

4.4

ERF 11171, 19 FISH EAGLE STREET, HEMEL & AARDE ESTATE, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR SUBDIVISION AND DEPARTURE: WRAP PROJECT OFFICE ON BEHALF OF PTN HARPER

11171 HMS (3617/2020)

(H Boshoff)

H van der Stoep

(028) 313 8900

Hermanus Administration

9 October 2023

1. EXECUTIVE SUMMARY

An application was received on 27 January 2020 (final amended application on 6 October 2022) from Messrs WRAP Project Office on behalf of PTN Harper, applicable to Erf 11171, Hemel & Aarde Estate, Hermanus for the following:

- **subdivision** in terms of Section 16(2)(d) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to subdivide Erf 11171, Hermanus in four portions, namely a Portion A $\pm 835\text{m}^2$, a Portion B $\pm 800\text{m}^2$, a Portion C $\pm 1640\text{m}^2$ and a Remainder $\pm 2236\text{m}^2$; and
- **departure** in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:
 - to relax the south-eastern, south-western and north-western lateral building lines of the above proposed Remainder from 2m to 0m in to accommodate portions of the existing dwelling unit, and
 - to relax the north-eastern and south-eastern lateral building lines of the above proposed Portion C from 2m to 0m to accommodate portions of the existing dwelling unit.

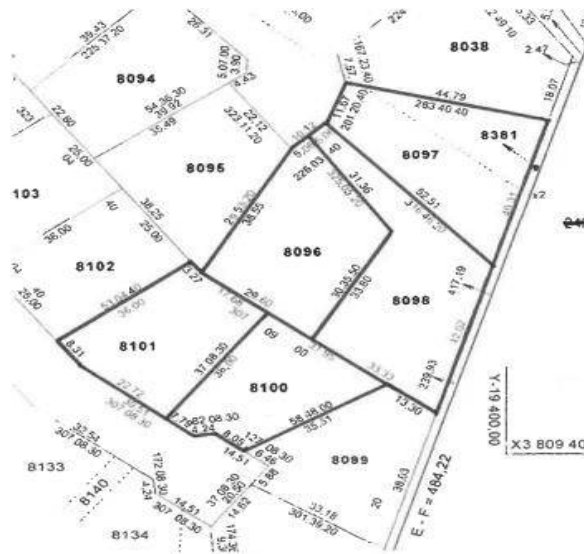
A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, and the Site Development Plan is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 11171, Hermanus is zoned as Residential Zone 1: Single Residential and is 5511m^2 in extent and is developed with a very large dwelling at most the eastern section thereof. The property is situated in the Hemel & Aarde Estate development. The property originally consisted of five approved erven (previous Erven 8096, 8097, 8098, 8100, and 8101, Hermanus) within the development that was consolidated to form Erf 11171 (see extract of general plan below).



The main aim of the application is to subdivide the property into four erven (original application).

4. SUMMARY OF APPLICANT'S MOTIVATION

It is important to note that that the Hemel & Aarde Village Homeowners' Association also objected to the application. After prolonged deliberations between the applicant and the said association, the parties eventually came to an agreement that the property be subdivided in three portions, being two portions on the outlines of the previous Erven 8100 and 8101 and a remainder. Due to the revised application no building line departures are applicable anymore and the applicant's motivation on the departures will therefore not be addressed in the summary below nor the applicant's motivation to create five erven (original application). Application was also made for a right of way servitude, but due to the revised layout it is not required anymore and will therefore also not be addressed. The motivation report (original) in support of the application is summarised as follows (only the relevant points are summarised - the detailed report is attached as Annexure B):

- ❖ The owner had the property marketed for a considerable time but cannot find a buyer for the whole property.
- ❖ The property is the largest property in the estate and is out of harmony with the urban form of the area.
- ❖ The increase in erven will unlock additional levies for the homeowners' association.
- ❖ The smaller erven would appeal to a larger market.
- ❖ Solid waste is collected by the municipality and the additional erven will derive the same benefit.
- ❖ The newly created erven will be connected to the existing electricity, water, and sewage networks.
- ❖ The newly created erven will gain access from Rock Kestrel Street and the remainder from Fish Eagle Close.
- ❖ The buildings will not interfere with the views, sunlight, and character enjoyed by the surrounding property owners.
- ❖ No listed activities in terms of NEMA are triggered.
- ❖ The SDF designates the property for residential purposes and the proposal is aligned with this designation.

- ❖ The proposal is in line with the planning principles of SPLUMA.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local newspaper	Yes	11 March 2020	17 April 2020
Registered notices	Yes	11 March 2020	17 April 2020
Internal departments	Yes	11 March 2020	17 April 2020
Ward councillor	Yes	11 March 2020	17 April 2020
Total comments	FOUR (4)		
Total letters of support	ONE (1)		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			Yes
Was the application processed correctly (if no, elaborate below):			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			Yes

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

Name	Date received	Summary of comments
Engineering Services	07/09/2020	Attached as Annexure G.
Building Control Department	12/03/2020	No objection. All building plan applications to comply with NBR and all other applicable law.
Fire Department	11/03/2020	No objection provided that the structure to complies with the National Fire Protection Regulations SANS 10400-T and the By-Law Relating to Community Fire Safety.
Environmental Management	06/08/2020	This office has no objection to this application for subdivision and departure of Erf 11171, Hemel and Aarde Estate, Hermanus.
Local Heritage	17/03/2020	No objection.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

It should be noted that the application was advertised in the Village News on 11 March 2020 and the closing date for public comment was the 17 April 2020. Due to the national lock-down that was instituted by the national government on 26 March 2020, the requirements as set out in Sections 47 and 48 of the By-Law could not be adhered to.

Subsequently the applicant was requested to recirculate the application to the original potentially affected parties and property owners and the extended closing date for the submission of comments was 24 July 2020.

Refer to the first paragraph of paragraph 4 of this submission. When the homeowners' association eventually agreed to the scaled down application, it made it subject thereto that the applicant obtain the support/consent of the neighbouring homeowners on the revised subdivisional plan (see letter of consent attached as Annexure F). The applicant circulated the revised subdivisional plan and further comments were received (see list below) that will also be responded to.

As already mentioned, the scaled down application lead thereto that no building line encroachments are applicable anymore and the points of comment relating thereto will therefore not be addressed.

Four (4) comments and one (1) letter of consent were received during the two initial public participation processes mentioned above. The applicant was provided with an opportunity to respond to the comments which includes its response on the comments received on the circulation of the amended subdivision plan (the request by the homeowners' association). See Annexures D and E respectively.

Comments received

INITIAL CIRCULATION

- PR & GM Busby
- P Bagnall
- Hemel & Aarde Estate Homeowners Association

SECOND CIRCULATION

- MH & JS Allie
- C & BA Cordes (consent)

THIRD CIRCULATION (AMENDMENT OF SUBDIVISION PLAN)

- S Wightman
- RJ & P Bagnall
- A de Koker on behalf of Hemel & Aarde Village Home Owners Association
- M Allie
- JF Rademan
- D Jones

Only the main and applicable points of comment are responded upon as follows (the detailed comments received is attached as Annexure D):

COMMENT 1

We have no problems in principle provided that the new dwellings comply with all the necessary regulations of the Estate.

APPLICANT'S RESPONSE

New dwellings which will be constructed on the proposed Portion A and Portion B will comply with the Hemel en Aarde Estate Architectural Design Manual (HEAEADM).

APPLICANT'S RESPONSE

Noted.

COMMENT 2

A number of affected persons did not receive their notices by the time of the national lockdown. The application has not been discussed, submitted, scrutinised, or approved by the association and in our view the adjoining property owners have not been properly advised of the application or its implications.

APPLICANT'S RESPONSE

The public participation procedures were disrupted by the lockdown regulations, but measures were instituted to ensure that all interested and affected parties were granted the opportunity to comment. The application was advertised in the Village News on 11 March 2020 and notices were served on surrounding property owners with the closing date for comments the 17th of April 2020. E-mails with the motivation report were sent to adjacent property owners on 19 June 2020 and the public participation process was extended to 24 July 2020. A meeting was held with the homeowners' association that entailed the amendment of the subdivision plan to address several concerns raised and was circulated again to adjacent property owners.

TOWN PLANNER'S RESPONSE

The comment of the applicant is noted and concurred with.

COMMENT 3

The subdivision has not been dealt with according to the constitution of the Hemel & Aarde Estate.

APPLICANT'S RESPONSE

The constitution highlights the following:

"Immovable property in the Hemel & Aarde Estate or any portion thereof shall, save for as set out in Clause 3.4.8 below, not be subdivided without the sanction of a Special Resolution of the Association."

When Clause 3.4 is read in conjunction with clause 3.4.6, it specifically empowers the HOA to grant authorisation regarding the subdivision of common property. The subject property is private property and not common property, and the municipality is therefore empowered to make an impartial decision.

TOWN PLANNER'S RESPONSE

This point of comment was referred to the legal department for comment. The department's comment is quoted below:

- “1. Ja, die **onderverdeling** het uiteraard betrekking op **privaat eiendom** en nie gemeenskaplike eiendom nie;
2. ja, **klousules 4.4.en 4.5** van die grondwet verwys enersyds na (bou)planne en Bou Regulasies en nie na onderverdelings per se nie, en het die HOA nie die bevoegdheid om die bepalinge van die Bouwet te “waive”nie – dit is gebonde aan wat die “law” bepaal en vereis; **maar**,
3. **klousule 3.4** se opskrif is: “**Sub division and Common Area**” en nie “**Sub division of Common Area**” of net “**Sub division:Common Area**” nie. So gese interpreteer ek klousule **3.4.6 as sou dit bepaal dat alle** onroerende eiendom (**gemeenskaplik en privaat**) in Hemel en Aarde of enige gedeelte daarvan nie onderverdeel mag word sonder die toestemming van die HOA wat geneem is ingevolge n “Special Resolution”nie? **Klousule 3.4.6 maak geen onderskeid in die teks tussen gemeenskaplike en privaat eiendom nie – dit meld blout: “Immovable Property”.**
4. *Bogemelde beteken dan dat alhoewel ons by-law bepaal dat die munisipaliteit wel onderverdelings moet goedkeur – artikels 16(1) en 16(2)(d) - die HOA se vooraf goedkeuring vereis word.”*

COMMENT 4

That a meeting be held with the Trustees, affected members and the owner of the property or their respective representatives for transparent discussion.

APPLICANT'S RESPONSE

A meeting was held with the HOA, and it was requested that an amended subdivision plan be circulated.

TOWN PLANNER'S RESPONSE

The applicant's response is noted.

It should further be noted that the association must either support an application unconditionally or not support an application. Only the Municipality has the mandate in terms of its planning By-Law to undertake a public participation process which was lawfully conducted with an extended period to comment due to the national lockdown at the time.

COMMENT 5

There may be certain benefits of a subdivision regarding rates and levies, but one has to consider the effect of construction, noise and prolonged building works, damage and repairs required to roads with prolonged heavy vehicles carrying building materials. There is always the increased risk of crime when construction takes place. The estate is a settled area since the completion of the last vacant land in Fish Eagle 2 – 3 years ago.

APPLICANT'S RESPONSE

Section 6.2 of the architectural guideline document of the estate highlights the following:

"The HOA will determine the hours and conditions that will apply to building contractors and building operations."

This clause empowers the HOA to impose mitigation measures regarding construction of the future buildings to minimise the impact thereof on the ability of surrounding property owners to occupy respective properties in comfort. The estate has stringent security measures regarding access to the development that is strictly controlled that illustrates high capability to address any security risk which may arise from the construction of future dwellings.

TOWN PLANNER'S RESPONSE

The applicant's response is noted and agreed with.

COMMENT 6

Will the subdivisions first need to be sold before any construction can take place? If so, it could take years before it is completed in its entirety and cause an endless disruption to the peaceful environment currently enjoyed by affected parties.

APPLICANT'S RESPONSE

The historic development style of the estate consists of purchasers individually constructing dwellings. Any construction on Portion A and B will not constitute an unbearable abrupt and prolonged disruption in the ability of surrounding property owners to occupy respective properties in comfort as only two dwellings will be constructed.

TOWN PLANNER'S RESPONSE

The applicant's response is noted and concurred with.

COMMENT 7

In keeping with the sizes of other properties in the area and Portion C and Remainder, it is suggested that Portion A and B be retained as one property as they are both smaller than the average size of 1018.5m² as per 12.1.1 which could lead to the reduction in property values. That A and B be combined to 1630m² to be more in keeping of the sizes of surrounding properties and that of the two other subdivisions of Erf 11171.

APPLICANT'S RESPONSE

The erven and sizes adjacent to the proposed Portion A and B are as follows:

- Erf 8102 = 900m²
- Erf 8099 = 995m²

The subdivision plan that was submitted with the application illustrates that Portion A measures 835m² and Portion B measures 800m² and are of similar size and shape as neighbouring Erven 8102 and 8099. It was also motivated that Erf 11171 is the largest residential erf in the estate and the proposed subdivision is intended to align the approximate erf sizes with that of surrounding erven. The Surveyor General Diagram that was submitted with the application illustrates that Erf 11171 is a consolidation of five (5) erven.

The Spatial Planning and Land Use Management Act highlights the following in Section 7(vi):

“A Municipal Planning Tribunal (MPT) considering an application before it, may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land and property is affected by the outcome of the application.”

The submission of an objection based on the assertion that the property values will be decreased is therefore not a relevant consideration for the MPT when making a decision.

TOWN PLANNER'S RESPONSE

The applicant's response is agreed with.

It should be mentioned that at the time when the property was consolidated, the planning legislation that is now repealed did not provide for applications to consolidate erven as is the case with the current planning legislation of the municipality. If the landowner had to apply at present times to have the 5 erven consolidated, it is doubted that such an application would have been supported mainly due to the fact that such a big erf (5511m²) is completely out of character with the average single residential erf within the estate development.

The commenter did not provide concrete evidence backing its statement that the proposed subdivision will affect property values. It is an established principle in property valuation that an area has a median or average value. With two high value and upmarket that is to be constructed on the two newly created erven, the median or average value will definitely be increased.

COMMENT 8

The constitution of the homeowners' association is legally binding upon all property owners. All plans and national building regulation waiver applications must be submitted to and stamped by the homeowners' review committee before being submitted to the local authority.

APPLICANT'S RESPONSE

The clause referred to pertains to the approval of building plans. The existing building on the property have already been approved. The future owners of Portions A and B will submit building plans to the review committee, but the application submitted does not relate to that.

TOWN PLANNER'S RESPONSE

The applicant's response is concurred with.

COMMENT 9

A commenter's (previous owner of Erf 8099) points of comment are mostly based on water problems from water that seeps from the subject property to its property and the damages it causes, as well as huge trees that was planted on the subject property that gives off a white powder that blows into his house that lets his wife's asthma to flare up.

APPLICANT'S RESPONSE

The proposed subdivision lines will have no additional adverse impact on the historic water discharge disputes between the objector and the owner of the subject property. The objector must explore other avenues which are not related to the town planning application to resolve this dispute.

TOWN PLANNER'S RESPONSE

The applicant's response is concurred with since the points of comment does not have any bearing on the application to subdivide the property. Further, the commenter is not the owner of its property anymore.

COMMENT 10 (COMMENTS ON AMENDED SUBDIVISION PLAN)

I own the property 8038 on the top side of your proposed subdivision changes. The property was developed knowing the shape of 8097 and the surrounding properties and abiding and respecting the requirements of the municipality and the Hemel En Aarde estate internal building rules.

The proposal for the subdivision has a direct and potentially detrimental effect to our property now and into the future. Additionally, it has major effects on the peace of our corner of the estate, by allowing for major development right in front of our house for an extended period of time that could take place over the course of several years. The property was purchased in this estate knowing there was a building deadline that all residents had to adhere to which almost certainly guaranteed peace and quiet after the cut-off date. Of course, there will always be renovations on houses, but not full-blown new building, which this subdivision would allow for.

APPLICANT'S RESPONSE

The objector's property is located to the north of the proposed Remainder which is already developed with a dwelling unit thereon and the only building alterations which can be projected are renovations. Construction work is mostly projected to occur on the proposed Portion A and B, is buffered by the existing dwellings on each of the properties which is unlikely to result in the objector occupying the respective property in discomfort.

TOWN PLANNER'S RESPONSE

The applicant's response is noted and concurred with.

COMMENT 11 (COMMENTS ON AMENDED SUBDIVISION PLAN)

Potential for large new construction of properties long after the cut-off date of the estate internal rules, disturbing the peace and quiet and the ignoring the very purpose of building in an estate with guidelines for building.

APPLICANT'S RESPONSE

Most of the construction is only projected to occur on the proposed Portion A and Portion B as illustrated in figure 1 which at most will have two dwellings which will not constitute a significant disruption of the peace and tranquillity in the HEAE. The unique circumstances which are related the subdivision which is sought will invariably result in construction after the cut-off date, but it is submitted that Erven 8254, 8255, 8256, 8259 and 8260 in the HEAE are vacant and will also be constructed after the cut-off date which therefore results in this proposal not being an anomaly.

TOWN PLANNER'S RESPONSE

The applicant's response is noted and concurred with.

COMMENT 12 (COMMENTS ON AMENDED SUBDIVISION PLAN)

It is assumed that it is not required to directly discuss these types of changes with the direct neighbours of the property, but it probably would have been a sensible thing to sit down and discuss the plans with the adjoining properties to ensure there was a general consensus for the proposal and how it would affect them.

APPLICANT'S RESPONSE

Applicant had discussions with the HOA who represents the commenter, and it was requested that Portion A and Portion B as illustrated in figure 2 be consolidated to create one erf which was done as illustrated in figure 2. This concession was made by the owner of the subject property and the amended subdivision plan was circulated to the HEAE residents and the HOA and the number and scale of objections persisted regardless of the concessions which the owner of the subject property was prepared to make.

All attempts to appease the residents of the HEAE and HOA seemed futile. Considering this, it is submitted that the concession made by the owner of the subject property to consolidate Portion A and Portion B is revoked and that the OM apply its decision making authority to the original subdivision plan which was submitted with the planning application as illustrated in figure 1.

TOWN PLANNER'S RESPONSE

It is important to note that due to the comments on the amended subdivision plan that was circulated by the applicant, the amended subdivision plan was altered to such an extent that Portions A and B is realigned to the layouts of the original Erven 8100 and 8101 as per the original approved general plan. The layout of the Remainder is altered to avoid any building line encroachments. Thus, references to illustrations 1 and 2 by the applicant in its response on the comments must therefore be ignored since the layout as indicated on Annexure C of this submission is the final amended subdivision plan that was submitted by the applicant.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Section 7 above.

9. MUNICIPAL ASSESSMENT OF COMMENTS

See Paragraph 7 above.

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

N/A

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

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

Efficiency

The application will optimize the use of the two newly created properties in terms of municipal services and the payment the necessary bulk infrastructure levies.

Spatial resilience

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 follows 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

Consistent with the Zoning Scheme, 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 existing services are available and have been viewed positively by the Engineering Services Department.

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

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12. THE DESIRABILITY OF THE PROPOSAL

The motivation of the application and its responses to the comments are supported. The comments by the author on the points of comment should be read in conjunction with the desirability of the application.

It should be noted that the initial application involved the subdivision of the property in four (4) erven together with building line encroachments. The homeowners' association initially objected to the application. Due to extensive discussions with the homeowners' association over a long period of time and various requests from the applicant for extended periods to submit its comment on the comments that were received, the application was delayed for a long time. The association eventually agreed to a scaled down application. The proposal now entails the subdivision of the property in three (3) portions being Portion A $\pm 936\text{m}^2$ in extent, Portion B $\pm 866\text{m}^2$ in extent, and a Remainder $\pm 3711\text{m}^2$ in extent. The dwelling on the subject property was built on the Remainder. As mentioned, the initial application also entailed various building line encroachments, but due to the revised proposal no building line encroachments are applicable anymore, thus only the subdivision of the property is applicable.

Two (2) additional erven will be created and together with the Remainder, the land parcels will be more, except for the remainder, aligned with the sizes of the single residential erven within the estate development. The subject erf is currently out of line with the character of the surrounding area due to its excessive size, but once subdivided will have a more positive impact on the immediate surrounding area.

All services for the subdivided portions are available and sufficient capacity exist to accommodate the proposal.

Adequate access to the erven can be provided.

No objections from internal departments were received.

In view of the above, the proposal can be regarded as being desirable from a town planning perspective.

13. RECOMMENDATION

1. that the comments be noted.
2. that the application in terms of Section 16(2)(d) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to subdivide Erf 11171, Hemel & Aarde Estate, Hermanus in three portions, namely Portion A $\pm 936\text{m}^2$ in extent, Portion B $\pm 866\text{m}^2$ in extent, and a Remainder $\pm 3711\text{m}^2$ in extent, **be approved** in terms of Section 61 of the By-Law;
3. that the above approval be subject to the following conditions:
 - (a) that this approval is only for the subdivision as indicated on undated Plan Number 19/140;
 - (b) that all the applicable development parameters for the three land parcels as set out in the estate's architectural guideline document must be complied with; and
 - (c) that building plans be submitted for all new buildings to the Building Department for approval, and that all conditions of the Building and the Fire Department be complied with at that stage;
 - (d) that the conditions of Engineering Services (attached as Annexure G), be complied with;
 - (e) that the above approval does not absolve the applicant from compliance with any other relevant legislation; and
 - (f) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
4. that the applicant and persons who commented 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 conditional approval.

14. REASONS FOR RECOMMENDATION

- ❖ The application contains sufficient merit to be considered favourably.
- ❖ The current size of the property is excessive in nature and completely out of character with the sizes of the single residential erven within the Hemel & Aarde Estate development.
- ❖ Two additional erven will be created that will be more, except for the remainder, in line with the erf sizes of the immediate area and will therefore not impact on the character of the specific area.
- ❖ The additional traffic that will be created when Portions A and B are developed, will not be problematic to the existing development.
- ❖ All the applicable development parameters for the three land parcels as set out in the estate's architectural guideline document will be complied with to ensure that there are not impacts on the rights of the surrounding property owners.
- ❖ All services for the subdivided portions are available and is sufficient to accommodate the proposal.
- ❖ No internal objections were received.
- ❖ The proposal is regarded as being desirable from a town planning perspective.

15. Annexures

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Objections
Annexure E:	Comment on objections
Annexure F:	Consent from Hemel & Aarde Estate HOA
Annexure G:	Services Report

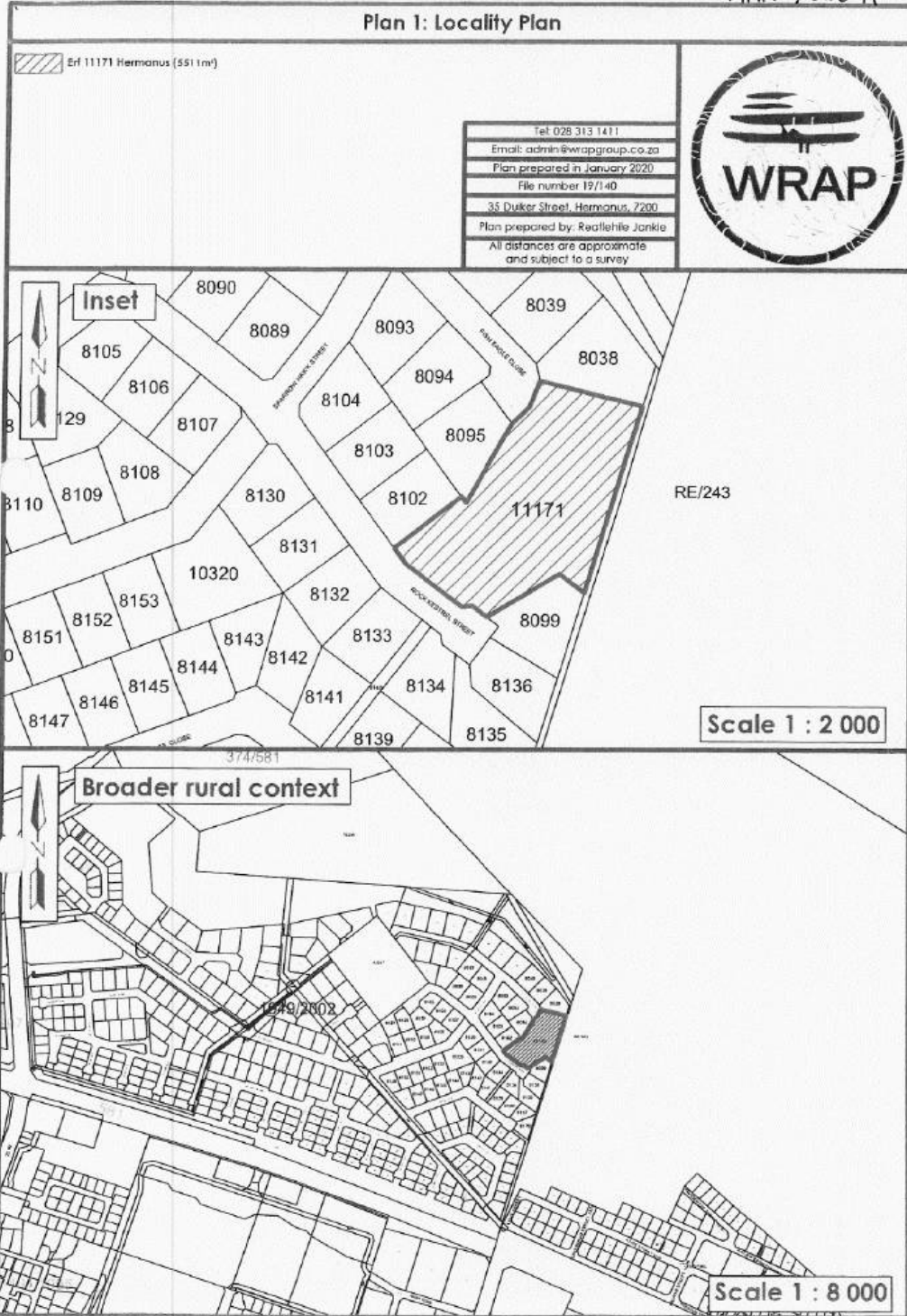
SIGNATURES**REGISTERED PLANNER:**

Name: **H VAN DER STOEP**

SACPLAN Reg No: **A/1780/2013**

Signature: _____

Date: _____





MOTIVATION

1. ABBREVIATIONS

OMZS	Overstrand Municipality Zoning Scheme, 2013
SDF	Overstrand Municipality Spatial Development Framework, 2006
OM	Overstrand Municipality
OM By-Law	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015
SDF	Overstrand Spatial Development Framework, 2006
OMGMS	Overstrand Municipal Growth Management Strategy, 2010
LUPA	Land Use Planning Act, 2014
DEADP	Western Cape Department of Environmental Affairs and Development Planning
SDP	Site Development Plan
SR1	Residential Zone 1: Single Residential
HEAHOA	Hemel en Aarde Home Owners Association
HEAE	Hemel en Aarde Estate

2. SUMMARY OF PROPERTY DETAILS

Property description	Erf 11171 Hermanus
Registered owner	Phillip Thomas Ned Harper
Consultant	WRAP Project Office
Restrictive title deed conditions	None
Property extent	5511m ²
Current zoning	SR1
Current land use	Dwelling

3. INTENT

- 3.1** The owner of the subject property purchased erven 8096, 8097, 8098, 8100 and 8101 and consolidated all the erven and the consolidated erf is now known as Erf 11171, Hermanus. A large dwelling was constructed on the consolidated property, covering the previous erven 8096, 8097 and 8098. No building work was done on the area of the erven previously known as Erven 8100 and 8101.
- 3.2** The owner had the property on the market for a considerable time but cannot find a buyer for the whole property.
- 3.3** The owner obtained advice from property experts and he now envisage subdividing the subject property into 4 erven of which Portion C and the Remainder will each have a dwelling after subdivision.
- 3.4** The subject erf is the largest residential erf in the Hemel en Aarde Estate and is out of harmony with the urban form of the area. The proposed subdivision is therefore intended to harmonise this proposal with the surrounding residential character and urban form.
- 3.5** The increase in erven would also unlock additional levies which would be paid to the HEAHOA, and the approval and implementation of this proposal will enable the property owner to sell the subdivided properties as the smaller properties would appeal to a larger market.



MOTIVATION

4. TECHNICAL PROCEDURES PROPOSED

4.1 Approval of the following applications are required to obtain the most appropriate land use rights to materialise what is highlighted in Section 3 of this motivation report.

4.1.1 **Subdivision** of Erf 11171 Hermanus in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015, to create the following erven:

Proposed Erf	Extent	Zoning
Portion A	835m ²	Residential Zone 1: Single Residential
Portion B	800m ²	Residential Zone 1: Single Residential
Portion C	1640m ²	Residential Zone 1: Single Residential
Remainder	2236m ²	Residential Zone 1: Single Residential

All erven are proposed to retain the zoning of SR1 and to comply with the HEAE Architectural Guidelines. This is to ensure that any future buildings conform to the character and ambiance of the immediate surroundings. The large size of the subject erf also presents an opportunity for infill development which the owner of the subject property seeks to capitalise on.

The departures sought on the Remainder are the following

- 4.1.2 **Departure** from the 2m south eastern building line to 0 to accommodate the existing building in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015;
- 4.1.3 **Departure** from the 2m south western building line to 0 to accommodate the existing building in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015;
- 4.1.4 **Departure** from the 2m north western building line to 0 to accommodate the existing building in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015; and
- 4.1.5 **Departure** from the 2m south western building line to 0 to accommodate the existing building in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015.

The departures sought on the Portion C are the following

- 4.1.6 **Departure** from the 2m north eastern building line to 0 to accommodate the existing building in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015; and
- 4.1.7 **Departure** from the 2m south eastern building line to 0 to accommodate the existing building in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015.

The proposed subdivision results in existing buildings encroaching on the side building lines (refer **Plan 5**). The proposed departure from the side building lines is therefore to permit existing buildings and not related to any proposed buildings. The proposed building line departure will therefore not have any additional visual impact on the character of the HEAE. Considering that the proposed Remainder and Portion C both belong to the owner of the subject property, no one else in the HEAE would be impacted by the approval and implementation of this proposal.



MOTIVATION

- 4.1.8 Confirmation** that a 5m wide right of way servitude measuring (230m²) registered over the Remainder in favour of Portion C is exempt in terms of Section 26.(1)(g)(v) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015.

The proposed right of way servitude is to provide access to Portion C. The proposed right of way servitude is currently used as access to the southern part of the existing buildings on the property. The proposed width of 5m enables two vehicles to pass each other simultaneously and would avert any collusion. It is therefore requested that the OM confirm that the proposed right of way servitude is exempt from an application in Section 16 of the OM By-Law.

5. APPLICATION

- 5.1** Considering the above, application is made for the following:
5.1.1 Subdivision of Erf 11171 Hermanus to create the following erven in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015:

Proposed Erf	Extent	Zoning
Portion A	835m ²	Residential Zone 1: Single Residential
Portion B	800m ²	Residential Zone 1: Single Residential
Portion C	1640m ²	Residential Zone 1: Single Residential
Remainder	2236m ²	Residential Zone 1: Single Residential

5.2 The departures sought on the Remainder are the following

- 5.2.1 Departure** from the 2m south eastern building line to 0 to accommodate the existing building in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015;
- 5.2.2 Departure** from the 2m south western building line to 0 to accommodate the existing building in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015;
- 5.2.3 Departure** from the 2m north western building line to 0 to accommodate the existing building in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015; and
- 5.2.4 Departure** from the 2m south western building line to 0 to accommodate the existing building in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015.

5.3 The departures sought on the Portion C are the following

- 5.3.1 Departure** from the 2m north eastern building line to 0 to accommodate the existing building in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015; and
- 5.3.2 Departure** from the 2m south eastern building line to 0 to accommodate the existing building in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning Act, 2015.



MOTIVATION

6.2 Land use fabric

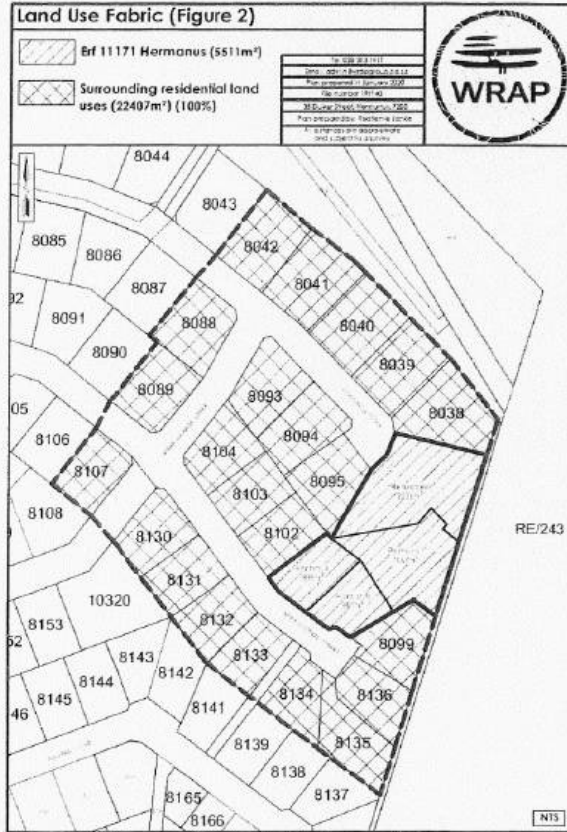


Figure 2 illustrates that all the land uses in the subject delineation are exclusively for residential purposes. This proposal to create 4 erven for residential purposes is in harmony with the prevailing land use fabric in the delineated area of the HEAE.

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MOTIVATION

7. TITLE DEED CONDITIONS

The title deed contains the following conditions which is relevant to the submitted proposal and it will herewith be illustrated why these conditions are not regarded as restrictive.

"G. Subject to the following conditions contained in Deed of Transfer No T86488/2005 imposed in terms of Section 42(1) of Ordinance 15 of 1985 in favour of the Hemel en Aarde Estate Home Owners Association:

G.1 The owner of the subject property and his successor in title shall not be entitled to transfer the Property, or any sub-division thereof, or any unit, or any interest herein, without the prior written confirmation of the Association of its consent to such transfer, which consent may not be withheld if all amount due to the Association by the owner have been paid."

The OM town planner responsible for the area highlighted that this application would be circulated to the HEAHOA to provide comments and input regarding the submitted application.

8. ZONING

The evaluation of zoning is a relevant consideration in terms of Section 66 (1) (a) of the OM By-Law.

Portion C and the Remainder were evaluated in terms of the development parameters of the SR1 zoning:

Portion C			
Residential Zone 1: Single Residential			
	Parameters	Proposal	Comply or deviate
Primary use	Dwelling house, day care centre, guest rooms, home occupation and second dwelling unit.	Dwelling house	Comply
Consent use	Crèche, guest house, green house, house shop, institution, place of instruction, place of worship, residential building and tourist accommodation.	N/A	N/A
Land Use Restrictions			
Coverage	50%	17,4%	Comply
Street building line	4 metres to any street boundary provided that in the case of a corner site with an average depth of 20m or less has a 3m street building line.	N/A as there is no street boundary	Comply
Side and Rear building line	Side and Rear building lines for erven greater than 400m ² are 2m.	Departure from the 2m north eastern building line to 0 to accommodate the existing building. Departure from the 2m south eastern building line to 0 to accommodate the existing building.	Departure motivated

File 19/140

Erf 11171 Hermanus

January 2020 & Amended February 2020

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Height	8 m measured from the base level to the top of the roof.	6,8m	Comply
Garages and carports	Garages and carports may be constructed within the building lines in accordance with 16.1.2.	Comply	Comply
Parking	2 bays per dwelling.	2 bays	Comply

Remainder			
Residential Zone 1: Single Residential			
	Parameters	Proposal	Comply or deviate
Primary use	Dwelling house , day care centre, guest rooms, home occupation and second dwelling unit.	Dwelling house	Comply
Consent use	Crèche, guest house, green house, house shop, institution, place of instruction, place of worship, residential building and tourist accommodation.	N/A	N/A
Land Use Restrictions			
Coverage	50%	16,9%	Comply
Street building line	4 metres to any street boundary provided that in the case of a corner site with an average depth of 20m or less has a 3m street building line.	8m	Comply
Side and Rear building line	Side and Rear building lines for erven greater than 400m ² are 2m.	Departure from the 2m south eastern building line to 0 to accommodate the existing building; Departure from the 2m south western building line to 0 to accommodate the existing building; Departure from the 2m north western building line to 0 to accommodate the existing building; and Departure from the 2m south western building line to 0 to accommodate the existing building.	Departure motivated
Height	8 m measured from the base level to the top of the roof.	6,8m	Comply
Garages and carports	Garages and carports may be constructed within the building lines in accordance with 16.1.2.	Comply	Comply
Parking	2 bays per dwelling.	2 bays	Comply



MOTIVATION

Portion A and B were not evaluated as these proposed erven are vacant and any future buildings will have to be constructed in accordance with the development parameters of the SR1 zoning.

The OMZS highlights the following.

Section 16.1.1 (b) (iv) "No doors and windows shall be permitted in any wall closer than 1,0 m to the rear or side boundary"

There are two windows which are located up to 0m alongside the two proposed north eastern boundary lines between Portion C and the Remainder. These two windows will be closed off to avoid contravening Section 16.1.1 (b) (iv) of the OMZS.

9. SERVICES

The situation regarding the availability of services as a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA, can be illustrated as follows:

9.1 Solid waste

Solid waste is collected by the OM from the subject property and the proposed additional erven will derive the same benefit.

9.2 Electricity

The buildings in the proposed Portion C and Remainder are connected to an existing electricity grid. The proposed Portion A and B will connect to the existing electricity grid.

9.3 Water

The existing building on Portion C and Remainder are connected to the reliable OM water network. The buildings which will be constructed on Portion A and B will connect to the reliable OM water network.

9.4 Sewage

The existing buildings on Portion C and the Remainder are connected to the reliable OM sewage network. The buildings which will be constructed on Portion A and B will connect to the reliable OM sewage network.

9.5 Access and egress

Access to Portion A and B can be gained from Rock Kestrel Street. Access to Portion C can be gained via a right of way servitude which runs over the Remainder and connects to Fish Eagle Close. The Remainder gains access from Fish Eagle Close.

10. NEED AND DESIRABILITY

The need and desirability for the approval and implementation of this proposal will be illustrated in accordance with Section 66 (1) (c) of the OM By-Law and DEADP Provincial Support Document on Relevant Considerations, 2015. The purpose of addressing the desirability of this proposal is to place the decision maker in a position to consider whether any positive advantages will accrue to the area or community by approving this application.

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MOTIVATION

10.1 Impact on views, sunlight and character of the area

The development parameters applicable to the SR1 zoning are applicable on the surrounding erven. The permissible buildings will therefore be of the same scale and not interfere with the views, sunlight and character enjoyed by surrounding property owners.

The construction of dwellings on the proposed Portion A and B will also enhance the aesthetic appeal of the subject property.

10.2 Economic impact

The investment which will occur in the construction of dwellings on the proposed Portion A and B will be labour intensive and contribute to the reduction of poverty which can be regarded as a positive economic impact.

10.3 Environmental impact

No listed activities in terms of the National Environmental Management Act are triggered by this proposal.

11. SPLUMA MOTIVATION REQUIREMENTS

This application as a relevant consideration in terms of Section 42 (c) of SPLUMA is motivated as follows:

11.1 Public interest

The creation of 3 additional erven on the subject property would increase the levies payable to the HEAHOA if these subdivisions are approved and implemented. The approval and implementation of this proposal and construction of dwellings on Portion A and B will increase the value of the subject property and the rates which are payable to the OM. The additional levies and rates which will be paid, will contribute to service delivery which is in the public interest.

11.2 Impact on safety, health and wellbeing of the surrounding community

The additional families which will reside on Portion A and B will be additional surveillance which is projected to contribute to the reduction of crime. This can therefore be regarded as being in the interest of the safety and wellbeing of surrounding property owners.

Residential land uses are not noxious and therefore not projected to interfere with the health of surrounding property owners.

11.3 Respective rights and obligations of all those affected

Opportunity cost in the context of land use planning refers to the devaluation or foregoing a valued land use right of interested and affected parties when an application is approved and implemented.

The surrounding properties as illustrated in the delineation in Section 6 are all zoned SR1 and have land use rights which property owners' value. The proposal to create Portion A, B, C and D will maintain this valued residential character of the HEAHOA. The respective rights of surrounding property owners will therefore not be devalued or foregone with the approval and implementation of this proposal.



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12. SPATIAL PLANNING POLICIES

The consistency of this proposal with all relevant spatial planning policies was investigated. This is a relevant consideration in terms of Section 66 (1) (h), (i) (u) (k) and (l) of the OM By-Law:

12.1 PSDF

The aim of the PSDF is to communicate the governments' sound spatial development intentions to the private sector and civil society. Policy proposal in the PSDF which are pertinent to this proposal are recorded below.

12.1.1 The PSDF promotes the protection and enhancement of the prevailing sense of place and settlement patterns.

The prevailing sense of place as illustrated in Section 6 of this report is residential estate living with an average erf size 1018,5m². The proposal for erven which will be used for residential purposes with an average erf size of 1377,75m² is in harmony with the valued sense of place and settlement pattern of the area.

12.1.2 Provide households with residential environments.

The purpose of this proposal is to contribute towards unlocking additional residential living environment in the HEAE as prescribed by the PSDF.

12.1.3 Avoid developing new residential areas in proximity to agricultural areas.

The unlocking of additional residential opportunities within the urban edge as illustrated with this proposal reduces the pressure for urban sprawl into agricultural areas.

12.2 SDF

The SDF identifies areas where growth and changes are projected and contains policy proposals which ensure that this occurs to the benefit of the inhabitants of the area. Policy proposal in the SDF which are pertinent to this proposal are recorded below.

12.2.1 Promote the provision of a range of residential housing types and appropriated densification strategies.

This proposal entails increasing the permissible density on the subject property from 3,6 dwelling units a hectare to 14,5 dwelling unit a hectare to be aligned with the surrounding density and unlock the provision of a range of residential housing types.

12.2.2 Maintain the unique village character of the Greater Hermanus

The approval and implementation of this proposal is intended to bring the proposed development in harmony with the prevailing village character of the HEAE as prescribed by the SDF.

12.2.3 Contain the urban footprint of the Greater Hermanus within a well define urban edge.

This proposal is within the urban footprint of the Greater Hermanus as prescribed by the SDF.

12.2.4 Spatial proposal plan

The spatial proposal plan designates the subject property for residential purposes and this proposal is aligned with this designation.



12.3 OMGMS

The OMGMS aims to guide a process which would institute the enhancement of the quality and efficiency of the built environment. Policy proposal in the OMGMS which are pertinent to this proposal are recorded below:

12.3.1 Enhance the built environment and landscapes.

The existing buildings on the subject property are visually appealing and contribute to an enhanced built environment in the HEAE. This construction of additional buildings on Portion A and B in accordance with the Hemel en Aarde Estate Architectural Guidelines will contribute towards the further enhancement of the built environment and landscape of the estate.

12.3.2 Promote infilling of vacant sites within the exiting urban area.

This proposal promotes the subdivision and infilling of the subject property as prescribed by the OMGMS.

12.3.3 Spatial proposal plan

The subject property is designated for residential purposes and this proposal is aligned therewith. The subject property historically consisted of several erven which is accounted for in the spatial proposal plan. The number of erven which are sought are therefore in harmony with the densities in the OMGMS.

13. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains 5 uncompromisable planning principles which each development application must be guided by. Policy proposal in SPLUMA which are pertinent to this proposal are recorded below:

13.1 Spatial justice

Spatial justice refers to addressing spatial development imbalances caused by apartheid planning. The approval and implementation of this proposal will benefit the historically marginalised through employment creation during the construction phase on Portion A and B. The incomes which will be earned will be used by the employees to afford access to land, housing and improve socio economic standing. The approval and implementation of this proposal will therefore unlock employment opportunities which will address apartheid spatial development imbalances.

13.2 Spatial sustainability

This proposal does not entail the encroachment on agricultural land, environmentally sensitive areas or biodiversity rich areas and can therefore be regarded as spatially sustainable.

13.3 Efficiency

The proposal promotes the optimal use of energy and space on the current derelict property which has development potential to unlock additional residential opportunities. This application entails the optimal use of the subject property while conforming to the residential character of the surroundings.

13.4 Spatial resilience

The subject development proposal is in synchrony with the all relevant spatial planning policies. The spatial planning policies all contain policy proposals pertinent to this site which



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MOTIVATION




enables the land uses applied for to absorb environmental and economic shock in a timely and efficient manner. The approval and implementation of this proposal will therefore promote spatial resilience.

13.5 Good administration

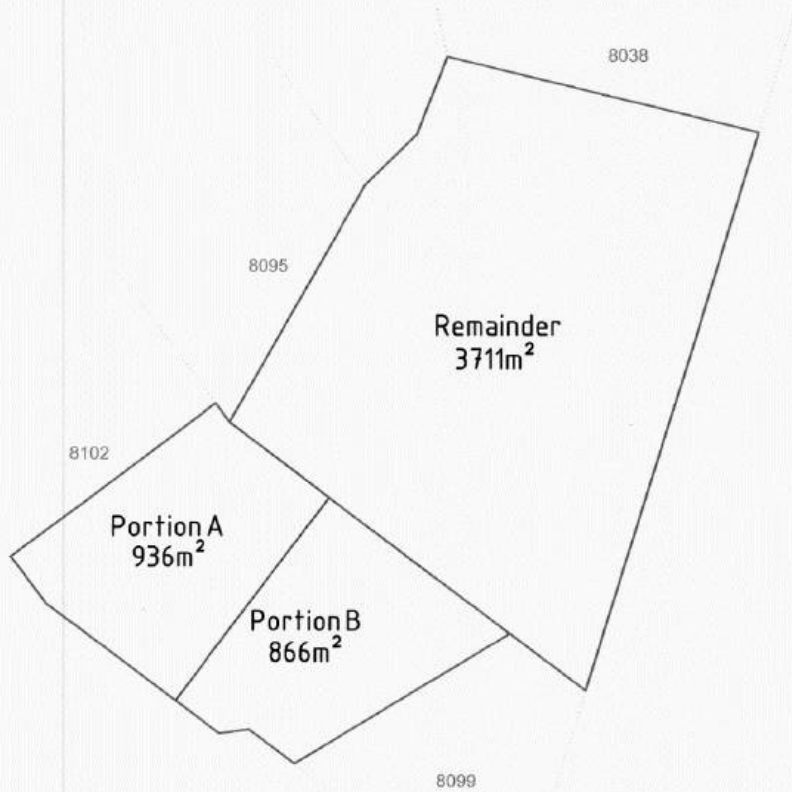
The OM has a credible track record of good administration regarding the method of public participation which accepts comments from the public to make an informed decision as well as complying with the prescribed time frames pertaining to the processing of applications.

Annexure C

Subdivision Plan of Erf 11171, Hermanus

-  Erf 11171 Hermanus (5511m²)
-  Subdivision line
-  Surrounding properties

Tel: 028 313 1411
Email: admin@wrapgroup.co.za
Plan prepared in October 2022
File number 19/140
Unit B, Standard House, Cnr Dirkie Uys and Royal Street, Hermanus, 7200
Plan prepared by: Thian Jansen
All distances are approximate and subject to a survey



Scale 1 : 500

Annexure D 1/50

Loretta Gillion - ERF 11171, 19 FISH EAGLE STREET, HEMEL & AARDE ESTATE, HERMANUS.

From: "Patrick Busby" <>
To: <loretta@overstrand.gov.za>
Date: 13/04/2020 11:44 AM
Subject: ERF 11171, 19 FISH EAGLE STREET, HEMEL & AARDE ESTATE, HERMANUS.



TP. N. Moor
(1.1. Olivier)

Hi Loretta,

We are Mr & Mrs Busby and are in receipt of registered post from S. MULLER, regarding the subdivision and alterations to the above mentioned erf.

We have no problems in principle provided that the new dwellings comply with all the necessary regulations of the Estate.

Regards,
MR P.R. AND MRS G.M. BUSBY
12, Rock Kestrel
Hemel & Aarde Estate.
Hermanus.

FILE NO:	EF 11171
	Memo's Note
SCAN NO:	48
COLLABORATOR NO:	1412990

2/50

Loretta Gillion - Municipal Notice 33/2020 Subdivision ERF 11171 19 Fish Eagle

From: "Pat Bagnall" <>
To: <loretta@overstrand.gov.za>
Date: 17/04/2020 09:52 AM
Subject: Municipal Notice 33/2020 Subdivision ERF 11171 19 Fish Eagle
Cc: <trustees@estatehna.co.za>



FILE NO:	33/1171
	Hemel & Aarde
SCAN NO:	47
COLLABORATOR NO:	1412989

Attention : Mr. H Boshoff

Re : Subdivision ERF 11171 19 Fish Eagle Hemel & Aarde Estate

Objection to subdivision of the abovementioned property, ERF 11171

- The notice appeared in the Village News on 11 March 2020.
- On 16th March 2020 the Trustees of H & A were made aware of the notice which had appeared in the Village News.
- After discussion with Mr. Boshoff on 18/03/2020 I was informed that a notice had been sent to The H & A Trustees, PA533277492ZA on 11/03/2020.
- As an affected person in the subdivision we received a registered slip in the mailbox from Overstrand Municipality on 20/03/2020.
- A number of affected persons who should have received this not had NOT received their notices by the time of the National Lockdown by the President on 26/03/2020.
- The subdivision has not been dealt with according to the constitution of the Hemel & Aarde Estate and an objection to this has been submitted by the Trustees.**
- While there may be certain benefits of a subdivision with regards to rates and levies income, one has to take into account the effect of construction, noise & prolonged building works, damage and repairs required to roads with prolonged heavy vehicles carrying building materials. There is always the increased risk of crime when construction takes place. This has been a settled area of the H & A Estate since the completion of the final vacant land in Fish Eagle 2-3 years ago.
- The relaxation of boundary lines on H & A Estate in the upper part of the Estate should NOT be considered.
- Will the subdivisions first need to be sold before any construction can take place? If so, this could take years before it is completed in its entirety and cause an endless disruption to the peaceful environment currently enjoyed by affected parties.
- In keeping with the sizes of other properties in this area, and Portion C and Remainder, it is suggested that Portion A & Portion B be retained as one property as they are both smaller than the average size of 1018.5 sq m as per 12.1.1 which could lead to the reduction in value of other properties in this area.

Suggestions:

- That the notice be readvertised - having been placed as the Village News as SA prepared for lockdown.

3/50

2. That the submission for objections date be postponed to two weeks after SA lifts the lockdown to allow all affected parties to receive their registered letters and to be allowed equal opportunity to respond to the notice of subdivision of Erf 11171.
3. That A & B be combined to 1630 sq m, to be more in keeping with the sizes of surrounding properties, and that of the two other subdivisions of Erf 11171.
4. That NO relaxation of perimeters be allowed.
5. That a meeting be held with Trustees, affected members and the owner of Erf 11171 - or their respective representatives for transparent discussion.
6. Should the subdivision be approved conditions need to be set in place with regards to term (expiry) dates for sale of property and conditions and dates for construction of property?

This is relevant to restricting damage, maintenance of roads & verges and noise levels which could be drawn out over years of construction and annoying to those affected by the subdivision. This is relevant to ALL residents not only those in the upper H & A estate

It is hereby requested that this notice be circulated to all members of H & A in the interests of transparency and fairness to all members of H & A as this proposal not only affects the affected parties in the immediate vicinity of Erf 11171, but also every single member from the gate entry all the way to the proposed subdivision at the top end of the estate and any future development requests on properties within Hemel & Aarde Estate.

Pat Bagnall

17 Sparrow Hawk

Mail Collection 176
Hemel & Aarde Estate
Hermanus
7200

Tel : ()
Cell : ()

Email : ()

Virus-free www.avast.com



4/50

25 March 2020

Overstrand Municipality
By-Law and Municipal Land Use Planning Department
16 Patterson Street
Hermanus, 7200
Municipal Notice no 33/2020



TP. N. (heerl
Ch. Olivia)

ERF: 11171, 19 FISH EAGLE STREET, HEMEL-EN-AARDE ESTATE

Application to Overstrand Municipality for sub-division and relaxation of building lines on behalf of P T N Harper

Dear Sir/Madam,

In response to Municipal Notice No: 33/2020 concerning the above, a representative of the Homeowners Association visited your offices on Tuesday, 17 March 2020 and has had sight of the extensive above application. Notwithstanding the omission of any detailed comments to the contrary, the Hemel en Aarde Homeowners' Association submits our objection to the application consistent with the following:

The Constitution of the Homeowners' Association submitted to and ratified by the Overstrand Municipality is legally binding upon all members owning property on the Estate. In terms of sub-clauses 4.4 and 4.5 of the Architectural Design Manual (Annexure 'B' of the Constitution) "...All plans and National Building Regulation waiver applications must be submitted to and stamped by the Home Owners Review Committee before being submitted to the local authority."

The above application has not been discussed, submitted, scrutinised or approved by the Association. In addition, in our view the adjoining property owners have not been properly advised of this application or its implications.

It is worthy of note that the existing structures (on the five previously consolidated erven) are built across the proposed sub-division lines and the re-configuration has been massaged to allow for this non-compliant proposal.

In view of the foregoing, the Overstrand Municipality does not have the right to approve this application without proper notification and consultation with the Association and adjoining property owners. Kindly understand that this objection will be copied and circulated to all interested parties.

Yours faithfully

Rosemary Surmon
Hemel-en-Aarde Estate Homeowners Association
Chairperson

FILE NO:	OF 11171
	Hemel & Aarde
SCAN NO:	
COLLABORATOR NO:	1412905

Private Bag X7 Hermanus 7200 * E-mail: reception@estatehna.co.za
Telephone +27 (0) 28 316 2691 * Fax +27 (0) 28 316 2684

25 MARCH 2020

TP

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INITIAL LEVY SCHEDULE - Annexure "E"
Page 1 of 1

"Heaven on Earth"

INITIAL LEVY SCHEDULE
Effective from 1 November 2007 to 29 February 2008
(Annexure "E")

All Erven smaller than 500 square meters -	Monthly levy R 426.17
All Erven between 500 square meters and 749 square meters -	Monthly levy R 472.82
All Erven between 749 square meters and 1000 square meters -	Monthly levy R 519.43
All Erven larger than 1000 square meters -	Monthly levy R 566.06

7/50



CLIENT:		Tel:		
ERF NO & STREET NAME:		Cell:		
1	CONDITIONS FOR ACCEPTING PLANS FOR APPROVAL:	YES	N/A	NO
1.1	FOUR SETS OF PLANS READY FOR SUBMISSION TO LOCAL AUTHORITY ARE TO BE SUBMITTED AND 3 SETS APPROVED ARE RETURNED FOR SUBMISSION TO THE LOCAL AUTHORITY.			
1.2	ARCHITECTURAL REVIEW SCRUTINY FEE IS PAYABLE ON SUBMISSION TO ARC.			
1.3	THIS CHECKLIST IS TO BE COMPLETED IN FULL AND DETAIL NOT INDICATED AND MARKED WITH N/A MAY NOT BE CONSTRUCTED WITHOUT FORMAL APPROVAL FROM ARC			
1.4	ANY UNCLEAR INFORMATION, OMISSION OR AMBIGUITY IN THE DRAWINGS WILL REQUIRE CLARIFICATION AND RE-SUBMISSION TO THE ARC			
2	GENERAL INFORMATION:			
2.1	ARE ERF NO'S OF ADJACENT PROPERTIES INDICATED			
2.2	IS THE NORTH POINT INDICATED			
2.3	ARE THE BUILDING LINES INDICATED			
2.4	ARE FLOOR LEVELS IN RELATION TO CONTOUR LINES INDICATED			
2.5	ARE NATURAL GROUND LEVELS INDICATED, SHOWING CUT AND FILL			
2.6	ARE BOUNDARY WALLS INDICATED			
2.7	IS STORMWATER RETICULATION SHOWN			
3	ROOF INFORMATION:			
3.1	ARE FLAT ROOFS CONCEALED FROM STREET			
3.2	ARE PITCHED ROOFS AS PER ELEMENTS 2.1			
3.3	ARE FLAT ROOFS CONCEALED BEHIND PARAPETS			
3.4	IS THE ROOF MATERIAL AND COLOUR INDICATED			
3.5	ARE FASCIAS AND BARGE BOARDS WITH THEIR TYPE AND COLOUR INDICATED			
3.6	ARE GUTTERS WITH THEIR TYPE AND COLOUR INDICATED			
4	WALL INFORMATION:			
4.1	IS THE FINISH AND COLOUR INDICATED			
4.2	IS TYPE AND COLOUR OF DOORS AND WINDOWS INDICATED			
5	EXTERNAL ELEMENTS:			
5.1	ARE THE FOLLOWING INDICATED ON THE DRAWINGS WITH MATERIAL, SIZE, DETAIL, COLOUR AND FINISH			
5.1.1	VERANDAHS			
5.1.2	BALCONIES			
5.1.3	BALUSTRADES			
5.1.4	PERGOLAS			
5.1.5	AERIALS, COWLS & AIRCONDITIONING UNITS & OUTDOOR FEATURE LIGHTING IF ANY			
6	GENERAL:			
6.1	IS THERE A DRYING YARD CONCEALED FROM THE ROAD			
6.2	DOES THE DESIGN ALLOW FOR PLUMBING TO BE CONCEALED INTO THE BRICKWORK			
6.3	IS THE BUILDING IN KEEPING WITH THE INTENTIONS OF THE DESIGN GUIDELINE			
6.4	IS THERE A QUALIFIED SURVEYOR'S TOPOGRAPHICAL DIAGRAM AVAILABLE			





APPENDIX CL - 2

Hemel en Aarde Estate Home Owner's Association Approved Colour List

1. The Home Owner's Association may from time to time add and/or delete colours from this list.
2. All dwellings must be painted a colour, or a combination of colours selected from this list. The selection of colour/s must be indicated on the plans submitted to the Architectural Review Committee (ARC) for consideration.
3. Any of the approved colours may be used as well as white.
4. The combination of approved colours is still subject to approval by the ARC.
5. The list of approved colours has been selected from the Plascon Expressions colour range as well as from the Plascon Inspired colour range.
6. Any make of paint may be used, but for accurate colour matching Plascon paint is recommended. The onus and responsibility of accurate colour matching of a different make of paint rests with the Member.

Note: The Plascon "Expressions" colour range was phased out in December 2006 and replaced with the Plascon "Inspired" colour range. The "Expressions" colour range's colour names and codes are however still valid and therefore may be used.

New Colour Range			Old Colour Range		
PLASCON Inspired Colour Range			PLASCON Expressions Colour Range		
Colour Code	May Be Used For	Colour Name	Colour Code	May Be Used For	Colour Name
Y1-A2-1	Minor Detail Only	Fun in the Sun	B14-1	Major or Minor Detail	Pearly Ivory
Y1-A2-2	Major or Minor Detail	Glowworm	B14-2	Major or Minor Detail	Fresh Cream
Y1-A2-3	Major or Minor Detail	Translucent Lace	B14-3	Major or Minor Detail	Crema Caramel
Y1-B2-1	Minor Detail Only	Butterscotch Glaze	B14-4	Major or Minor Detail	Peanut Cream
Y1-B2-2	Major or Minor Detail	Almond Butter	B14-5	Major or Minor Detail	Dijon
Y1-B2-3	Major or Minor Detail	Spiced Olive	C14-1	Major or Minor Detail	Hint of Calmead
Y1-C2-2	Minor Detail Only	Pale Blisness	C14-2	Major or Minor Detail	Onion
Y1-C2-3	Minor Detail Only	Pink Linen	C14-3	Major or Minor Detail	Straw Wood
Y1-D2-2	Minor Detail Only	Country Masterroom	C14-4	Major or Minor Detail	Wheat germ
Y1-D2-3	Minor Detail Only	Incense Treasure	C14-5	Major or Minor Detail	Oak Belgir
Y2-A2-1	Minor Detail Only	Perky Pint	C15-1	Major or Minor Detail	Mashed Potatoes
Y2-A2-2	Major or Minor Detail	White Naps	C15-2	Major or Minor Detail	Scalloped Potato
Y2-A2-3	Major or Minor Detail	White Montage	C15-3	Major or Minor Detail	French Fry
Y2-B2-1	Minor Detail Only	He Loves Me	C15-4	Major or Minor Detail	Filins
Y2-B2-2	Major or Minor Detail	Harvest Wreath	C15-5	Major or Minor Detail	Rader Range
Y2-B2-3	Major or Minor Detail	Oyster Catcher	C16-1	Major or Minor Detail	Cook Mint
Y2-C2-2	Minor Detail Only	Bleached Gacbah	C16-2	Major or Minor Detail	Capellini
Y2-C2-3	Major or Minor Detail	Dalciato White	C16-3	Major or Minor Detail	Cream of Potato
Y2-D2-2	Major or Minor Detail	Stone Wash	C16-4	Major or Minor Detail	Gold
Y2-D2-3	Minor Detail Only	Velvet	C16-5	Major or Minor Detail	Chicken
Y2-E2-3	Minor Detail Only	Artist's canvas	C16-6	Major or Minor Detail	Braai
Y3-A2-1	Minor Detail Only	Lemon Sponge Cake	D14-1	Major or Minor Detail	Alpaca
Y3-A2-2	Major or Minor Detail	Jello	D14-2	Major or Minor Detail	Bleached Sand
Y3-A2-3	Major or Minor Detail	Lemon Drizzle	D14-3	Major or Minor Detail	Golden Pop
Y3-B2-1	Minor Detail Only	Thatch	D15-1	Major or Minor Detail	Falabel
Y3-B2-2	Major or Minor Detail	Ocean Soft	D15-2	Major or Minor Detail	Gallery
Y3-B2-3	Major or Minor Detail	Cuttlefish	D15-3	Major or Minor Detail	Cream of Mushroom
Y3-C2-1	Minor Detail Only	Organic	D15-4	Major or Minor Detail	Seasquatch
Y3-C2-2	Minor Detail Only	Springbok Chest			
Y3-C2-3	Major or Minor Detail	Ivory Snow			
Y3-D2-2	Minor Detail Only	Ivory Ridge			
Y3-D2-3	Major or Minor Detail	Ivory Parchment			
Y3-E2-3	Major or Minor Detail	Fresh Linen			
Y4-A2-1	Minor Detail Only	Hampton Daisy			
Y4-A2-2	Major or Minor Detail	Headline Yellow			
Y4-A2-3	Major or Minor Detail	Lemony Mist			
Y4-B2-1	Minor Detail Only	Yellow Mystery			
Y4-B2-2	Major or Minor Detail	Acacia			
Y4-B2-3	Major or Minor Detail	Ivory White			
Y4-C2-2	Minor Detail Only	My Magnolia			
Y4-C2-3	Major or Minor Detail	Aftersun Shower			
Y4-D2-2	Minor Detail Only	Lightning			
Y4-D2-3	Major or Minor Detail	Resplendent			
Y5-A2-1	Minor Detail Only	Yellow Ribbon			
Y5-A2-2	Major or Minor Detail	Rain Sticks			
Y5-A2-3	Major or Minor Detail	Moon Beam			
Y5-B2-3	Major or Minor Detail	Happy Ending			
Y5-C2-2	Minor Detail Only	Parmesan Sauce			
Y5-C2-3	Major or Minor Detail	Sheepskin			
Y5-D2-2	Minor Detail Only	Mosaic			
Y5-D2-3	Major or Minor Detail	French Chantreuse			
Y5-A2-1	Major or Minor Detail	Ligna Reflection			
Y5-B2-3	Major or Minor Detail	Fresh Scent			
Y6-C2-3	Major or Minor Detail	Swan Hills			
Y6-D2-3	Major or Minor Detail	Clarens Stone			
Y7-E2-2	Minor Detail Only	Mokona			
Y7-E2-3	Major or Minor Detail	Bleached Newclow			

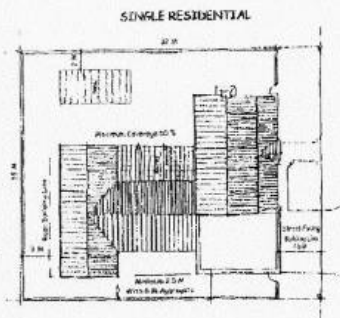


3. STREET FACING BUILDING RESERVE

- 3.1. No area within the building reserve or the common area can be built on with the exception of an approved driveway and pedestrian walkway not exceeding a width of 7 meters in total. Where the driveway/pedestrian walkway extends over the common area the natural ground level may not be altered.
- 3.2. The natural ground levels of the common area are not allowed to be altered.
- 3.3. No retaining walls are allowed to be built within any street facing building reserve other than to support the approved driveway/pedestrian walkway and, if needed, are not allowed to be built higher than natural ground level and may not support a cut area deeper than 0.9 meters at any point.
- 3.4. The garden area within the street facing building reserve may be tiered, terraced, sloped and have its natural shape altered by means of natural means and not artificial means (built retaining walls or retaining blocks). Adjacent tiered and terraced areas are not allowed to differ in height by more than 0.9 meters.
- 3.5. If any garden retaining walls are built within the building lines, (beyond the building reserve) it has to be covered by soil / planted / landscaped.
- 3.6. Where the natural ground level of any part of the street facing building reserve is to be reshaped and/or altered it may be done subject to the above and subject to building plans being approved therefore. The applicant's building plan must include sufficient cross section contour detail and will also have to be approved by the immediate neighbours.

4. PLAN SUBMISSION : ALL SINGLE RESIDENTIAL BUILDING LINES AND DENSITIES AS PER THE RELEVANT ZONING SCHEME

- 4.1. Submission drawings are to clearly express design intentions, with materials selection, and final finishes. It is recommended that architects or other competent persons prepare the plans for submission to the Architectural Review Committee (ARC).
- 4.2. Two sketch plans showing intended colour scheme to be submitted to ARC for scrutiny, well in advance of intended Local Authority submission.
- 4.3. Once accepted, four sets of detail drawings (three coloured) to be submitted to ARC. On approval, three stamped sets will be returned to the Member for Local Authority submission, one set to be retained by ARC for record purposes.
- 4.4. The Local Authority will not accept plans without the ARC approved stamp.
- 4.5. Any application for waivers of the National Building Regulations, or any other statutory regulations, must first have it approved by the ARC.
- 4.6. A scrutiny fee as established by the Home Owners Association must accompany the detailed plans. If in the Review Committee's opinion the initial application requires extensive re-design then a re-submission will be considered as a new submission with a new fee to be paid.
- 4.7. Topographical survey by registered Land Surveyor required.

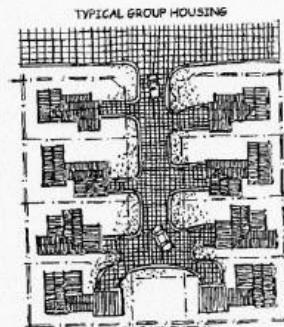


5. GROUP HOUSING



INTERESTING SKYLINE BY ALTERNATING SINGLE AND DOUBLE STOREY UNITS

- 5.1. Bulk of buildings to be placed away from streets and closer to rear boundaries
- 5.2. Double storey on Erven (group housing) generally to run North South. Erven on South boundary however may run West East. Double storey units to be on alternate Erven, as well as alternately placed to adjacent group housing block.
- 5.3. 45% Coverage of erf.
- 5.4. Alternate double and single storey units.
- 5.5. 2nd Storey, where applicable, to be maximum one third of actual ground floor plan area.
- 5.6. Street building line 3m.
- 5.7. Side building lines 1.2m minimum generally, but with an aggregate of 4m.
- 5.8. Garaging may be on lateral boundary with a rear building line for a maximum length of 6.5 metres and a vertical height of less than 2.7 metres of boundary. Rainwater to discharge inside own property.
- 5.9. Rear building line 3 metres from boundary.
- 5.10. No windows facing boundaries closer than 1.2 metres
- 5.11. With reference to other elements refer to general guideline.
- 5.12. No dwellings less than 100m² excluding garaging, ground floor only.



SINGLE RESIDENTIAL



BULK OF BUILDINGS PLACED AWAY FROM CENTRAL STREET

6. THE HOME OWNERS ASSOCIATION:

- 6.1. The purpose of the Home Owners Association (HOA) is to, amongst other things, regulate and control development within Hemei en Aarde Estate to the benefit and best interest of the community, and to the satisfaction of the Local Authority with the assistance from the Architectural Review Committee.
- 6.2. The (HOA) will determine the hours and conditions that will apply to building contractors and building operations.
- 6.3. The (HOA) will not have the power to veto a decision of the (ARC) on professional or technical grounds.
- 6.4. The (HOA) may, subject to the terms of (HOA) Constitution, after any call or requirement of those guidelines, and may at any time decide to appoint another firm of architects to act as a member of the (ARC).
- 6.5. A complete set of Builders Rules will be available from the Home Owners Association and Members are to ensure that all contractors comply strictly with them.

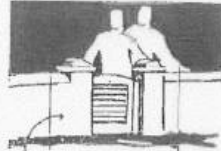
7. HOME OWNERS' ASSOCIATION APPROVED COLOUR LIST:

See Appendix 'CL-2'





UTILISE ROOF SPACES



LOW WALLS - "WIRE MESH"



SPACE OF DOUBLE VOLUMES BROKEN BY PERGOLAS, WALLS, VERANDAS

2.4 CHIMNEYS, VERANDAS, BALCONIES, BALUSTRADES, PERGOLAS, AND OTHER EXTERNAL ELEMENTS

- 2.4.1 Not Acceptable
Mild steel flues.
Prefabricated metal awnings.
Decorative wrought iron, cast iron or aluminium.
Exposed drainpipes.
Exposed water storage tanks.
- 2.4.2 Acceptable
Elements to be consistent with style of house.
Canvas awnings.
Simple detailing ornamentation, if necessary to design.
Timber posts or brick piers to pergolas.
Colours consistent with main house.
Glass conservatories attached to main structure with ARC approval.
External grade timber decking.

2.5 GARAGES & OUTBUILDINGS

- 2.5.1 Not Acceptable
Precast concrete.
Fibreglass cladding.
Porfo couche.
Tubular metal shade ports.
Wendy houses, tool sheds and garden sheds or similar looking structures.
- 2.5.2 Acceptable
Construction consistent with main structure.
Garage doors in timber or aluminium flip up or sectional overhead.
Preferably linked to main structure.
Colour consistent with house.
Dog kennels provided that not visible from road and with a maximum size of 1.5 m x 1.5 m x 1.2 m high.

2.6 GARDEN ENCLOSURES, BRAAIS AND LAPAS

- 2.6.1 Not Acceptable
Vibracrete type ponds.
Barbed or razor wire.
Unenclosed washing line area.
Face brick.
Street facing boundary/perimeter walls over building line.
Retaining walls higher than NQL over street facing building line.
- 2.6.2 Acceptable
Street boundary/perimeter walls if necessary maximum 900mm high and set back to building line.
Yard/perimeter walls maximum 2m high.
Plastered masonry.
Painted bagged brickwork.
Machined ranch pole fencing.
Colour consistent with house.

2.7 PAVING, DRIVEWAYS AND VISITORS PARKING

- 2.7.1 Not Acceptable
Concrete interlocking pavers.
Unpaved drive.
In-situ pressed concrete.
Two driveways on same street front.
Driveway and pedestrian walkway paving in excess of 7 meters wide over common area.
- 2.7.2 Acceptable
Clay pavers.
Cobble sets.
Ceramic tiles.
Edged and panelled premix tarmacadam.
Access preferred off minor road where applicable.

2.8 SWIMMING POOLS AND SPAS

- 2.8.1 Not Acceptable
Portable pools above ground.
Visible pump and filter.
Visible pool outside screen walls.
- 2.8.2 Acceptable
Pool paving to be consistent with house paving.
Landscaped water features.
Sound proofed pumps.

2.9 SIGNAGE AND STREET SCAPE

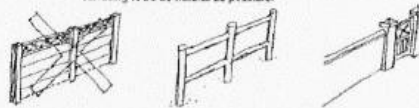
- 2.9.1 Not Acceptable
Theme letter boxes.
Stylized house names and numbers.
Trees not conforming to height restriction.
Unplanted retaining wall systems.
- 2.9.2 Acceptable
Postal slot in door only.
House names and numbers in Hemel en Aarde Estate approved typeface "Serpentine".
Planting maintained up to Erit boundary.
Terracing to be as natural as possible.

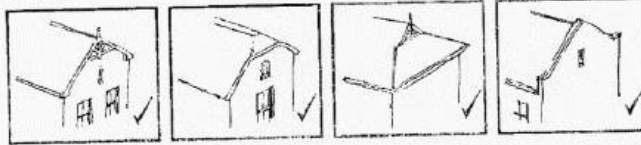
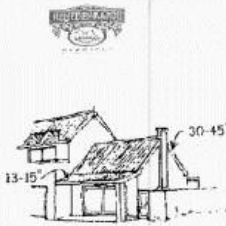


TEXTURES ON EXTERNAL AREAS
"KILLERBLOCKS" AND PLANTING



INTERESTING COMBINATIONS
OF FLOOR FINISHES - TIMBER
DECKING AND PAVERS

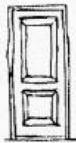




STONE WALL PLINTH WITH SHIPLAP SIDING



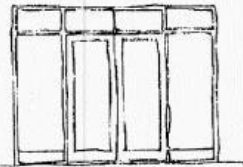
PLASTERED BRICK WALL WITH EXTENDED PLINTH



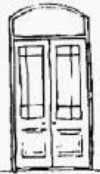
RAISED AND FIELDED PANEL DOOR



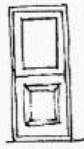
FRENCH DOOR



GLAZED FRENCH DOORS WITH SIDELIGHTS AND FANLIGHTS



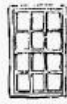
HAPPY DOORS



GLASS TOPPED STABLE DOOR



VICTORIAN SASH WINDOW



'CAPE DUTCH' SASH WINDOW



ARCHED GEORGIAN SASH WINDOW



CASEMENT WINDOW VERTICAL PROPORTIONS



SHUTTERS TO ALL WINDOWS



TOP HUNG WINDOWS

2. ELEMENTS - Please note that this list not fully inclusive and is indicative only.

2.1 ROOFS

2.1.1 Not Acceptable

- Semi-circular roofs.
- Mansard roofs.
- Flat roofs without parapets.
- Strong dominant colours.
- Pre-manufactured dormers.

2.1.2 Acceptable

- Pitch 30-45 degrees to main structure.
- Pitch 13 degrees minimum to minor structures.
- Flat roofs with gravel or paving.
- Traditional Victorian profile dove grey to black.
- Concrete roof tiles charcoal to black.
- Traditional thatch.
- Shingle, charcoal to black.
- Natural slate, charcoal to black.
- Pitched dormers for tiles or sheet roofs.
- Also traditional thatch leg of mullion dormers.
- Solis or Velux type roof windows.

2.2 SUPERSTRUCTURE WALLS

2.2.1 Not Acceptable

- Face brick
- Pebbled dash or other plaster effects
- Spanish plaster
- Ornate pilasters (Cape Dutch)
- Building on sills
- Stone cladded plinths on 1st floor level

2.2.2 Acceptable

- Painted bagged brickwork
- Smooth or traditional slive plaster and painted
- Stone plinths
- Stone piers, also to chimney breasts
- Shiplap or "Vermont" siding
- Colours to be as per attached H.O.A. approved list

2.3 WINDOWS & EXTERNAL DOORS

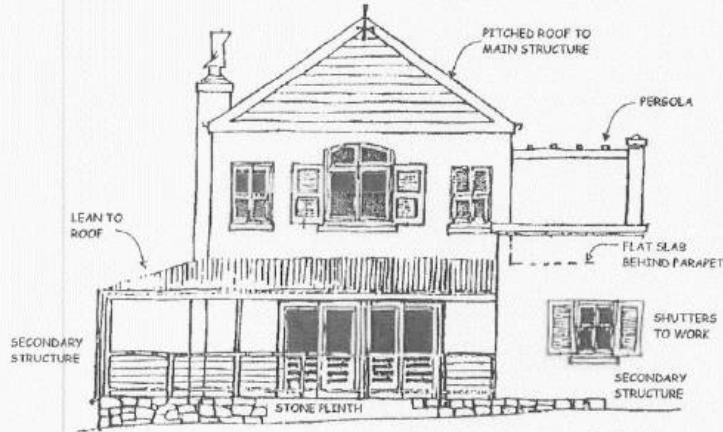
2.3.1 Not Acceptable

- False shutters
- Winkles and glass blocks
- Reflective glass

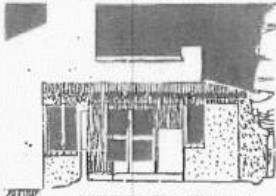
2.3.2 Acceptable

- Glazed trench and sliding doors
- Single windows, vertically proportioned or square
- Aluminium windows and glazed doors
- Timber (painted or natural oiled)
- UPVC
- Colours to be as per attached H.O.A. approved list

2.3.3 Large windows and/or glass areas must be set back (minimum 800 mm) and/or shaded unless specifically approved by the ARC (consideration will be subject to merit and subject to aesthetics)



SIMPLE CLEAN LINES - MINOR ELEMENTS FLOWING OUT OF THE MAJOR



SHADED SPACES - VERANDAS

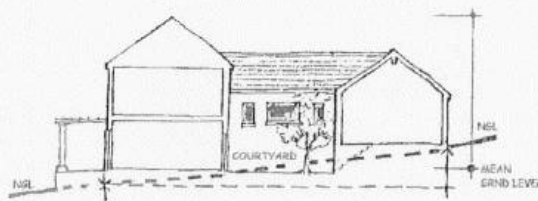


LOCAL VERMACULAR - PLINTHS, SHUTTERS, COLUMNS, PERGOLAS



1. ARCHITECTURAL GUIDELINES

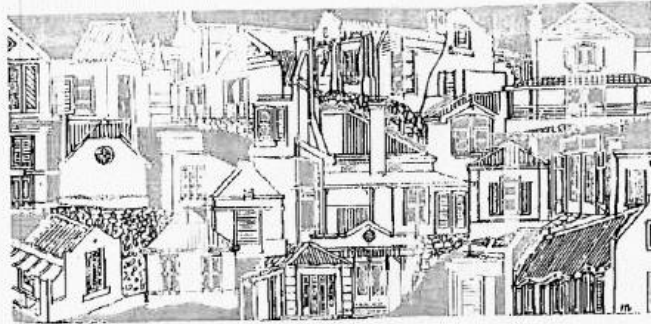
- 1.1 The broad range of local Vernacular Architecture, in a more modern and relatively simple idiom, is the unifying theme envisioned for the Hamlet on Aarde Estate. To be encouraged are designs flowing from Hermanus' unique village character, with special reference to its coastal character.
- 1.2 The local Vernacular usually has the major structure with a plan form with simple clean lines composed of rectangular or square forms, with minor elements flowing from this, such as lean to roofs and pergolas, all generally of common building elements.
- 1.3 No facadist architecture, or copies of Cape Dutch, Victorian, Classical, or Mediterranean buildings. Also no free form mixed elements, such as curved balconies. Detailing and decoration if used, to be simple. Windows essentially to have vertical proportions within a horizontal composition.
- 1.4 The height restriction of any structure is 7.5 m above the mean natural ground level of the footprint of the main structure, and dwellings with more than 2 floors placed directly above each other above mean natural ground level will not be allowed. The use of roof space for a 2nd storey is encouraged.
- 1.5 Owners are encouraged to site the structures with due regard to the ground slope i.e. length of building to follow contours and not straddle them. Also to take note of the sun path and prevailing winds, as well as their views and those of adjacent owners.
- 1.6 The careful handling of the Streetscape, with suitable landscaping, access to garages, parking and the dwelling to enhance the village scale.
- 1.7 a) No dwelling to be less than 100 m² excluding outbuildings and garages on Erven below 750m².
b) No dwelling to be less than 150 m² excluding outbuildings and garages on Erven above 750m².





"Heaven on Earth"

**ARCHITECTURAL DESIGN MANUAL
(Annexure "B")**



The Hemel en Aarde Estate Home Owner's Association has appointed an Architectural Review Committee (ARC) to ensure that all plans submitted for review fall within the Aesthetic Guidelines as set out hereunder.

It is intended that all development within the Hemel en Aarde Estate (whilst still permitting a considerably rich diversity and allowing for the individual owners requirements) shall comply with the guidelines set up so as to retain the overall village character with extensive streetscapes and vistas, while still allowing for areas of privacy within the individual Erven and to prevent any strongly divergent styles or architectural features, at the expense of the whole.

All Members are to note that this Design Manual is a guide only and all plans submitted to the ARC for consideration will be assessed on individual merit. The Members are first required to obtain ARC's approval prior to the statutory submission to the local Authority.



27 JUL 2020

14/50

Ingrid Hanekom - Letter and documents regarding - Objection to Sub division

From: Mohammed Allie <loretha@overstrand.gov.za>
To: <loretha@overstrand.gov.za>
Date: 2020/07/23 01:57 PM
Subject: Letter and documents regarding - Objection to Sub division
Attachments: Letter to council.pdf; Inspector Report.pdf; Plan Boundary wall.pdf; Plan Boundary wall 2.pdf; Letter.pdf; Letter 2.pdf; Municipality overstrand.pdf



Good Day Loretta

TP. A/heat
(11.01.20)

I trust you are well.

Please may you receive the attached documents, regrading ERF8099 and ERF11171

Kindly confirm receipt of this email.

Thank you

Regards
Mohammed

FILE NO:	5F 11171
	Mandla Nade Eddo
SCAN NO:	HMS 11171
COLLABORATOR NO:	1434284

To Whom It May Concern:

RE: OBJECTION TO SUBDIVISION IN TERMS OF SECTION 16 (2)(d) OF THE BY LAW IN ORDER TO SUBDIVIDE THE PROPERTY INTO FOUR PORTIONS

In 2005/ 2006 Mr. Harper the owner of ERF 11171 called a meeting with the municipality officials regarding the water problem on his property, he then blamed me and said it was because of my building that he has a water problem stating my building is too low/deep in the ground.

Municipality officials explained, what was required for Mr. Harper to do regarding the water problem on his side. Mr. Harper then did not follow the municipalities recommendation. As a result, the water problem affected my property and became my responsibility.

I Mohammed Allie, the owner of Erf 8099 had to then waterproof my boundary wall to stop the water from flowing from Mr. Harper's property into my property. All at my own cost.

I installed an agricultural drain to stop the water from damaging my structure. All at my own cost.

The water caused damages to my stone cladding, as well as my fish pond killing all my fish.

I could not build my home theater as per my original approved plan and was forced to change my plans, due to the water seeping through the foundation and therefore I could not go to the depth that I wanted to.

The water was also leaking through my pools cladding, and causing damages.

The leaking water causes stains on my patio's tiles.

I Mohammed installed a sump, pump and pipe to pump the water out, hoping it would not damage my pool, however it made a little difference but still has damaged my pool.

The boundary wall built by Mr. Harper was built out of a 150mm thick cement block that was not plastered nor painted instead of a 300mm thick wall that was recommended as per plan. This was signed off by the building inspector. Kindly have a look at attachment (Plan Boundary wall and Plan boundary Wall – that is suppose to be the thickness of the wall).

My water problem started getting worst, I then called a consultant engineering/ Geologist. Mr. Dirk Van Rooyen, he gave a report which you may view in the attached documents (Inspector Report). All at my own cost.

I Mohamed had to slush plaster and paint Mr. Harpers boundary wall on my side, on numerous occasions I tried to contact Mr. Harper regarding this water and wall damage problem, hoping that we could come to some sort of an arrangement.

I Mohammed went as far as consulting with the Mayoress and Officials as well as the DA representative of Hermanus. We tried to find a solution that we could propose to Mr. Harper. At the end there was no assistance from Mr. Harper regarding the above matter.

According to "Plan- Boundary Walls" see attached document, Mr. Harper did not adhere to the plan, nor to the garden layout as per plan. The plan states Fynbos garden, and Mr. Harper planted huge trees that gives off a white powder that blows into my house. It affects my wife's asthma to flare up. There are worms as well entering our patio, please see the attached image.

All the above has cost me a lot of money, and my concern's are that I will have this as an on going problem.

Mr. Harper seems to ignore recommendations and does what he wants.

16/50

Should the above subdivision be approved, again it may disturb the water table and all that I have done to try and contain my water problem.

Thanking you

Mohammed Allie

J624/hemel/herm/allie/08/10

30 July 2010

Mr Mohamed Allie
 P.O. Box 742
 MARAISBURG
 1710

Dear Mr Allie

**HOUSE ALLIE ON ERF 8099, HEMEL-EN-AARDE ESTATE, HERMANUS –
 SEEPAGE EVALUATION**

The discussions held with Messrs Dirk Nel and Gerhard Swanepoel of the Hemel-en-Aarde Estate during my site visit on 15 July 2010, and our subsequent meeting and site inspection with Mr Bob Cameron, chairman of the Hemel-en-Aarde Estate Rate Payer's Association, at your house on 24 July 2010, refer.

My observations and findings are set out below:-

1.0 SITE LOCATION

Your property, Erf 8099, is located on the eastern boundary of the estate and accessed from the north-east side of the turning circle of Rock Kestrel Avenue, which is a cul-de-sac, see Figure 1.

Your neighbour, Mr Harper, owns four stands, namely Erven 8100 and 8098, which border onto the west and north sides of your property, and Erven 8096 and 8101 to the west of these stands, see Figure 1; these have since been consolidated into one property, Erf 11171.

CONSULTING ENGINEERING GEOLOGISTS
 CEGELA HOUSE 20 HOPE STREET HERMANUS 7201 • PO BOX 1321 HERMANUS 7200 SOUTH AFRICA
 TEL (+27 28) 313 0741 • FAX (+27 28) 313 0747 • E-mail:divrooyen@hermanus.co.za

These properties are delineated on Google Earth's landsat imagery, which was photographed in April 2004 and in November 2009 (combined to form one photo), see Figures 2 and 3, hence the fact that the top half of the photo, including the top two erven of Mr Harper's property are more developed than the southern part of the estate, as well as Mr Harper's two bottom erven.

2.0 BACKGROUND

It is understood that you purchased your property in 2004 and commenced building your house in 2005. The boundary wall between your property and Mr Harper's Erven 8100 and 8098 was constructed in 2006/2007. This wall was designed to retain the cut embankment on the north, west and east sides of the building platform excavated into the slope to accommodate your house, driveway and staircase.

It is also understood that, at this stage, you were not aware of Mr Harper's intention to raise the ground level on the bottom two erven to its current level to establish a garden. In order to achieve this, he had to construct a retaining wall on his side of your retaining wall. As you had explained to me and Mr Cameron, this wall was founded at a relatively shallow depth near the top part of your wall, which was designed neither to support this additional foundation pressure, nor the additional fill that it retains.

As far as can be ascertained from the observations you had made and according to the section through the wall shown on the drawing provided by Mr Nel (see Figure 4), appropriate drainage measures may not have been taken to prevent the build-up of water or to alleviate any pressure that this water may exert on both your and Mr Harper's wall during future rainfall periods.

It is also understood that you had not experienced any seepage problems prior to the construction of Mr Harper's wall and the raising of the ground level on his property.

3.0 OBSERVATIONS

Inspection of the seepages on your property, those flowing from the boundary wall separating your and Mr Harper's properties, and the surface run-off that flowed across

19/50

Mr Harper's property and onto the turning circle during the spell of heavy rain that fell prior to my first visit, revealed the following:-

3.1 Harper's Residence North of Erf 8099

The location of Mr Harper's house in relation to your house, and the alley along the eastern boundary wall, are shown on the photograph on Plate 1.

It is understood that rainwater that fell on the paved surface between Mr Harper's house and his southern boundary wall, accumulated in the south-east corner, which, due to the negative fall of the pavement, could not flow away. The water that had dammed up in this corner infiltrated the backfill through voids and open joints between the pavement bricks.

Water that flowed down the alley, apparently, also infiltrated the ground behind the eastern extension of this wall through voids at the surface as shown on photo 2a on Plate 2.

3.2 Paved Backyard on Erf 8099

It is understood that the paved areas to the north and east of your house are largely unaffected by seepage. This is due to the fact that your retaining wall is provided with a subsoil drain immediately above its foundation, as well as a subsoil drain that you had installed beneath the paved backyard as illustrated on Plates 2 and 3. Water that passes beneath the retaining wall is intercepted by this drain, hence the fact that seepage problems have not developed along the north-eastern and eastern retaining walls, except for minor effervescence on the surface of the stone column shown on Plate 4. This may be attributed to seepage related to water that had infiltrated the ground in Mr Harper's courtyard and on the north-east corner of your property.

3.3 Western Retaining Wall and Harper's Wall

The configuration of your retaining wall and Mr Harper's wall is shown on Plates 3, 5 and 6. It is understood that the seepage water intercepted by the subsoil drain along your retaining wall, discharges into a pipe that exits behind the stones stacked in the northern corner of your fish pond, see photo 8a on Plate 8. Apparently, the excess water discharges into a vertical overflow pipe located between the weir and southern wall of the pond, see photos 7b and 8b on Plates 7 and 8, respectively. It is understood that this water used to flow out at the surface where the driveway and turning circle merge, see photo 6b on Plate 6; however, this outlet has since been disconnected and the water is now disposed of in the stormwater system or subsoil drain along Rock Kestrel Avenue.

4.0 DESCRIPTION OF SEEPAGES

The main seepage areas include the following:-

- (i) Mr Harper's wall; water was seen to seep from voids in the mortar joints and movement joints separating the cement-block wall panels, see photos 7a on Plate 7, 8a on Plate 8, 10a to 10c on Plate 10, 12a to 12c on Plate 12 and 13a to 13c on Plate 13. This water derives from surface infiltration on Mr Harper's side as it is contaminated with silt leaching from the recently placed fill, hence the stains where water had run down the wall shown on Plates 7, 8, 10, 12 and 13.
- (ii) Stone-clad wall above the fish pond; evidently, water seeping from Mr Harper's wall flows down the stone façade and between the retaining wall and stone cladding, see Plate 8.
- (iii) Stone screen wall separating the staircase from the fish pond; water seeping from this wall appears to be leaking from the fish pond, see photos 7c and 7d on Plate 7. Some of this water also derives from the stone wall further up the staircase, see photo 9a on Plate 9.

- (iv) Tiled access ramp and stairs leading up to the house and top terrace (includes stone wall retaining the pool and surrounding terrace fill); it is not possible to establish with certainty at this stage whether this water only derives from Mr Harper's property. The fact that you are convinced that the pool does not leak, suggests that the only other source of water is infiltration of rainwater falling on the lawn covering the top terrace and the area around the BBQ facility, see Plates 3 to 5, 10 and 11.
- (v) Turning circle off Rock Kestrel Avenue; water was seen to be seeping from an almost impervious clayey horizon exposed through erosion of the embankment above the turning circle. Evidently, the embankment was eroded by water that had flowed down the slope across Mr Harper's property and over the low wall along his southern boundary. Indications are that the water must have dammed up behind this wall before spilling over and flowing across the embankment and then onto the road. Most of the water that crossed Mr Harper's property flowed down his eastern boundary wall, see Plates 14 and 15.

4.0 EVALUATION AND RECOMMENDATIONS

4.1 Drainage Along Estate's Eastern Boundary Wall

Concentrated run-off down the alley between the estate's eastern boundary wall, and your and Mr Harper's properties, would have to be upgraded to prevent further erosion, and the ingress of water behind your retaining wall.

4.2 Harper's Paved Yard above Northern Retaining Wall

It is understood that the negatively drained south-east corner of the paved yard above your northern retaining wall has not been rectified, and that water still ponds in this corner when it rains. Provision has not been made to drain this water away.

4.3 Harper's Retaining Wall

There appears to be a discrepancy between the approved design drawing of the wall shown in Figure 4, and the as-built wall inspected on site. It is imperative that the structural integrity, and drainage measures provided behind this retaining wall be confirmed by the structural engineer who was responsible for the design and approval of it's construction.

The silt-contaminated seepage water has left unsightly stains on your wall. Measures would have to be taken on Mr Harper's side of the wall to prevent fines from leaching out of the backfill and flowing down your retaining wall. The wall would also have to be waterproofed on Mr Harper's side to stop damp penetration.

Run-off on Mr Harper's side of the boundary wall would have to be controlled by directing it away from this wall to prevent future concentration of run-off as shown on Plates 14 and 15. This has also caused erosion of the embankment above the cul-de-sac turning circle and seepage water to flow onto the road surface. The pavement structure could be adversely affected if this water is not diverted away from the road.

4.4 Staircase Seepages

Drainage within the top lawned terrace and around the braai facility would have to be upgraded by extending the subsoil drain on the north side of the house to the staircase. This drain would have to be continued along the fence of the pool in front of the BBQ facility, see Plate 11.

Ultimately the stretch of lawn between the braai room and the pool extending to the staircase, should be paved. If the problem persists, the entire lawn would have to be replaced by brick paving.

4.5 Seepages Through Driveway Pavement Below Fish Pond

The seepages beneath the paved driveway below the fish pond will require the installation of an additional subsoil drain to intercept the water seeping from the joints between the brick pavers. The possibility of having to lift and relay the pavement bricks over of a blanket drain and damp proof membrane should not be discounted.

4.6 Fish Pond

The advice of a fish pond specialist should be sought before reintroducing fish back into the pond. The effect that the seepage water may have had on the first batch of fish that died, apparently, due to the seepage problems, would have to be confirmed by this specialist.

I trust that my evaluation of the seepage problems experienced to date, and my recommendations in this regard, will assist you in your discussions with Mr Harper, and that a speedy resolution will be reached. However, I hold myself available should you require my assistance in these discussions.

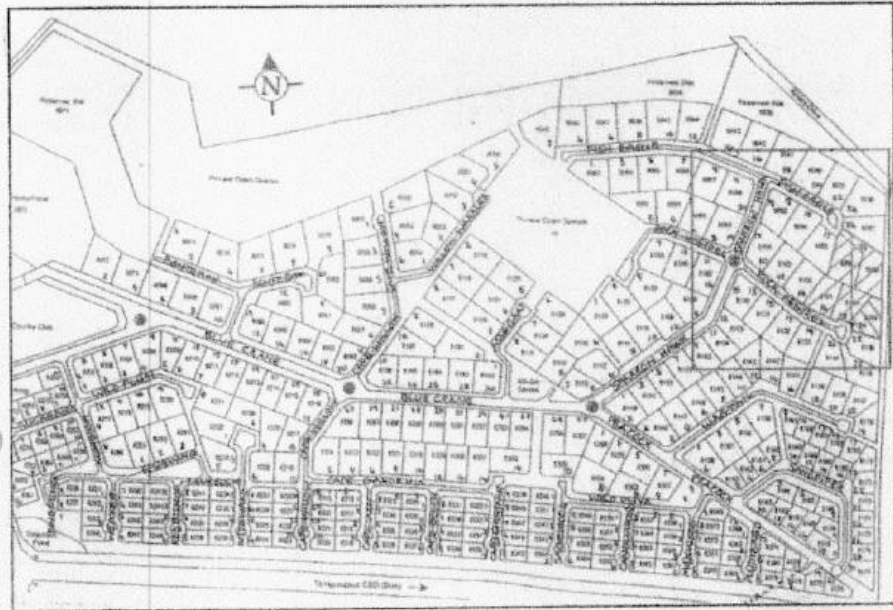
Yours sincerely



GEOTECHNICS AFRICA WESTERN CAPE



Dirk van Rooyen (Pr SciNat)
Engineering Geologist

24/50

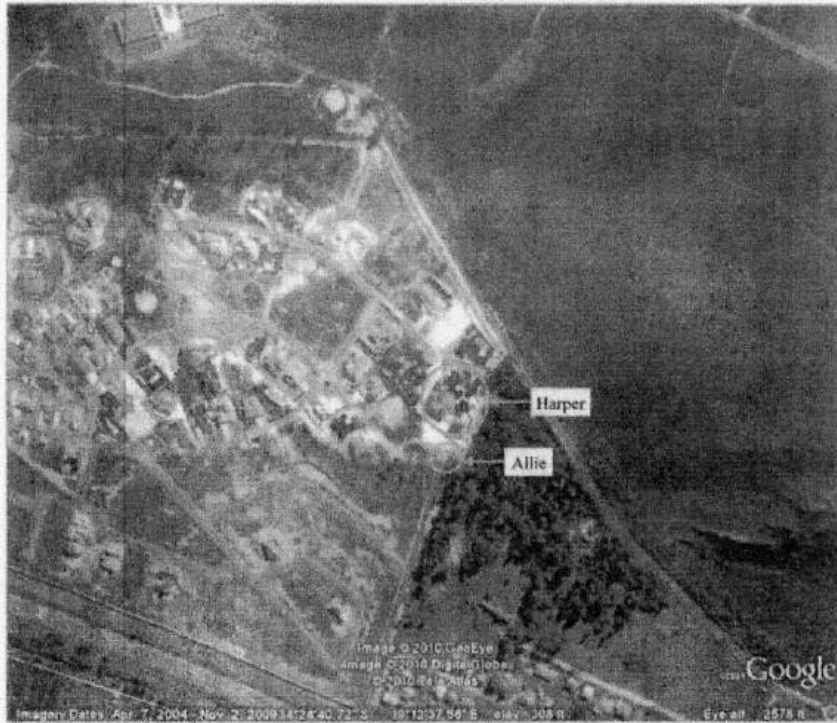


-  Harper's property (consolidated Erf 11171)
-  Allie's property (Erf 8099)

HOUSE ALLIE, ERF 8099 HEMEL-EN-AARDE ESTATE, HERMANUS LOCALITY PLAN
FIGURE I

J624

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Note:- Northern part of Google image comprises 2009 photography and southern part 2004 photography, hence the more developed northern half of the estate. These photos are also not properly merged and show discrepancies across the site.

HOUSE ALLIE, ERF 8099 HEMEL-EN-AARDE ESTATE, HERMANUS
AERIAL PHOTOGRAPH
FIGURE 2

J624

26/50

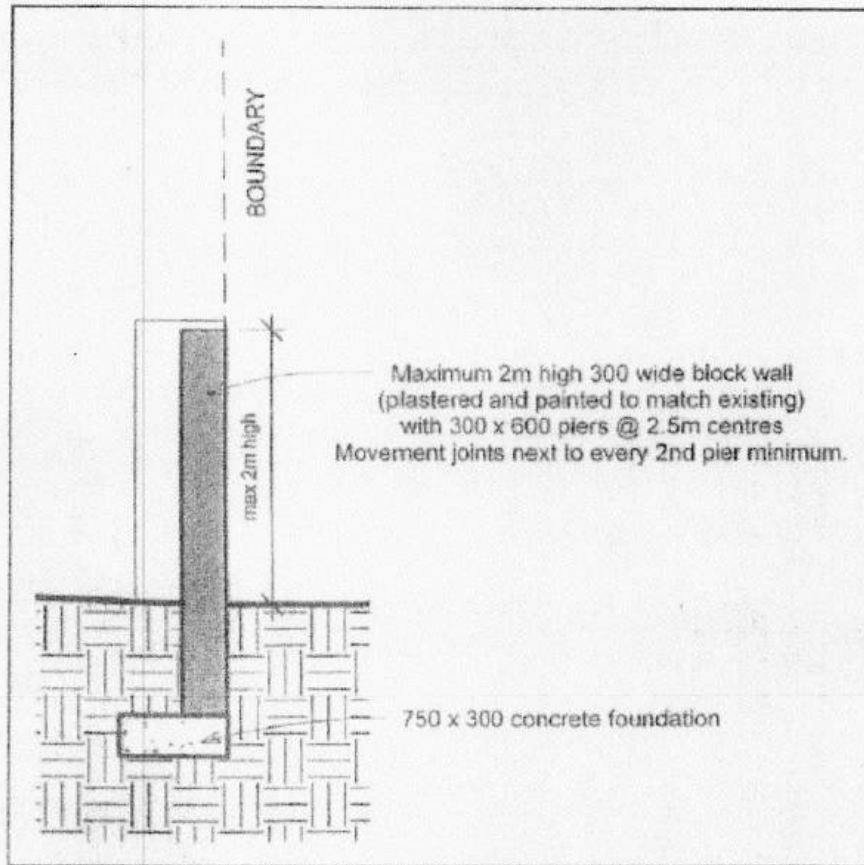


Note poorly merged Google images across Erf 8099.

HOUSE ALLIE, ERF 8099 HEMEL-EN-AARDE ESTATE, HERMANUS
AERIAL PHOTOGRAPH: CLOSE-UP
FIGURE 3

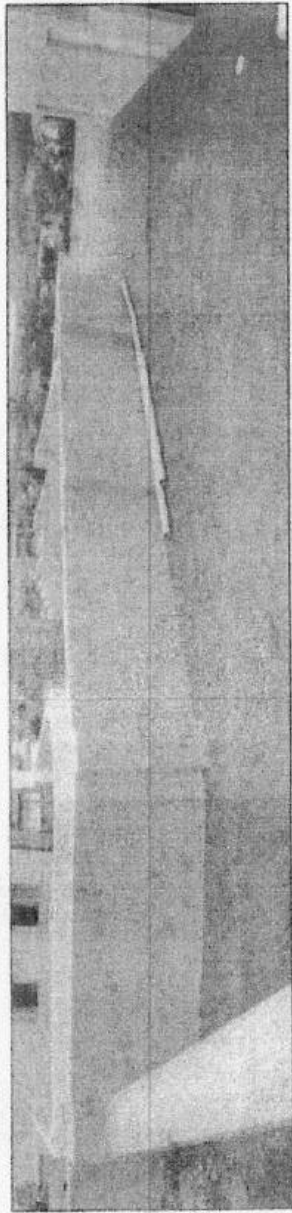
J624

27/50

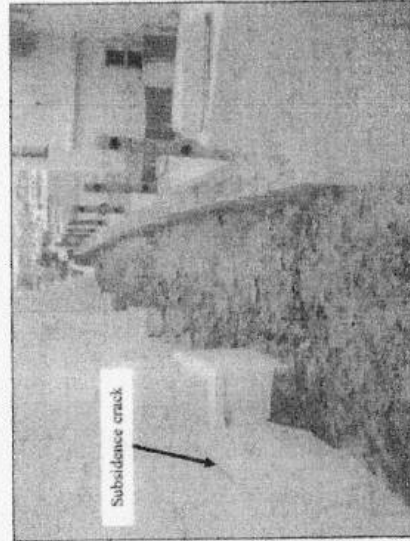


Section through Harper's south-eastern boundary wall.

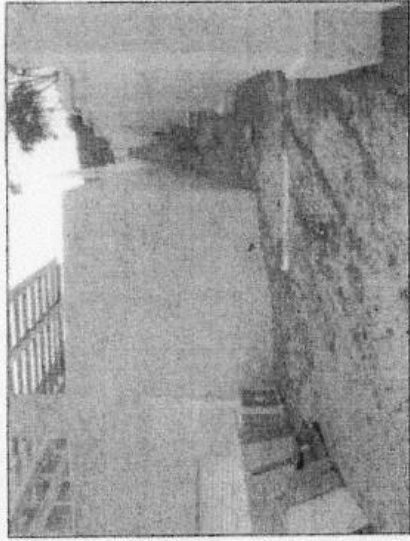
HOUSE ALLIE, ERF 8099 HEMEL-EN-AARDE ESTATE, HERMANUS
SECTION THROUGH SOUTH-EASTERN BOUNDARY WALL
J624 FIGURE 4



Southern boundary wall on Harper's property constructed above House Allie's northern boundary and retaining wall.



Eroded surface of alley between House Allie's eastern retaining wall eastern estate boundary wall



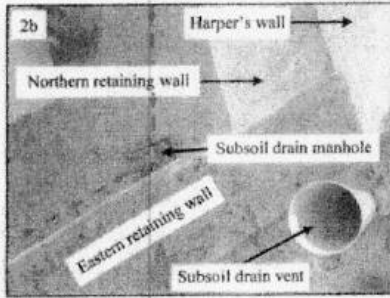
Alley between Harper's house and eastern boundary wall; note southern erosion through concentrated run-off.

28/50

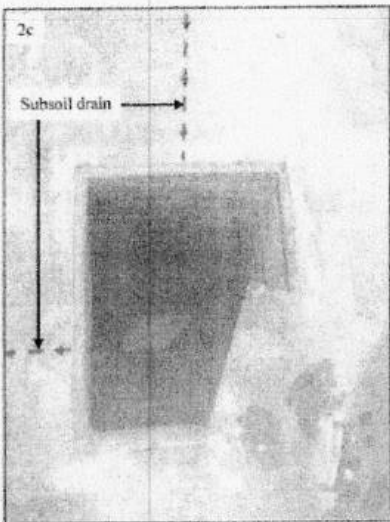
29/50



Voids at top south-east corner of retaining wall resulting from infiltration of surface water into backfill behind the corner column of this wall.

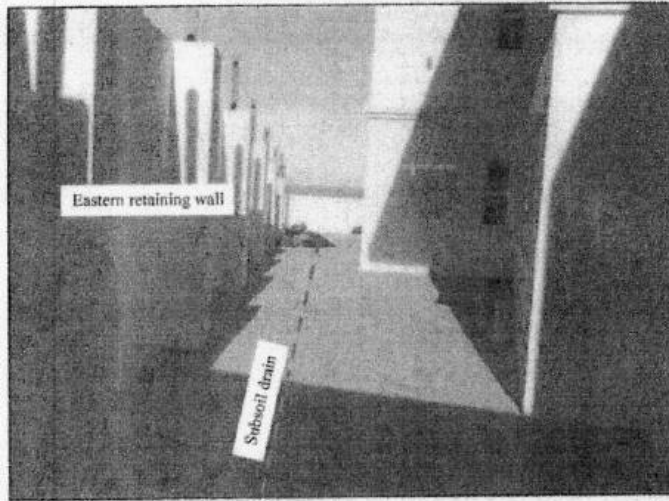


North-east corner of Erf 8099 viewed from top corner of northern and eastern retaining walls.

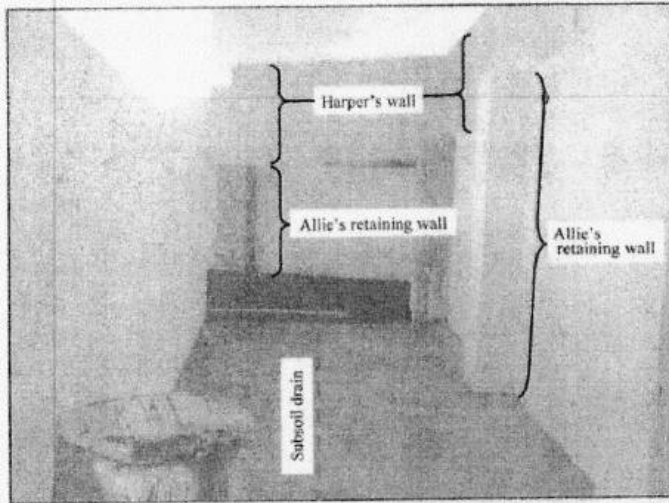


Manhole to subsoil drain on north-east corner of property, i.e. where subsoil drain beneath paved backyard changes direction.

30/50



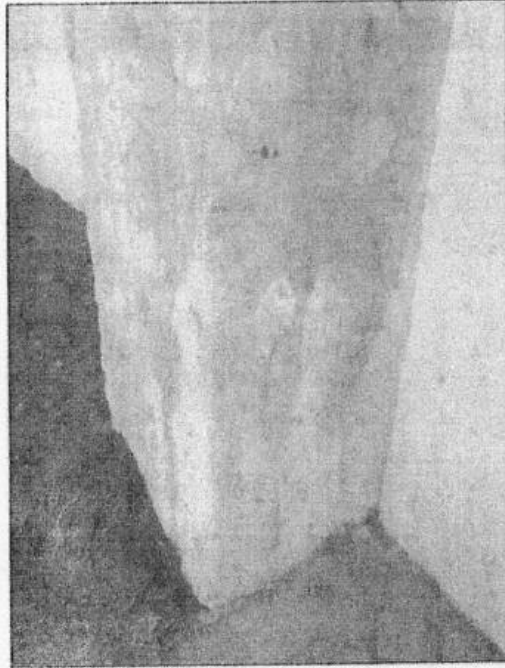
Eastern retaining wall and paved backyard on east side of House Allie.



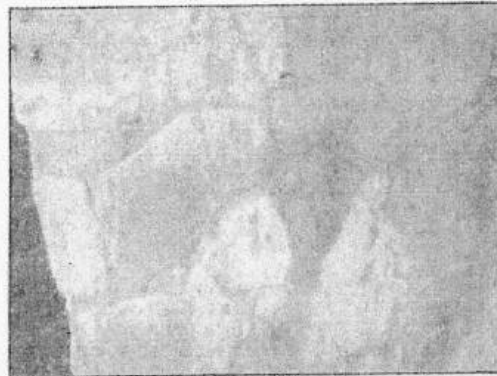
Northern retaining wall and paved backyard between this wall and House Allie; subsoil drain at base of northern retaining wall discharges into subsoil drain indicated beneath brick pavement on photo above.

PLATE 3

31/50



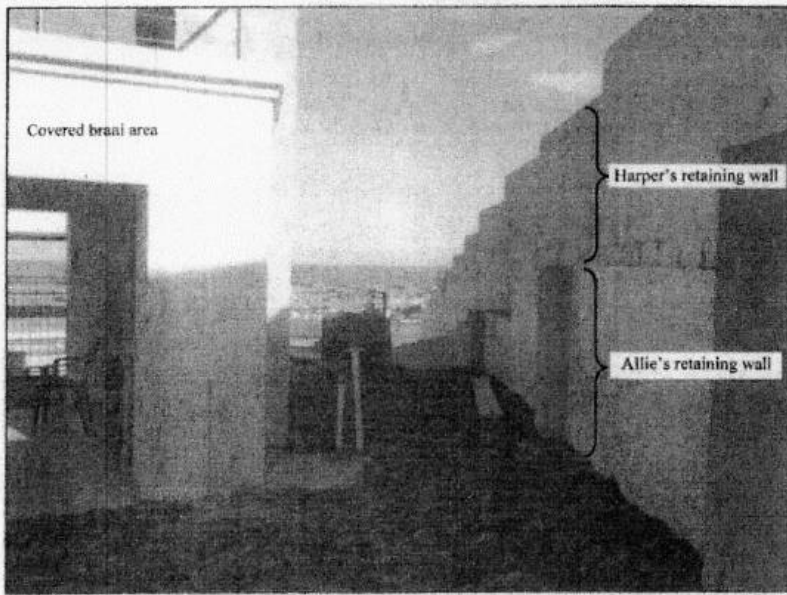
Hydroscopic salts deposited by seepage water permeating mainly from mortar joints in stone column supporting retaining wall on northern boundary.



Close-up of salts deposited on stone column shown above.

PLATE 4

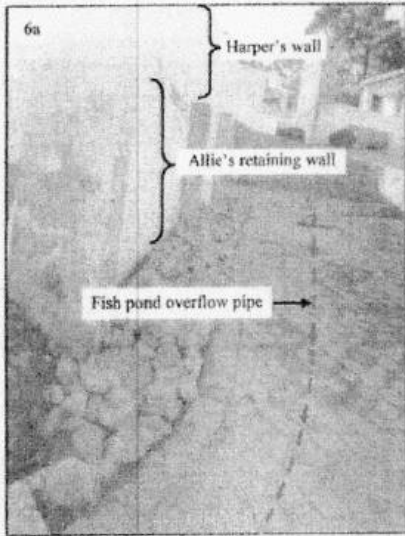
32/50



Western boundary wall retaining face of cut and Mr Harper's wall retaining fill that had been placed to raise the ground level on his property for the establishment of a garden on the bottom two stands.

PLATE 5

33/50



Western perimeter of property and boundary wall showing damp patches on brick-paved driveway.

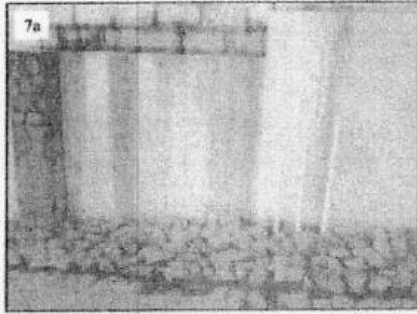


Subsoil drain outlet, which used to dispose seepage water at the surface where the turning circle and driveway merge.



Manhole to pipeline carrying excess water from overflow inlet pipe in fish pond to the outlet at the bottom of the driveway.

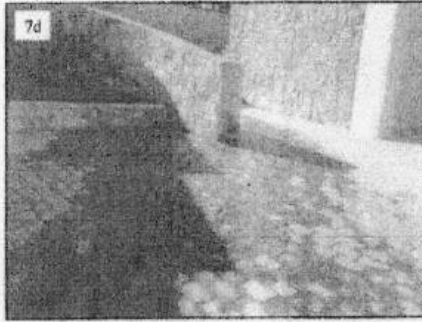
PLATE 6



7a: Seepage from Mr Harper's wall spilling over top of retaining wall and staining painted surface.



7b: Damp patches on stone-dressed retaining wall due to penetration of seepage water behind stone cladding.

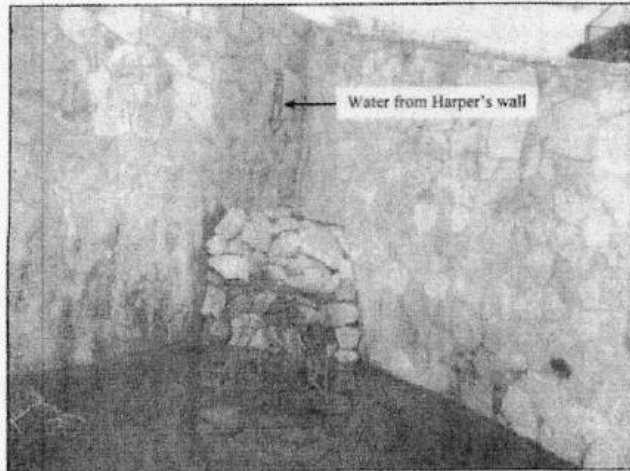


7c and d: Seepage from fish pond wall and stone wall on west side of staircase leading up to the house and pool area.

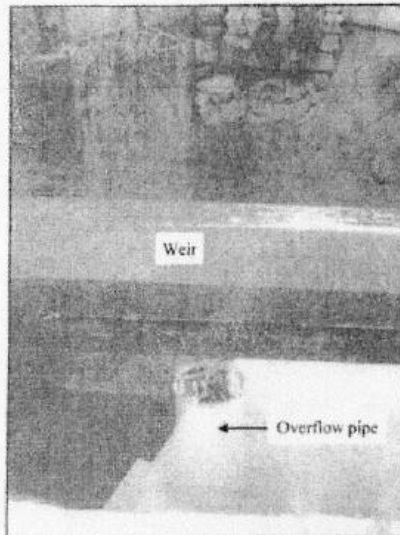


7e: Seepage at base of staircase to house and pool area.

35/50



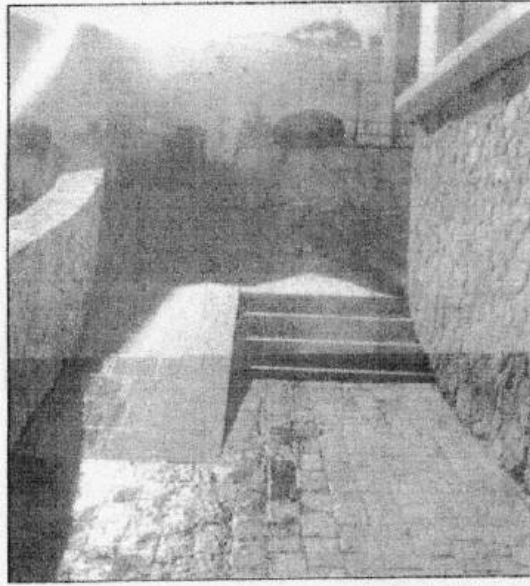
Subsoil drain outlet behind stones stacked in northern corner of fish pond.



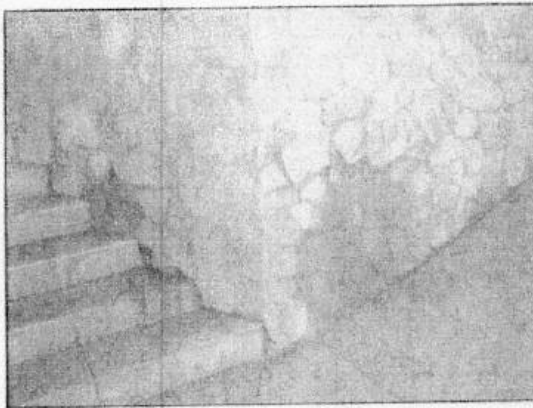
Vertical overflow inlet pipe to drain excess water from fish pond.

PLATE 8

36/50



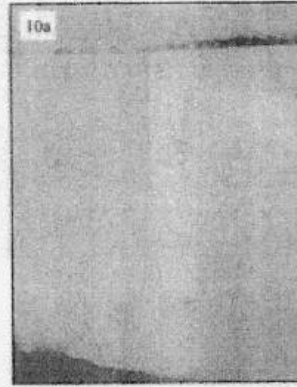
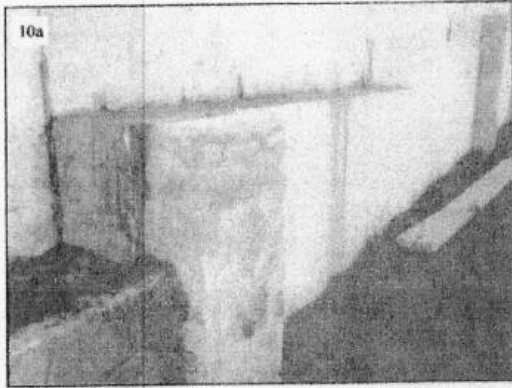
Seepages from base of staircase and wheelchair ramp leading up to front door and pool area.



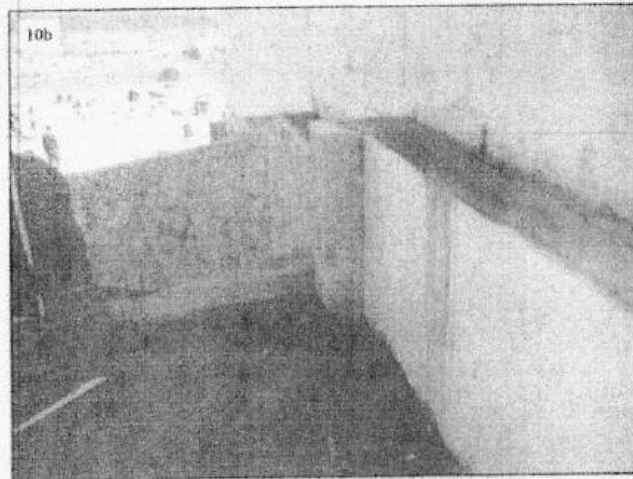
Seepage from stone wall retaining backfill around pool.

PLATE 9

37/50



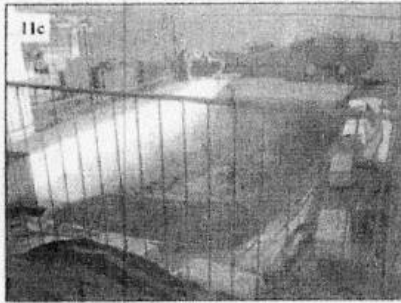
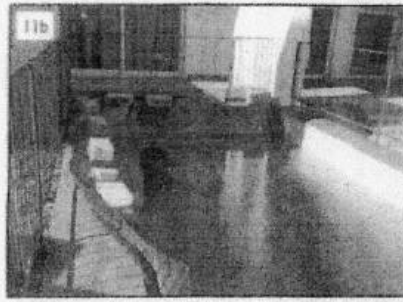
Staining of retaining wall due to silt-contaminated seepage water flowing from voids and movement joints in Mr Harper's boundary (retaining) wall and down the face of Mr Allie's retaining wall.



Top of stairs leading up to lawned terrace on north-west side of House Allie.

PLATE 10

38/50



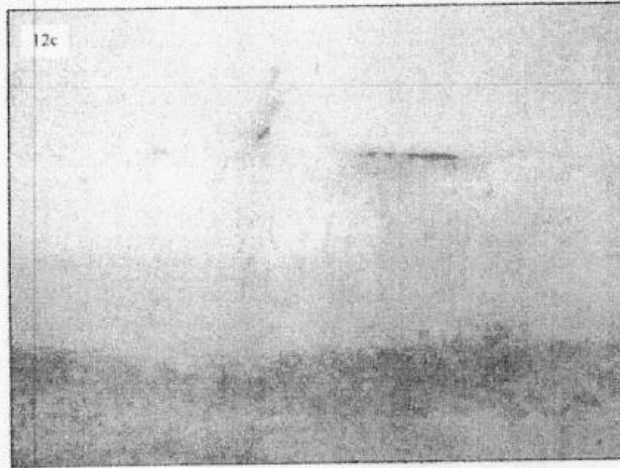
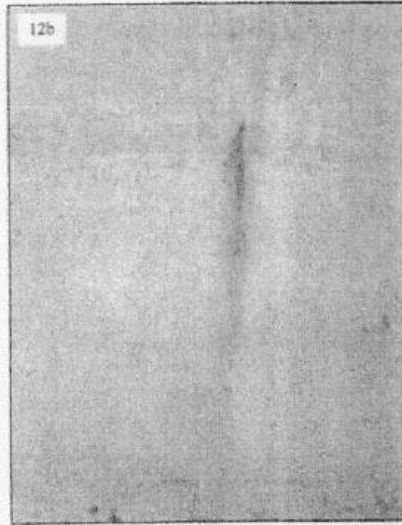
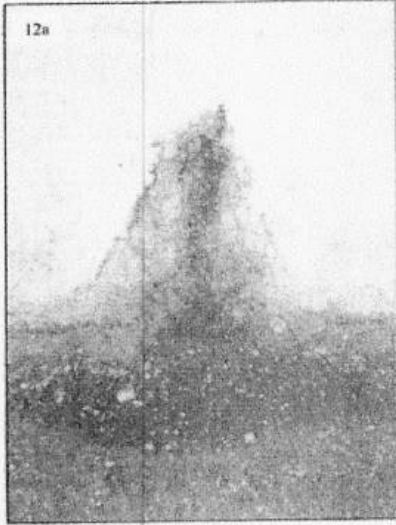
Swimming pool on the south side of the covered BBQ room on the top terrace.



Stretch of lawn between BBQ room and swimming pool.

PLATE 11

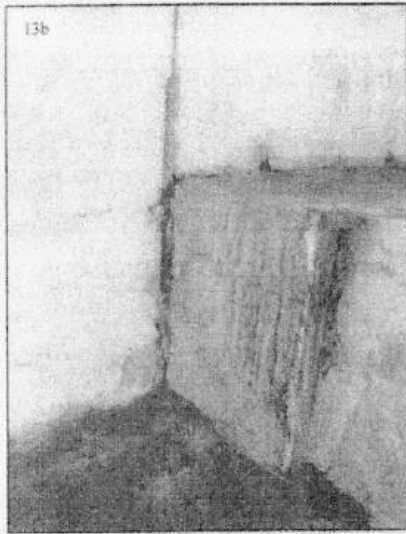
39/50



Isolated seepages from voids in mortar joints of Mr Harper's cement-block retaining wall.

PLATE 12

40/50



Staining of top surface of retaining wall where silt-contaminated seepage water emerges from voids in Mr Harper's wall.

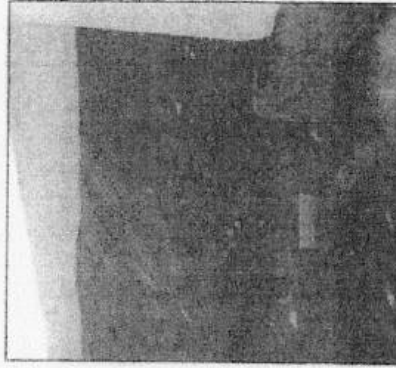
PLATE 13



Neighbour's embankment above turning circle. Erosion resulted from stormwater flowing across neighbouring property and over their boundary wall.



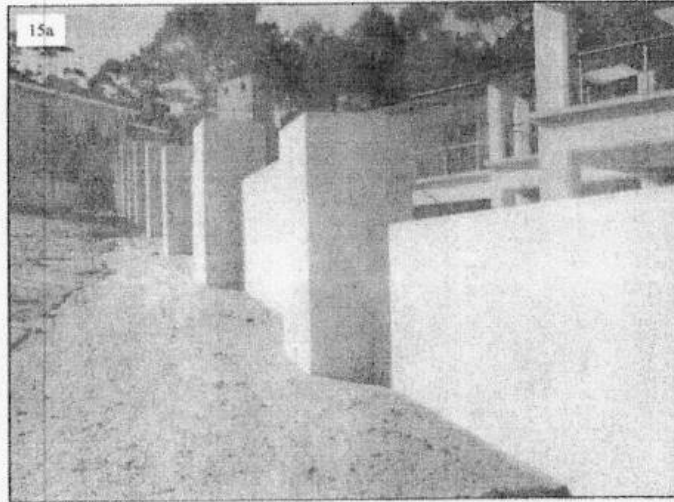
Embankment between ERF 11171 and turning circle.



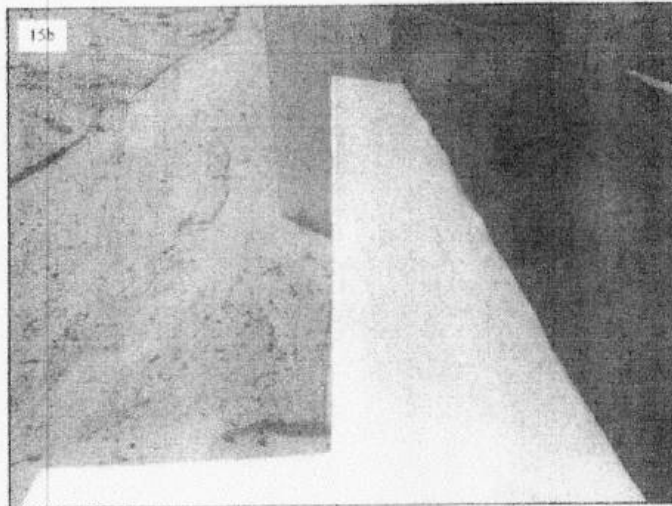
Subsoil drain outlet at bottom end of Mr Harper's boundary wall.

41/50

42/50



15a
Concentrated run-off that flowed down common boundary between Erf 11171 and Erf 8099.



15b
Difference in ground level between Erf 11171 on left hand side and Erf 8099 on right hand side of boundary wall.

PLATE 15

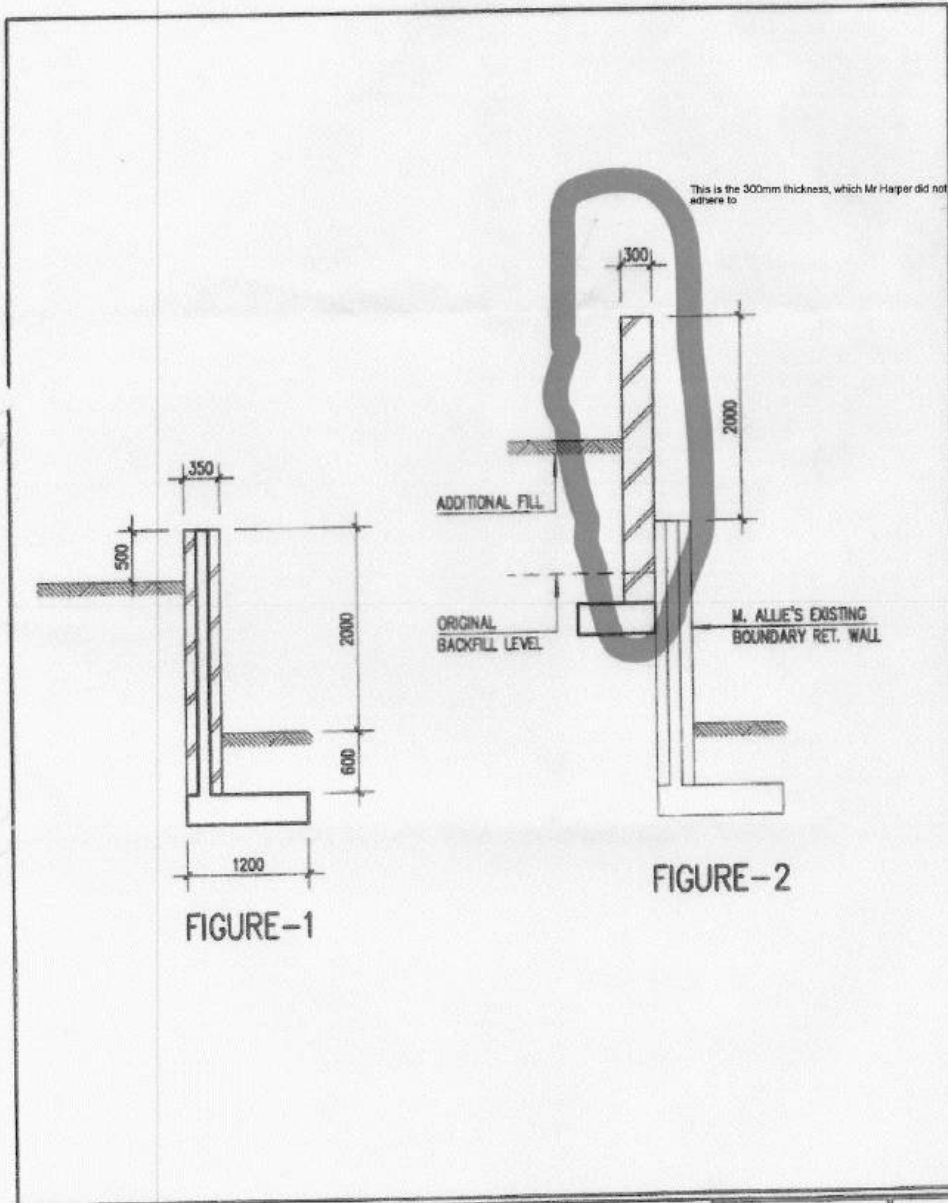


FIGURE-1

FIGURE-2

ICE GROUP (Pty)Ltd
ATHLONE
 TEL: 021-633 8616
 FAX: 021-633 9616
BUDDY SYDOW



BOUNDARY RETAINING WALL

HOUSE M. ALLIE
 ERF 8099, HEMEL & AARDE ESTATE
 HERMANUS

DRAWN	WAKES	PAGE 1
CHECKED		
DATE	NOV 2010	



45/50

Postbus 20
HERMANUS
 7200
 Navrac:
 Innuisuzo:
 Enquiries: R Myburgh

Tel: (028) 3138080
 Fax: (028) 3138070
 e-mail: klara@overstrand.gov.za

P O Box 20
 HERMANUS
 7200

Datum:
 Inuku:
 Date: 20 January 2011

VERW/REF

MR Mohamed Allie
 PO Box 742
 MARAISBURG
 1710

per email elhimprojects@telkomsa.net

Sir

RE: ERF 8099 & 11171 ALLIE/HARPER: HEMEL& AARDE ESTATE SANDBAAI HERMANUS

As this conflict has been on going for some time now I would like to report as follows

- The as built wall under plan no 19680 erf 11171 has been inspected by Gobbler & Associates Consulting Engineers. They have confirmed the structural stability and adequacy of the said retaining wall in writing to the Local authority
- With regard to the problem of sub soil drainage, this issue to be taken up with Gobbler & Associates Consulting Engineers.

Furthermore please be advised that this is no longer an issue for the Local Authority but a civil matter that must be resolved between Mr Harper and yourself, and or your respective Engineers

Yours Sincerely

R G Myburgh
 Building Inspector: Hermanus

PLEASE ADDRESS ALL CORRESPONDENCE TO THE MUNICIPAL MANAGER
 ZONKE INBALELWANO ZINGATHU NYELWA KUMPHATHIDWA NAMAGIPHALA
 RIC ASSERBLIEF ALLE KORRESPONDENSIE AAN DIE MUNISIPALE BESTUURDER

46/50

38 Spinal Avenue

Fleurhof, 1709

22 July 2010

Home en Aarde Estate Home Owners Association

Hermonds

By FAX: 028 316-3684

Sirs

Re: Erf 8009 Hermonds

In my letter to you of 25 July, I asked you to supply me immediately the contact details for the owner of the property adjoining mine upon which the new wall has been built.

I have had no response to this, and request this information by return.

As you are surely aware, I am a building contractor, and I have many years of hands-on experience.

That experience indicates to me, as set out in my earlier letter, that the wall erected by the adjoining owner is dangerously inadequate as a retaining wall, especially in the light of the known high rates of water flow from ground and storm water at that part of the estate. In addition to this, the wall leaks and weeps considerable quantities of water onto my property, and this has caused and continues to cause actual damage to my property. This must be rectified and further damage prevented on a basis that will be permanent.

I have no way of knowing what drainage, if any, has been laid alongside the wall and/or foundations to carry away run-off and prevent erosion, and my perception is that the foundations are most likely inadequate and insufficiently footed to allow the wall to perform its intended role, especially having regard to the scale of the water problems.

As I anticipate serious problems that will directly affect my property, and probably others, I wish to have some facts placed on record, for which purpose I pose 5 straightforward questions, each of which can be answered with a simple Yes or No and a date, except in the case of question 5, which is, hopefully, redundant.

1. Is there an architect's/engineers drawing for the works?
2. Was such drawing approved by the Estate, and if so, on what date?
3. Was such drawing and such works approved by the municipal building inspectorate, and if so, on what date?
4. Was the work carried out in accordance with and as specified on such drawings?

th

47/50

5. If there are no such approved drawings, then on what basis did the Estate allow the works to be carried out?

If everything is as it should be, then you should have no qualms about answering these questions. There is only one inference to be drawn should you decline to do so.

Yours faithfully,

M. H. Allen



Copy to: Mr Chris Falah
Planning Division
Overstrand Municipality
by FAX: 028 132-7822

48/50

MUNISIPALITEIT OVERSTRAND MUNICIPALITY

The owner of the undermentioned property contemplates to erect a dwelling/ho additions to the existing dwelling which will encroach upon the building line (as per enclosed plan). This requires the consent/comments of the adjacent property owners.

DETAILS OF OWNER(S) THAT NEED/S CONSENT FOR RELAXATION OF BUILDING LINES	
ERF NO	ERF 11171
STREET ADDRESS	19 FISH EAGLE STREET, HEMEL & AARDE ESTATE
NAME AND SURNAME	PTN HARPER
TEL NO	082 894 1120
POSTAL ADDRESS	19 FISH EAGLE STREET HEMEL EN AARDE ESTATE HERMANUS 7200

DETAILS OF APPLICATION (complete where necessary)
APPLICATION FOR SUBDIVISION AND DEPARTURE

DETAILS OF ADJACENT PROPERTY OWNER(S)	
ERF NO	8099
STREET ADDRESS	ROCK KESTREL STREET HEMEL & AARDE ESTATE
NAME AND SURNAME	M H ALIE and J S ALIE
TEL NO	0837590176
POSTAL ADDRESS	58 SPINAL AVE FLEURHOF FLORIDA
POSTAL CODE	1709

NOTE: CONSENT TO BUILDING LINES IS NECESSARY IF NOT ACCOMPANIED BY A DETAILED PLAN SIGNED BY ADJACENT PROPERTY OWNERS

We hereby consent to the aforementioned relaxation.

MOHAMMED HASSAN ALIE  16/7/2020
NAME SIGNATURE DATE





JOGHAN SYHANAH ALIE  16/7/2020
NAME SIGNATURE DATE

COMMENTS/CONDITIONS: WE OBJECT TO THE SUBDIVISION IN TERMS OF SECTION 16(2)(d) OF THE B-LAW IN ORDER TO SUBDIVIDE THE PROPERTY INTO FOUR PORTIONS

Tel: 029 513 2500
Fax: 029 513 2093
Email: overstrand@overstrand.gov.za

PO Box 20 / Postbus 20
HERMANUS
7200

Plan 3: Subdivision Plan

-  of 11171 Hermann [to 11171]
-  Subdivision line
-  Right of way surface
-  Surrounding properties

Tel: 020 333 1411
 Email: admin@wrapgroup.co.za
 Plan prepared in January 2010
 File number: 11/140
 32 Colaba Street, Hermanus, 7200
 Plan prepared for: Parkside Janke
 All distances are approximate
 and subject to a survey



STAND NO 8099
 WIE, MIE ALLE AND JS ALLE
 ARE NOT SIGNING,
 BECAUSE WE OBJECT

Scale 1 : 500

50/50

MUNISIPALITEIT OVERSTRAND MUNICIPALITY



The owner of the undermentioned property contemplates to erect a dwelling/do additions to the existing dwelling which will encroach upon the building lines (as per enclosed plan). This requires the consent/comments of the adjacent property owners.

DETAILS OF OWNER(S) THAT NEED/S CONSENT FOR RELAXATION OF BUILDING LINES	
ERF NO	ERF 11171
STREET ADDRESS	19 FISH EAGLE STREET, HEMEL & AARDE ESTATE
NAME AND SURNAME	PTN HARPER
TEL NO	082 894 1120
POSTAL ADDRESS	19 FISH EAGLE STREET
	HEMEL EN AARDE ESTATE
	HERMANUS 7200

TP - D. Iheath
(D. Olivia)

DETAILS OF APPLICATION (complete where necessary)

APPLICATION FOR SUBDIVISION AND DEPARTURE

DETAILS OF ADJACENT PROPERTY OWNER(S)

ERF NO	8133
STREET ADDRESS	17 ROCK KESTREL STREET
NAME AND SURNAME	THE BELVADERE TRUST
TEL NO	
POSTAL ADDRESS	BOX 1963
	HERMANUS
POSTAL CODE	7200

THE CONSENT TO RELAXATION IS INCOMPLETE IF NOT ACCOMPANIED BY A SITE PLAN SIGNED BY ADJACENT PROPERTY OWNER(S).

FOR - ON BEHALF OF THE BELVADERE TRUST AS TRUSTEES
I/We hereby give my/our consent to the abovementioned relaxation.

C Cordes  09.07.20
NAME SIGNATURE DATE

B. A Cordes  09.07.20
NAME SIGNATURE DATE

COMMENTS/CONDITIONS

FILE NO:	SF 11171 ✓
	Hemel & Aarde Estate
SCAN NO:	HMS 11171
COLLABORATOR NO:	1429206

TP - 9 JUL 2020
Tel: 026 313 8500
Fax: 026 313 2093
E-mail: fo@overstrand.gov.za

PO Box 26 / Pousas 26
HERMANUS
7200

Annexure E 1/12



Project Office

Town Planning & Project Management.

Our Reference: 19/140
Your reference: 11171 HMS 3617/2020

26 November 2020

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

FILE NO: EL 11171-Herm
SCAN NO: 03
COLLABORATOR NO: 1483714

Attention: Mr H Boshoff

ERF 11171 HERMANUS: RESPONSE TO OBJECTIONS TO APPLICATION FOR SUBDIVISION AND DEPARTURE

There were several public participation circulations for the submitted application which are discussed below.

Comments and objections in the first round of public participation circulation were received from:

- PR and GM Busby;
- P Bagnall; and
- Hemel-en-Aarde Home Owners Association.

Comments and objections in the second round of public participation circulation were received from:

- MH & JS Allie; and
- C & BA Cordes (consent).

Comments and objections pertaining to an amended subdivision plan were received from:

- S Wightman;
- RJ & P Bagnall;
- A de Koker on behalf Hemel-en Aarde Home Owners Association;
- M Allie;
- JF Rademan; and
- D Jones.

Project Planning | Project Feasibility | Land Use Applications | Project Execution Management | Liquor Licensing
Wright Approach Investments Unit B, Standard House, Tel: +27 (0)28 313 1411 Email: admin@wrapgroup.co.za
136 CC Cnr Royal and Dirkie Uys Street Web: www.wrapgroup.co.za
(Reg No. 2002/060745/23) Hermanus, 7200

Established 2002

TP
26 NOV 2020

First and second round of public participation:**Response to comments related to architectural features and guidelines**

Comments	Response
"We are in receipt of registered post from S. Muller, regarding the subdivision and alterations to the above-mentioned erf. We have no problems in principle provided that the new dwellings comply with all the necessary regulations of the Estate."	New dwellings which will be constructed on the proposed Portion A and Portion B will comply with the Hemel en Aarde Estate Architectural Design Manual (HEAEADM).

Response to objections pertaining to procedural considerations.

Objection	Comment
<p>"A number of affected persons who should have received this had not received their notices by the time of the National lockdown by the President on 26/03/2020.</p> <p>The above application has not been discussed, submitted, scrutinised or approved by the Association. In addition, in our view the adjoining property owners have not been properly advised of this application or its implications.</p> <p>That the notice be re-advertised having been placed as the Village News as SA prepared for lockdown.</p> <p>That the submission for objections date be postponed to two weeks after SA lifts the lockdown to allow all affected parties to receive their registered letters and to be allowed equal opportunity to respond to the notice of subdivision of Erf 11171."</p>	<p>The public participation procedures were disrupted by the lockdown regulations, but the measures were instituted to ensure that all interested and affected parties were granted an opportunity to comment:</p> <ul style="list-style-type: none"> • The application was published in the Village News on the 11 March 2020 and notices were sent to adjacent property owners with the closing date for comments 17 April 2020. • Emails with attachments of the motivation report were sent to adjacent property owners in the Hemel en Aarde Estate (HEAE) on 19 June 2020 to provide comments and the closing date for the public participation process was extended to 24 July 2020. • A meeting was held between WRAP and the Hemel en Aarde Home Owners Association (HOA) which entailed the amendment of the subdivision plan to address several concerns which were raised and was circulated again to the adjacent property owners and will be discussed in greater detail later in this objection. <p>A great deal of effort was taken to ensure that the public participation process was inclusive in response to the limitations brought about by Covid 19 and allowed adjacent property owners equal opportunity to respond.</p>
"The subdivision has not been dealt with according to the constitution of the Hemel & Aarde Estate and an objection to this has been submitted by the Trustees."	<p>Section 3.4 of the constitution under the heading of "SUBDIVISION AND COMMON AREA" highlights the following in Section 3.4.6.</p> <p>"Immovable property in the Hemel & Aarde Estate or any portion thereof shall, save for as set out in Clause 3.4.8 below, not be subdivided without the sanction of a Special Resolution of the Association."</p>



	<p>When this clause 3.4 is read in conjunction with sub clause 3.4.6, it specifically empowers the HOA to grant authorisation regarding the subdivision of common property. The subject property is in private ownership and is not common property and the Overstrand Municipality (OM) is therefore empowered to make an impartial decision regarding this proposal.</p>
<p><i>"That a meeting be held with Trustees, affected members and the owner of Erf 11171 or their respective representatives for transparent discussion."</i></p>	<p>As stated earlier, a meeting was held between WRAP and the HOA and it was requested that an amended subdivision plan be circulated. This will be discussed in detail later in this objection.</p>

Response to objections pertaining to construction related considerations.

Objection	Comment
<p><i>"While there may be certain benefits of a subdivision with regards to rates and levies income, one has to take into account the effect of construction, noise & prolonged building works, damage and repairs required to roads with prolonged heavy vehicles carrying building materials. There is always the increased risk of crime when construction takes place. This has been a settled area of the H & A Estate since the completion of the final vacant land in Fish Eagle 2 - 3 years ago."</i></p>	<p>Section 6.2 of the HEAEADM highlight the following:</p> <p><i>"The HOA will determine the hours and conditions that will apply to building contractors and building operations"</i></p> <p>This clause empowers the HOA to impose mitigation measures regarding the construction of the future buildings to minimise the impact thereof on the ability of surrounding property owners to occupy respective properties in comfort.</p> <p>The HEAE has stringent security measures as access and egress to the development is strictly controlled which illustrates high capability to address any security risk which may arise from the construction of future dwellings.</p>
<p><i>"Will the subdivisions first need to be sold before any construction can take place? If so, this could take years before it is completed in its entirety and cause an endless disruption to the peaceful environment currently enjoyed by affected parties."</i></p>	<p>The historic development style of the HEAE consists of purchasers individually constructing dwellings. Any construction which would occur on Portion A and B will not constitute an adverse departure from this nor will it constitute an unbearable abrupt and prolonged disruption in the ability of surrounding property owners to occupy respective properties in comfort as only two dwellings will be constructed.</p>



Response to objections pertaining to building lines considerations.

Objection	Comment
<p>"The relaxation of boundary lines on H & A Estate in the upper part of the Estate should not be considered. That no relaxation of perimeters be allowed."</p>	<p>The building line departures which are sought are for existing buildings and will therefore not open future encroachment opportunities. Considering this, no additional visual impacts will accrue from the departures sought and will not alter the visual landscape which property owners in the HEAE have become accustomed to. Only Portion C and the Remainder are materially impacted by the departures which are sought, and both are owned by the applicant.</p>

Response to objections pertaining to the subdivision.

Objection	Comment
<p>"In keeping with the sizes of other properties in this area, and Portion C and Remainder, it is suggested that Portion A & Portion B be retained as one property as they are both smaller than the average size of 1018.5m² as per 12.1.1 which could lead to the reduction in value of other properties in this area. That A & B be combined to 1630 sq m, to be more in keeping with the sizes of surrounding properties, and that of the two other subdivisions of Erf 11171."</p>	<p>The erven and size thereof which are adjacent to the proposed Portion A and B are provided below.</p> <ol style="list-style-type: none"> 1. Erf 8102 = 900m² 2. Erf 8099 = 995m² <p>The subdivision plan which was submitted with the planning application illustrates that Portion A measures 835m² and Portion B measures 800m² and are of a similar size and shape as neighbouring Erven 8102 and 8099. It was also motivated in Section 6 of the submitted motivation report that Erf 11171 Hermanus is the largest residential erf in the HEAE and that the proposed subdivision is intended to align the approximate erf sizes with that of surrounding properties.</p> <p>The Surveyor General Diagram which was submitted with the planning application illustrates that Erf 11171 Hermanus is a consolidation of 5 erven. The proposed subdivision to create 4 erven is of a smaller scale compared to the historic number of erven and therefore nullifies the assertion that this proposal is not in keeping with the sizes of surrounding properties.</p> <p>Notwithstanding the above, the Spatial Planning and Land Use Management Act</p>



	<p>16 of 2013 highlights the following in Section 7 (vi):</p> <p><i>"A Municipal Planning Tribunal considering an application before it, may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property is affected by the outcome of the application."</i></p> <p>The submission of an objection based on the assertion that the property values will be decreased is therefore not a relevant consideration for the MPT when making a decision.</p>
<p><i>"It is worthy of note that the existing structures (on the five previously consolidated erven) are built across the proposed sub-division lines and the re-configuration has been massaged to allow for this non-compliant proposal."</i></p>	<p>The proposal does not constitute a reconfiguration of erf boundaries but constitutes a subdivision and building line departures which are intended to create additional erven with a Residential Zone 1: Single Residential zoning and not to address non-compliance issues as alluded to by the objector.</p>
<p><i>"Should the subdivision be approved conditions need to be set in place with regards to term (expiry) dates for sale of property and conditions and dates for construction of property? This is relevant to restricting damage, maintenance of roads & verges and noise levels which could be drawn out over years of construction and annoying to those affected by the subdivision. This is relevant to ALL residents not only those in the upper H & A estate."</i></p>	<p>The OM will lay conditions of approval which pertain to the lapsing of the proposed subdivision if not implemented within a specified time frame.</p> <p>It is unlikely that the construction of dwellings on Portion A and Portion B will be drawn out over a period of several years as the construction of a dwelling generally does not take that long to complete.</p>

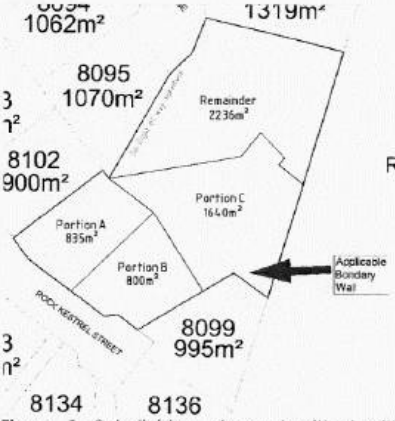
Response to objections pertaining to the authority of the HOA.

Objection	Comment
<p><i>"The Constitution of the Homeowners' Association submitted to and ratified by the Overstrand Municipality is legally binding upon all members owning property on the Estate. In terms of sub-clauses 4.4 and 4.5 of the Architectural Design Manual (Annexure 'B' of the Constitution)". All plans and National Building Regulation waiver applications must be submitted to and stamped by the Home-Owners Review Committee before being submitted to the local authority."</i></p>	<p>The clause referred to by the objector pertains to the approval of building plans. The existing buildings on the subject property have already been approved.</p> <p>The future occupants of Portion A & B will submit building plans for approval to the Home-Owners Review Committee but the submitted application does not relate to that.</p>

6/12



Response to objections not related to the submitted proposal.

Objection	Comment
<p>"In 2005/ 2006 Mr. Harper the owner of ERF 11171 called a meeting with the municipality officials regarding the water problem on his property, he then blamed me and said it was because of my building that he has a water problem stating my building is too low/deep in the ground.</p> <p>Municipality officials explained, what was required for Mr. Harper to do regarding the water problem on his side. Mr. Harper then did not follow the municipalities recommendation. As a result, the water problem affected my property and became my responsibility.</p> <p>I Mohammed Allie, the owner of Erf 8099 had to then waterproof my boundary wall to stop the water from flowing from Mr. Harper's property into my property. All at my own cost.</p> <p>I installed an agricultural drain to stop the water from damaging my structure. All at my own cost. The water caused damages to my stone cladding, as well as my fishpond killing all my fish.</p> <p>I could not build my home thereafter as per my original approved plan and was forced to change my plans, due to the water seeping through the foundation and therefore I could not go to the depth that I wanted to.</p> <p>The water was also leaking through my pools cladding and causing damages. The leaking water causes stains on my patio's tiles.</p> <p>I Mohammed installed a sump, pump and pipe to pump the water out, hoping it would not damage my pool, however it made a little difference but still has damaged my pool.</p> <p>The boundary wall built by Mr. Harper was built out of a 150mm thick cement block</p>	<p>The image below illustrates the boundary in question which has been a source of dispute between the objector and owner of the subject property.</p>  <p>Figure 1: Subdivision plan submitted with the planning application.</p> <p>The proposed subdivision lines as illustrated in the image above will have no additional adverse impact on the historic water discharge disputes between the objector and the owner of the subject property. It is therefore suggested that the objector explore other avenues which are not related to town planning application to resolve this dispute.</p>



that was not plastered nor painted instead of a 300mm thick wall that was recommended as per plan. This was signed off by the building inspector. Kindly have a look at attachment (Plan Boundary wall and Plan boundary Wall-that is supposed to be the thickness of the wall).

My water problem started getting worse, I then called a consultant engineering/ Geologist. Mr. Dirk Van Rooyen, he gave a report which you may view in the attached documents (Inspector Report). All at my own cost.

I Mohamed had to slush plaster and paint Mr. Harpers boundary wall on my side, on numerous occasions I tried to contact Mr. Harper regarding this water and wall damage problem, hoping that we could come to some sort of an arrangement.

I Mohammed went as far as consulting with the Mayoress and Officials as well as the DA representative of Hermanus. We tried to find a solution that we could propose to Mr. Harper. At the end there was no assistance from Mr. Harper regarding the above matter.

According to "Plan - Boundary Walls" see attached document, Mr. Harper did not adhere to the plan, nor to the garden layout as per plan. The plan states Fynbos garden, and Mr. Harper planted huge trees that gives off a white powder that blows into my house. It affects my wife's asthma to flare up. There are worms as well entering our patio, please see the attached image.

All the above has cost me a lot of money, and my concerns are that I will have this as an on-going problem. Mr. Harper seems to ignore recommendations and does what he wants.

Should the above subdivision be approved, again it may disturb the water table and all that I have done to try and contain my water problem."

9/12



<p>of the municipality and the Hemel En Aarde estate internal building rules.</p> <p>Your proposal for the subdivision has a direct and potentially detrimental effect to our property now and into the future. Additionally it has major effects on the peace of our corner of the estate, by allowing for major development right in front of our house for an extended period of time that could take place over the course of several years. We purchased in this estate knowing there was a building deadline that all residents had to adhere to which almost certainly guaranteed peace and quiet after the cut-off date. Of course, there will always be renovations on houses, but not full-blown new building, which this subdivision would allow for."</p>	<p>Construction work is mostly projected to occur on the proposed Portion A and B, illustrated in figure 1 is buffered by the existing dwellings on each of the properties which is unlikely to result in the objector occupying the respective property in discomfort.</p>
<p>"Potential for large new construction of properties long after the cut-off date of the estate internal rules, disturbing the peace and quiet and the ignoring the very purpose of building in an estate with guidelines for building."</p>	<p>Most of the construction is only projected to occur on the proposed Portion A and Portion B as illustrated in figure 1 which at most will have two dwellings which will not constitute a significant disruption of the peace and tranquillity in the HEAE. The unique circumstances which are related the subdivision which is sought will invariably result in construction after the cut-off date but it is submitted that Erven 8254, 8255, 8256, 8259 and 8260 in the HEAE are vacant and will also be constructed after the cut-off date which therefore results in this proposal not being an anomaly.</p>

Response to comments and objections pertaining to the building line departures which are sought:

Comment	Response
<p>"I can also see that there is a request for departure of building distance requirement from the boundaries. During the construction of our house, I requested a relaxation of this rule by a very small amount, but I was emphatically denied. I cannot see how the estate would allow this now. I would see that it could send a desirable precedence for all people in the estate to enter plans to do the same and</p>	<p>The departure sought is for the existing buildings and will not have an additional visual impact on the built landscape on the subject property. The only properties which are impacted by this departure sought are Portion C and the Remainder as illustrated in figure 1, both owned by the applicant and will therefore not materially impact on the neighbours.</p>

10/12



<p>build right up to the boundary. I shall take this up with the estate."</p> <p>"Departure from the building line to boundary distance requirement. We were denied this request when we built our house, so I cannot see how this would be allowed for your development."</p>	<p>Considering that the departures sought are in harmony with the current visual impact which is prevalent on the subject property, no precedence for surrounding property owners is projected as this vary remarkably from instances where property owners wish to expand the building footprint into the building line.</p>
<p>"The Architectural Review Committee (ARC) has looked at the proposed subdivision again, evaluated inputs from various concerned homeowners as well as the Estate's guidelines. The general standard of houses on the Estate was also taken into account. The following are to be noted: ARC cannot give permission for the relaxation of the building line as it can only be done by the Overstrand Local Authority."</p>	<p>Noted</p>

Response to objections related to procedural considerations.

Comment	Response
<p>"I guess you are not required to directly discuss these types of changes with the direct neighbours of the property, but it probably would have been a sensible thing to sit down and discuss the plans with the adjoining properties to ensure there was a general consensus for the proposal and how it would affect them."</p>	<p>WRAP had a discussion with the HOA which represents the objector and it was requested that Portion A and Portion B as illustrated in figure 2 be consolidated to create one erf which was done as illustrated in figure 2. This concession was made by the owner of the subject property and the amended subdivision plan was circulated to the HEAE residents and the HOA and the number and scale of objections persisted regardless of the concessions which the owner of the subject property was prepared to make.</p> <p>All attempts to appease the residents of the HEAE and HOA seemed futile. Considering this, it is submitted that the concession made by the owner of the subject property to consolidate Portion A and Portion B is revoked and that the OM apply its decision making authority to the original subdivision plan which was submitted with the planning application as illustrated in figure 1.</p>



Response to objections pertaining to the scale of the submitted proposal.

Comment	Response
<p>"My big concerns are as follows: Large increase in size of the property which directly effects the way we built our house, the views. The new larger plot allows for a very large property to be built directly in front of our property, which would never have been possible with the original plot orientation. I will strongly contest this request."</p>	<p>The size of any future construction will be limited to the 50% coverage on the subject property which is a development parameter which is also enjoyed by the objector and does not constitute an unfair unlocking of additional land use rights.</p>
<p>"I will also talk to the estate manager about my concerns and how it is possible for a property to get exemptions from rules that the rest of the estate had to follow during their individual building process. I see nothing positive about the plans and there seems to be a lack of thought for the neighbouring houses. I see many years of potential building and disruption in a very quiet corner of the estate which I will not allow."</p>	<p>At most, the proposed Portion A and Portion B will unlock a primary dwelling and a second dwelling unit which is not projected to be a prolonged disruption in terms of construction to the HEAE considering that only a few even are still vacant in the area.</p>
<p>"The proposal to divide the existing house into two separate houses poses a problem to current owners on the Estate. It would not be in line with the style of free-standing houses that we have and could set a precedent for future developments / additions to existing houses.</p> <p>The Architectural Review Committee can therefore not approve the application to divide the existing structure into two adjoined residence.</p>	<p>The proposed subdivision line between Portion C and the Remainder as illustrated in figure 1 will only result in the construction of a boundary wall along the subdivision line and not alter the free standing character of the two properties and therefore not projected to set a negative precedent.</p> <p>As discussed earlier, the Architectural Review Committee does not have decision making authority pertaining to subdivisions but only evaluates new building plan submissions which will be done at a later stage when building plans are submitted for Portion A & B.</p>

Response to letters of support.

Comment	Response
<p>"I got no objection towards the subdivision."</p>	<p>Noted</p>
<p>"It does not affect me and therefore I don't have a problem with it."</p>	<p>Noted</p>

12/12

**Conclusion**

It has been illustrated in the response to the objections that the owner of the subject property has exhausted all measures to appease the residents of the HEAE and HOA by making amendments to the submitted subdivision plan all of which were rejected. Considering this, all concessions made are herewith revoked and the original subdivision plan which was submitted with the planning application is requested to be assessed by the OM.

Considering that a deadlock has been reached between the owner of the subject property and the residents in the HEAE and HOA, it is requested that the OM as the competent authority apply its mind by making an impartial decision regarding the submitted application.

Yours faithfully

A handwritten signature in black ink, appearing to read "Rea Jankie", is written over a horizontal line.

REA JANKIE
TOWN PLANNER (B/8392/2017)

Annexure F



20 May 2022

Richard Kotzé
WRAP Project Office
HERMANUS


Dear Richard

Erf 11171: Subdivision

This serves as confirmation that the Hemel-en-Aarde Estate HOA will support your application for subdividing Erf 1171, with the following conditions:

- Subdivision to be as per extent and shape of original erven 8100 and 8101.
- Neighbouring home owners support the application.

Regards,



Adriaan de Koker
OPERATIONS MANAGER

Annexure G 1/2

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR SUBDIVISION & DEPARTURE: ERF 11171, HEMEL &
AARDE ESTATE (3617/2020)**

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

Conditions:

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

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

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

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

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

The contribution according to the current policy (2020/2021) is as follows:

Freehold erven:

Water	R 23 957.00 x 3	=	R 71 871.00
Sewerage	R 16 153.00 x 3	=	R 48 459.00
Roads	R 7 243.00 x 3	=	R 21 729.00
Stormwater	R 8 357.00 x 3	=	R 25 071.00
Solid Waste	R 1 448.00 x 3	=	<u>R 4 344.00</u>
TOTAL (inclusive of VAT)		=	R171 474.00

Note:

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

3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the 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 any additional and / or extended vehicle entrances will be for the owner's account;
6. that stormwater be allowed to discharge through the proposed Erven, Hemel & Aarde Estate, unobstructed;
7. that no on-street parking be allowed.


DENNIS HENDRIKS
SENIOR MANAGER: ENGINEERING SERVICES


DATE