to the Town and Spatial Planning Department.

The town planner for land use management and compliance at the time had a meeting with the property owner on 3 July 2020 (more than a year ago) to explain the land use planning application requirements for the activities taking place on the property. A further property inspection was conducted on 23 July 2020 by the area town planner and a stage was noted together with additional building and land use planning discrepancies.

Extensive communications were again transferred in February 2021 (a year after the initial complaints) regarding the requirement to submit a land use planning application for all unlawful activities on the property. The then manager of the Brewery undertook to resolve the matter soonest.

The laisor at the office of the area manager, through whom the events applications are directed, received communications on 22 April 2021 regarding the need for the Brewery to obtain approval in terms of the Events By-Law for each event taking place as described in the Events By-Law, irrespective of the zoning of the property. An additional land use planning application will be required for permanent rights in respect of a place of entertainment, which will not dismiss the need for events applications in terms of the Events By-Law, as these represent different legislative requirements.


The area town planner and senior town planner conducted a property inspection on 23 April 2021 and also had a meeting with the property owner and the town planning consultant on this day to again discuss the land use application requirements. It was again undertaken that the matter will be resolved.

In September 2021, attention to the fact that an event is again being held by the Brewery was raised by one of the previous complainants who enquired whether permission has been granted as per earlier discussions. Communications were addressed to the property owner, the brewery manager and the event organiser who were advised that applications to the Municipality's Events Committee are still required to permit events such as the upcoming Heritage Celebrations Day (and the Brewery to Brewery MTB race). It was stated that the application for place of entertainment to the Town and Spatial Planning Department and the application for events to the Events Committee are two separate processes and requirements in terms of different legislation.

On 15 September 2021, the event organiser undertook to submit the required application for the event to the Events Committee and the town planning consultant advised that the land use planning application to permit a departure for place of entertainment is being finalised for submission to the Town and Spatial Planning Department.

This matter has been coming for more than a year and a half and the Brewery has to take responsibility to apply for all necessary applications in terms of the respective legislative requirements.

Yours faithfully




N GERBER
TOWN PLANNER: LAND USE MANAGEMENT & COMPLIANCE

17/9/2021

DATE

Acknowledged by:



R KUCHAR
SENIOR MANAGER: TOWN & SPATIAL PLANNING

17/9/2021

DATE



Annexure K-4/14

machoy**Mackenzie Hoy Consulting
Acoustics Engineers**

if you have a problem that nobody else can solve....

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Cape Town, South Africa
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Rev 1

Hemel-en-Aarde Brewery: Noise Impact Assessment

1 Introduction

This report was commissioned by Josiah Mos of Interactive Town and Regional planning on behalf of Hemel-en-Aarde Brewery, tel: +27 072 729 7193, e-mail: josiahmos1@gmail.com.

This report provides an assessment for the noise impact of the Hemel-en-Aarde Brewery development on the neighbouring properties in accordance with the Western Cape Noise Control Regulations, 2013.

T.E. Mackenzie-Hoy Pr. Eng. Bsc (Elec) M.S.A.I.E.E., M.S.P.E., IngP (Eur), AmASA (Member)
Rachel Viljoen BEng (Mechatronics), M. Attwood (Adv Dip S.Eng), G. Viljoen (Dip. QS)**machoy**

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2 Background and Present Situation

- 2.1 Hemel-en-Aarde Brewery is located at Unit 5, Village Lane, Hemel en Aarde, Hermanus.

See Figure 1 for an overview of the geographical location.



Figure 1: Location of Hemel-en-Aarde Brewery Venue and Location of Complainant

- 2.2 The owners of Hemel-en-Aarde Brewery have received noise complaints from a nearby neighbour with regard to live bands which perform at the venue.

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- 2.3 The venue is presently in use and operates during the following times:
- a. Monday to Saturday 11am until 10pm
 - b. Sunday 11am until 5pm
- 2.4 The venue occasionally hosts live performances, which includes bands etc.
- 2.5 The property from which the concerns were raised is located approximately 160m to the North of the venue.
- 2.6 Mackenzie Hoy Consulting Engineers were requested by Josiah Mos on behalf of Hemel-en-Aarde Brewery to provide a noise impact assessment report based on the Western Cape Noise Control Regulations, 2013.
- 2.7 This report provides an assessment in accordance with the Western Cape Noise Control Regulations, 2013 based on geographical data, site layout and expected noise levels.

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3 Measurements

3.1 Measurement Equipment:

The following instruments were used to conduct measurements at Hemel-en-Aarde on the 13th and 14th May 2021:

- i. Norsonic Nor140 Type 1/Class 1 Precision Sound Analyser, Serial No. 1405477, 15458. Calibrated by M and N Acoustic Services cc in March 2020, SANAS Reg No 148 1302, Certificate Number 2020-AS-0241.
- ii. Norsonic Nor140 Type 1/Class 1 Precision Sound Analyser, Serial No. 1314071, 03531. Calibrated by Norsonic in December 2020, Certificate Number 475056873
- iii. Norsonic Sound Calibrator, Serial No. 33747, Calibration by M and N Acoustic Services cc in October 2020, SANAS Reg No 148 1302, Certificate Number 2020-AS-0892.

Note: Calibration of the above sound level meter is valid for 2 years from the date of calibration.

3.2 Measurement Locations:

Refer to Figure 2 below for an overview of the measurement locations at Hemel-en-Aarde Brewery :

- M1: Western Plot Boundary
- M2: Northern plot Boundary
- M3: Eastern plot Boundary
- M4: Southern Plot Boundary
- M5: Source

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Figure 2: Hemel-en-Aarde Brewery: Measurement Locations (M1, M2, M3 and M4)

3.3 Measurement Description:

- 3.3.1 Outdoor sound pressure level measurements were taken for a period of $L_{Aeq, 30min}$ on the 13th May 2021 at measurement location M4 in order to determine the residual noise level for the area.
- 3.3.2 Noise transmission loss measurements were conducted on the 14th of May 2021 with the source located outside of the venue building (measurement location M5) and the receiver located at the nearest plot boundary (measurement location M2).

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3.4 Measurement Results:

3.4.1 Outdoor Noise Level Measurements:

The results of outdoor noise level measurements are as follows:

- a) The measured day-time residual sound pressure level (measurement location M4) was 62.7 dBA $L_{A_{eq,30min}}$
- b) The measured night-time residual sound pressure level was 45.4 dBA $L_{A_{eq,10min}}$
- c) The measured residual sound pressure level for day-time and night-time was analysed according to the Western Cape Noise Control Regulations, PN200, 2013 and SANS 10103:2008, "*The measurements and rating of environmental noise with respect to annoyance and to speech communication*", to determine whether the measured residual level corresponds to the rating level in SANS 10103:2008.

3.4.2 Sound Transmission Loss Measurements:

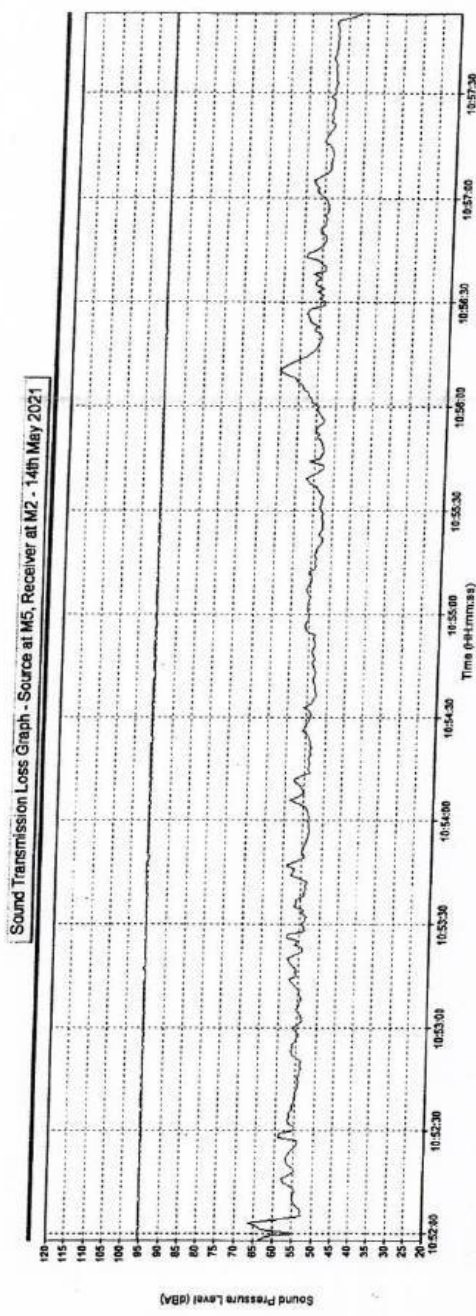
Results of sound transmission loss measurements are as follows:

- i. The source sound pressure level was set to 95 dBA on the outdoor stage of the venue building (measurement location M5).
- ii. The measured sound pressure level at the nearest plot boundary to the complainant to the North was 55.0 dBA $L_{A_{eq,8min}}$ (measurement location M2).

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Sound Transmission Loss Graph - Source at M5, Receiver at M2 - 14th May 2021

Graph 1: Sound Transmission Loss Graph, Source at Location M5 and Receiver at Location M2, 14th May 2021.

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Date 7.5.21

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Note: The measurements taken are for design and evaluation purposes. While they are in accordance with the provisions of the Western Cape Noise Control Regulations 2013 these measurements may not be used as the basis for legal action without consultation with ourselves. If this report forms part of an affidavit, it must be attested in full. If legal action is proposed, both parties must arrange for us to take further measurements.

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4. Discussion

- 4.1 The residual noise levels at Hemel-en-Aarde Brewery will be evaluated in accordance with the Western Cape Noise Control Regulations, 2013.
- 4.2 The Western Cape Noise Control Regulations, 2013 use the following definitions and descriptions:

“disturbing noise” means a noise, excluding the unamplified human voice, which;

- a) exceeds the rating level by 7 dBA
- b) exceeds the residual noise level where the residual noise level is higher than the rating level; or
- c) exceeds the residual noise level by 3 dBA where the residual noise level is lower than the rating level.
- d) in the case of a low-frequency noise, exceeds the level specified in Annex B of SANS 10103;

“Rating level” means the applicable outdoor equivalent continuous rating level indicated in Table 2 of SANS 10103:2008 *“The measurement and rating of environmental noise with respect to annoyance and to speech communication”*.

“Residual noise” means the all-encompassing sound in a given situation at a given time, measured as the reading on an integrated impulse sound level meter for a total period of at least 10 minutes, excluding noise alleged to be causing a noise nuisance or disturbing noise.

“Noise nuisance” means any sound which impairs or may impair the convenience or peace of a reasonable person.

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“Noise sensitive activity” means any activity that could be negatively impacted by noise, including residential, healthcare, educational or religious activities;

- 4.3 In order to determine if the sound pressure level measured at the venue of Hemel-en-Aarde Brewery is considered a “disturbing noise”, it must be evaluated according to the Western Cape Noise Control Regulations, 2013.

The evaluation is as follows:

- a. For any given area (Rural, Suburban, Urban, CBD, Industrial etc) there are two noise rating levels; one for daytime and one for night-time. These levels are given in Table 2 of SANS 10103:2008 “*The measurement and rating of environmental noise with respect to annoyance and to speech communication*”.

1	2	3	4	5	6	7
Type of district	Equivalent continuous rating level ($L_{Aeq,T}$) for noise dBA					
	Outdoors			Indoors, with open windows		
	Day/night $L_{Aeq,T}^a$	Daytime $L_{Aeq,d}^b$	Night-time $L_{Aeq,n}^b$	Day/night $L_{Aeq,T}^a$	Daytime $L_{Aeq,d}^b$	Night-time $L_{Aeq,n}^b$
a) Rural districts	45	45	35	35	35	25
b) Suburban districts with little road traffic	50	50	40	40	40	30
c) Urban districts	55	55	45	45	45	35
d) Urban districts with one or more of the following: workshops; business premises; and main roads	60	60	50	50	50	40
e) Central business districts	65	65	55	55	55	45
f) Industrial districts	70	70	60	60	60	50

Figure 3: Typical rating levels for noise in districts according to SANS 10103:2008.

4.3.1 Hemel-en-Aarde Brewery is located on the R43, which is the main arterial road into Hermanus, and as such will be considered as a "Urban District with one or more of the following: workshops; business premises; and main roads". With reference to SANS 10103:2008 "The measurement and rating of environmental noise with respect to annoyance and to speech communication", the following outdoor rating levels apply:

- i. Day-time rating level (06h00 – 22h00) : 60 dBA
- ii. Night-time rating level (22h00 – 06h00) : 50 dBA

4.3.2 A correction of 5 dBA must be applied where the alleged noise has audible tones such as whines, whistles, hums and music.

4.4 According to the Western Cape Noise Control Regulations, 2013 the maximum allowable noise level limit for Hemel-en-Aarde on their plot boundary is:

- a. Day-time: 62 dBA ($60\text{dBA} + 7\text{ dBA} - 5\text{ dBA} = 62\text{ dBA}$)
- b. Night-time: 52 dBA ($50\text{dBA} + 7\text{ dBA} - 5\text{ dBA} = 52\text{ dBA}$)

4.5 Results of noise transmission loss measurements conducted at Hemel-en-Aarde Brewery were as follows:

4.5.1 With the source sound pressure level set at 95 dBA, the measured sound pressure level at the receiver (M2) is 55.0 dBA.

- a. The measured sound pressure level at the plot boundary (M2) with the source sound pressure level set at 95 dBA **does not exceed** the maximum allowable **day-time** noise level limit.
- b. The measured sound pressure level at the plot boundary (M2) with the source sound pressure level set at 95 dBA **exceeds** the maximum allowable **night-time** noise level limit by 3 dBA.

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- c. Hemel-en-Aarde Brewery will therefore be considered a “disturbing noise” in terms of the Western Cape Noise Control Regulations, 2013.
- d. Evaluation of Noise Emission during Events
 - i. According to the Western Cape Noise Control Regulations, 2013, the unamplified human voice is not considered as a ‘disturbing noise’. Therefore all events that are hosted at Hemel-en-Aarde Brewery which do not have amplified human voice or music are not in contravention of the Western Cape Noise Control Regulations, 2013.
 - ii. Preliminary calculations show that all outdoor events to be held at Hemel-en-Aarde Brewery with event (live bands/dj’s) sound pressure levels below 92 dBA, will not be in contravention of the Western Cape Noise Control Regulations, 2013 insofar as the predicted noise level on the Hemel-en-Aarde Brewery plot boundary will not exceed the maximum allowable rating level according to the Western Cape Noise Control Regulations, 2013.
 - iii. The implementation of noise mitigation by means of noise control barriers for this venue will be impractical as it will affect the aesthetics of the venue and the location of the venue will require very high structures to give sufficient noise control.

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5. Recommendations

The following is recommended to ensure that Hemel-en-Aarde Brewery does not cause a disturbing noise in terms of the Western Cape Noise Control Regulations, 2013:

- a. Hemel-en-Aarde must take the necessary steps to reduce the noise level at the venue to 92 dBA.



T.E. Mackenzie Hoy Pr. Eng Bsc (Elec)

Registered professional engineer number 840428

for: **Mackenzie Hoy Consulting Acoustics Engineers**

(4/16)

Appendix A: Glossary of Terms

- Ambient Noise:** Total noise level in a specified environment.
- A-Weighting:** Frequency rating that relates to the response of the human ear
- Decibel or dB:** Fundamental unit of sound, defined as ten times the logarithm of the ratio of the sound pressure squared over the reference pressure squared.
- Frequency:** Repetition rate of a cycle, expressed in cycles per second or Hertz.
- Receiver:** A stationary far-field position at which noise levels are specified via measurement or calculated via a noise model.
- Sound Power:** The sound energy radiated per unit time by a sound source, measured in Watts (W)
- Sound Pressure Level:** The amplitude of the changes in pressure level of a sound wave, measured in either pressure units (Pa) or using the decibel logarithmic reference scale.