

**4.7****REMAINDER OF ERF 1253, FAIRWAYS AVENUE, EASTCLIFF, HERMANUS:  
APPLICATION FOR AMENDMENT OF THE SITE DEVELOPMENT PLAN (SDP) AND  
CONDITIONS OF APPROVAL: MESSRS WRAP PROJECT OFFICE ON BEHALF OF  
OVERSTRAND MUNICIPALITY****1253 HEC (4480/2023)****P Roux****11 October 2024****(028) 313 8900****Hermanus Administration**

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**1. EXECUTIVE SUMMARY**

An application has been received on 14 September 2023 (final version received on 05 December 2023) from Messrs WRAP Project Office on behalf of Overstrand Municipality, in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to the Remainder of Erf 1253, Hermanus for the following:

- **Amendment of the Site Development Plan** in terms of Section 16(2)(l) of the By-Law to reflect the new position, stall layout and parking layout of the Hermanus Country Market.
- **Amendment of condition of approval** in terms of Section 16(2)(h) of the By-Law to allow for sixty (60) stalls within the new lease area and to allow for extended operating days and to increase the number of tenants to ninety (90).

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

**2. DECISION AUTHORITY**

Municipal Planning Tribunal

**3. BACKGROUND / SITE HISTORY**

The location of the proposed development is located on a portion of Erf 1253 which was historically developed and approved for the use of the Hermanus Sports Club (HSC). The proposal is to relocate the existing country market on a northern portion of the HSC where it was previously approved by the municipality. The proposal includes 60 stalls with 90 traders and to allow for extended operating days.

**4. SUMMARY OF APPLICANT'S MOTIVATION**THE MOTIVATION CAN BE SUMMARIZED AS FOLLOWS:

- ❖ Erf 1253 is owned by Overstrand Municipality and forms part of the commonage which includes various uses such as roads and open spaces.

- ❖ The portion of Erf 1253 for which the application based is located in Eastcliff, Hermanus and is developed as the Hermanus Sports Club (HSC) and leased as such. The portion includes various sporting infrastructure and disciplines such as tennis, skateboarding, hockey a multi-purpose sports fields and building, with several sporting clubs. The country market has a sublease with the HSC to utilise a portion of the property for the market. The surrounding land uses are mixed uses which include community related uses such as schools and churches and residential areas.
- ❖ The submission of the application is to be in compliance following a memorandum of understanding that was entered into between the Overstrand Municipality, HSC and HCM, which outlines HCM obligations and commitment to relocate to an area as indicated on the historic site development plan. Secondly the application seeks to give effect to the draft sublease and that the proposed relocation area has the relevant land use approvals. Thirdly the application seeks to ensure the continuity of the HCM operations and to fulfil the operation of maintaining the market.
- ❖ The market was located at its existing location since 2012. To show commitment in working together it was agreed to move the market.
- ❖ To ensure the viability of the market, the market's utilisation needs to be optimised and it is therefore proposed to extend the operating days.
- ❖ The market will be utilised in line with the definition of a "market" which is defined as follows:  
*"Market" means an outdoor venue for the sale of fresh produce, food and beverages, crafts, art and manufactured goods to the public;*
- ❖ The property is zone Open Space Zone 2: Public Open Space and allows for recreational facilities as a primary right. No application for a recreational facility is being submitted, since the use of the market has already been classified as a recreational use, which aligns with the primary land use right and does not require any additional land use rights.
- ❖ The market has been operational for several years and has successfully introduced a variety of unique traders, enriching the experience for the public and offering support for local artisans and entrepreneurs. A number of the traders have their livelihoods intricately tied to the operations of the market.
- ❖ The historic SDP of 2013 did not clearly illustrate the proposed area for the HCM, this includes the size and shape of the lease area. The amendment of the SDP is also subject to the sub-lease of the area and therefore the proposal and layout may undergo changes and therefore if the application is approved then it is proposed that a condition be imposed in order to submit a final SDP.
- ❖ The proposed new lease area will have an extent of ±3176m<sup>2</sup>.
- ❖ In addition to the relocation of the trading area, it is proposed to increase the number of traders and to have additional market days.
- ❖ On the 2013 SDP a total of 60 stalls were indicated, the proposal is not to increase the number of stalls but to allow for more traders. Two waterproof tents are also being proposed. The tents will cover multiple stalls which will allow the stalls to operate during inclement weather.
- ❖ Each trader will be accommodated within a designated space tailored to their specific needs.
- ❖ This approach acknowledges that not every trader requires the same amount of space, and each trader is unique. This flexibility also opens the possibility for traders to share spaces within the same stall area. Additionally, some traders may require more than one stall to operate effectively.

- ❖ The relocation of the HCM comes at a great cost, which needs to be recouped over the lease period which is only possible if the proposed lease period contained in the lease agreement is agreed upon and that 90 traders are allowed.
- ❖ The same number of stalls will be retained but the number of traders will increase.
- ❖ The changes in the shape and layout of the lease area necessitate an amendment to the SDP to align with the new configuration.
- ❖ In addition to altering the lease area, the proposal seeks to modify the operational schedule of the market. Presently, the market is permitted to operate and trade on specific days, which include Saturdays, Sundays and public holidays. The market wants to be more flexible in the operation and the trade whenever opportunities arise. The current restriction to specific days has limitations on the HCM ability to maintain its standard operating procedures while hindering its potential to achieve its overarching goal: attracting and retaining as many visitors as possible to the Hermanus area.
- ❖ This will allow the market to contribute more to the community. This translates into more opportunities for local artisans and vendors to showcase their products, thereby bolstering the local economy and secondly, it will offer a wider range of operating days to cater for tourists and residents alike. The market can respond more effectively to special events, festivals, and seasonal variations in tourism. Festivals in this regard refers to special market events for example a pumpkin carving festival, where visitors have the opportunity to carve pumpkins while traders still sell food and drinks or even focused markets.
- ❖ Currently, the HCM operates primarily on Saturdays and Sundays, coinciding with the peak activity of the HSC and the entire precinct. These weekends are the busiest times, and the HCM is presently permitted to operate during these periods and have been for the better part of a decade. The proposal, however, seeks to extend the market's trading hours beyond these peak times and during low peak for the other operators in the HSC.
- ❖ Ample parking is provided at the HSC as there are 580 parking bays for visitors and members of the various facilities. Additionally, there are five designated bus parking bays. The integrated approach to parking underscores the synergistic relationship between the HCM and HSC. It not only facilitates convenient access for marketgoers but also contributes to the over all efficiency and convenience of the site.
- ❖ This approach fosters a vibrant and inclusive atmosphere within the HSC's grounds, ultimately enhancing the overall experience of those who come to enjoy the various amenities and events offered. As these facilities on the HSC operate independently, with no direct interconnection and varying operational hours, it becomes necessary to consider the combined parking requirements outlined in Section 17.1.4 of the OMLUS.
- ❖ In addition to the parking being provided on the HSC's grounds, the HCM has agreements in place with the Bosko Church, Generations School as well as the Hermanus High School specifically to be utilised for parking by the additional traders, which reduces the need for parking on the HSC's grounds. Refer to Plans 5 .2 & 5 .3 for the additional parking area that may be used.
- ❖ Title Deeds T3350/1924 & T16775/2004 were perused and there are no restrictive conditions that prohibit the proposed development.
- ❖ The proposal is in line with the principles of the SDF 2020 to improve urban efficiency and enhance connectivity.
- ❖ The applicant motivates that the application is aligned with the SDF and adheres to the Planning Principles as contained in SPLUMA.

## 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local newspaper	<b>Yes</b>	16/02/2024	22/03/2024
Notices to affected parties	<b>Yes</b>	23/02/2024	22/03/2024
Internal Departments	<b>Yes</b>	15/02/2024	22/03/2024
Ward councillor	<b>Yes</b>	15/02/2024	22/03/2024
Total comments	<b>FIVE (5)</b>		
Was public participation undertaken in accordance with Section 46 - 50 of the By-law on Municipal Land Use Planning?			<b>Yes</b>
Was the application processed correctly (if no, elaborate below):			<b>Yes</b>
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			<b>Yes</b>
In case of application for removal, amendment, or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies.			<b>N/A</b>

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

Name	Date received	Summary of comments
<b>Building Department</b>	16/02/2024	No objection, SANS 10400 Form 2 (Engineers Appointment) must be attached to the building plan application for proposed structures as a rational design.  The building plan application must comply with all applicable law.
<b>Local Heritage</b>	16/02/2024	No comment.
<b>Fire Services</b>	29/02/2024	No objection, subject to compliance with the provisions of SANS 10400 A:2016, 10400 T:2020 and the By-Law relating to fire safety.
<b>Tourism</b>	01/03/2024	Supported.
<b>Engineering Services</b>	13/03/2024	Attached as Annexure F.
<b>Waste Management</b>	05/04/2024	Attached as Annexure G.

<b>Department of Transport and Public Works</b>	09/05/2024	No objection.
<b>Environmental Services</b>	06/06/2024	Attached as Annexure H.
<b>Property Administration</b>	25/07/2024	Attached as Annexure I.

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

The objections and comments received was grouped into main discussion points:

### **OBJECTION 1**

Number of stalls permitted can potentially restrict the economic viability.

#### **Response from applicant**

The comment is noted and agreed with. As mentioned throughout the application, the needs of each trader vary. Additionally, the requirements of each trader may change over time. Small businesses will be allowed a platform to expand and more into larger spaces, even if it is only from a small stall to larger one.

#### **Response from Town and Spatial Planner**

It must be noted that the HSC is essentially first and foremost the location where sporting events and facilities are provided for the community as a whole. The country market is limited in scope and footprint in order not to detract from or invade on the sporting events and facilities.

### **OBJECTION 2**

#### **PARKING**

Parking arrangements cannot be provided at Bosko church or Generations School as proposed. During Saturday trading hours, the area experiences significant parking constraints, impeding the full functionality of our facilities. Therefore, we urge the market to adhere strictly to the agreed-upon trading hours and to meet the requisite parking requirements to mitigate any potential disruptions to our operations.

The HRA suggests that all the parking bays for the HSC be taken into account when considering this application.

**Response from applicant**

The proposed relocation of the HCM is not expected to generate additional parking requirements, as the extent and number of stalls are not being increased. There was a comment from the municipality that the additional traders need to be accommodated elsewhere. 30 additional traders are being proposed. Initially parking was to be provided at Generations School, however after the comment was received that the parking cannot be used an alternative was found at the Hermanus High School.

A formal lease agreement was entered into between the HCM and the Hermanus High School to allow the staff of the HCM to access the parking during market days.

The management of the parking was motivated in the land use application which was advertised for comment. The comment from the Hermanus Rate payers Association is agreed with.

**Response from Town and Spatial Planner**

Parking is one of the main concerns for the proposed development. Although it is agreed that the relocation of the market will not lead to additional requirements for parking, the amount of additional traders does. Currently only 60 traders are permitted and 90 traders are proposed as stated in the motivation. This essentially means the 60 stalls will be used by 90 different traders and 90 different units will be provided as some stalls will be split in two. The 30 additional traders will require 30 additional parking spaces for their vehicles, and an additional 30 parking spaces will be required for their respective clients, in total 60 additional parking spaces will be required. The agreement with the high school only provided 30 parking spaces and an additional 30 parking spaces will be required if the proposal is approved.

Further, what is unclear from the agreement with the high school is what the definition is of market days. Essentially the motivation depicts that the market will be free to operate as opportunities arise, this means that the school grounds will have to be open for parking even during school hours and during the week which is problematic in terms of scholar safety.

The grievance regarding the parking arrangements during weekends are noted and worth consideration in the evaluation.

**OBJECTION 3****TRAFFIC**

Concern is raised regarding traffic on Fairways during operating hours and conflict with pedestrian traffic. Several suggestions are made to accommodate both vehicular and pedestrian traffic.

**Response from applicant**

The application was sent to the Overstrand Engineering Department for comment. If any calming measures or alterations are required, it will be addressed.

**Response from Town and Spatial Planner**

The relocation of the markets does not warrant any significant changes to the road design, further Fairways has pedestrian sidewalks and large road reserves for pedestrians. What is of concern is the proposed additional parking on the high school's grounds across the Road of Erf 1253. The only pedestrian crossing is a few meters away and no indication is provided by the applicant how people will be guided to use the pedestrian crossing safely as opposed to crossing the road directly.

**OBJECTION 4****TRADING DAYS**

It is crucial to emphasize that the original SDP outlined specific trading days and hours for the market. We respectfully request that any deviations from these predetermined parameters be carefully reconsidered, as they may adversely affect the functionality of Generation Schools Hermanus, the neighbouring church, and the sports grounds.

Operating seven days a week is not supported; however other opportunities may be available during long weekends as well as mid-week holidays which would be suitable for the HCM to operate.

**Response from applicant**

The comment is duly noted. There is no intention from the owners to operate a "shopping centre". The current appeal should not change.

The market does not aim to operate 7 days a week, but it is proposed not to be limited by specific days. There are certain days on which the market operations could be successful.

Speciality markets are not planned for every day or week. As the need arises, the HCM would like to have a flexibility to plan a market that is not limited to a specific day of the week.

**Response from Town and Spatial Planner**

The application and motivation are not clear as to what the extent will be for operating on additional days. The motivation simply requests that the market be allowed to operate on days where other opportunities might present itself. However the other days could mean anything. The problem in terms of a planning perspective is that the parking must be available on any day the market is open, this could be irrespective of schools operating times and availability. The location of the additional parking is also a concern as market goers will have to park across the road and could cross the street directly.

As noted by the objector the proposed additional days may adversely affect the functionality of Generation Schools Hermanus, the neighbouring church, and the sports grounds in terms of parking and noise. Recently it was brought to light that amplified music is also being played on certain market days. The market is not equipped to soundproof music.

### **OBJECTION 5**

#### **VALID OCCUPATION / TENDER**

Objection is made to the subleasing of the property, HCM is a private business not an NPO. By allowing a long lease period the Overstrand Municipality is creating a precedent where other business will also seek to lease areas for business use without following a tender process.

#### **Response from applicant**

The application aims to relocate the existing market to a new location. Additional space is not required nor requested.

The HSC is a lessee of the property while the Overstrand Municipality remains the property owner. Subleasing is only permitted as allowed for and agreed by the Overstrand Municipality.

The HCM will continue to pay a market rent for the lease area. The cost of the relocation of the new market will be carried by the HCM and will be related rentals of commercial space over the lease period.

The HCM rents (subleases) the area from the HSC and not directly from Overstrand Municipality.

#### **Response from Town and Spatial Planner**

The application was circulated to the Property Administration who will consider the sublease. It should be noted that the HSC is the main lease holder of the sports grounds. In terms of their contract with Overstrand Municipality the HSC may sublease the property. The intention of the market from the municipality's perspective is to be auxiliary to the working of the sporting facilities and not to create a mini supermarket or alternative commercial facilities.

### **8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS**

See Paragraph 7 above.

### **9. MUNICIPAL ASSESSMENT OF COMMENTS**

#### **Waste Management**

1. The estimated volumes that they will generate per market day.
2. Which transfer station they intend to use to dispose of the waste that was generated on the day
3. What time they will be delivering the waste to the transfer station as I think the market end after the transfer station closing time.

4. What about evening markets if they are approved how will that waste be handled?
5. There is no reference in the report or on any of the drawing provided to show where the waste will be temporary collected / stockpiled on the market operational days before been removed off site. Please provide additional info.

**Response from Town and Spatial Planner**

The comment from Waste Management is noted. Should the relocation of the market be approved then a condition can be stipulated that the applicant provide a Waste Management Plan and clearly indicates how the waste will be dealt with.

**Environmental Services**

1. Any lighting must be downward facing.
2. A straight fence must be placed on the boundary between the Fernkloof nature reserve and the HCM site. This is to prevent illegal parking.
3. A Fire Management Plan must be submitted.
4. A Waste Management Plan must be submitted.
5. An application fore noise exemption must be submitted should amplified music be used at the market.
6. The SDP is subject to scrutiny of the Fernkloof Advisory Board.

**Response from Town and Spatial Planner**

The comment from the Environmental Services is noted. Should the relocation of the market be approved then a condition can be stipulated that the applicant provide an updated SDP and Fire Management Plan which clearly indicates how waste and fire will be dealt with. Currently there is no proposal to incorporate music at the market as the facility and units cannot be soundproofed. It is noted that the market is currently advertising music which is not currently being applied for.

**Property Administration:**

“What I must mention is that I noted that they are now indicating that they do not intend to trade 7 days a week, but as and when needed (thus not be bound by specific days). This is not what they applied for initially. If no limit on days is placed, it will give them a right to trade every day, which I cannot support.

As to the lease agreement. I have serious doubts as to whether the school is authorised to enter in such an agreement. What concerns me the most is that adults might have access to a school premises during the day when children are attending the school. How will this be monitored and is it permissible in terms of legislation? People who frequent the market will most probably make use of alcohol, etc. and then go back to their cars parked on the school grounds. Is the South African Schools Act not applicable to access to schools by, i.e. members of the public.

For example:

- “13. *Public schools on State property.*—(1) *In this section, immovable property owned by the State includes immovable property held in trust on behalf of a tribe by a trust created by statute.*
- (2) *Subject to section 20 (1) (k), a public school which occupies immovable property owned by the State has the right, for the duration of the school’s existence, to occupy and use the immovable property for the benefit of the school for educational purposes at or in connection with the school.*
- (3) *The right referred to in subsection (2) may only be restricted—*
- (a) *by the Member of the Executive Council; and*
- (b) *if the immovable property is not utilised by the school in the interests of education.*
- (4) *The Member of the Executive Council may not act under subsection (3) unless he or she has—*
- (a) *informed the governing body of the school of his or her intention so to act and the reasons therefor;*
- (b) *granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;*
- (c) *duly considered any such representations received.*
- 20. *Functions of all governing bodies.***—(1) *Subject to this Act, the governing body of a public school must—*
- (k) *at the request of the Head of Department, allow the reasonable use under fair conditions determined by the Head of Department of the facilities of the school for educational programmes not conducted by the school;*
- 36. *Responsibility of governing body***
- (4)(a) *A governing body may, with the approval of the Member of the Executive Council—*
- (i) *lease, burden, convert or alter immovable property of the school to provide for school activities or to supplement the school fund of that school; and*
- (ii) *allow any person to conduct any business on school property to supplement the school fund.*
- (b) *A governing body may not allow any activity on school property that is hazardous or disruptive to learners or prohibited by this Act.”*

### **Response from Town and Spatial Planner**

The comment from Property Administration is noted and the concern regarding the scholar’s safety is shared. In the agreement between the Hermanus Country Market and the Hermanus High School it is simply stated that the parking will be available “on market days”. It is unclear from the agreement with the high school what the definition is for “on market days”. Essentially the motivation depicts that the market will be free to operate as opportunities arise, this means that the school grounds will have to be open for parking even during school hours and during the week which is problematic in terms of scholar safety.

The HSC is essentially first and foremost the location where sporting events and facilities are provided for the community as a whole. The country market is limited in scope and footprint in order not to detract from or invade on the sporting events and facilities. The proposed additional days may adversely affect the functionality of Generation Schools Hermanus, the neighbouring church, and the sports grounds in terms of parking and noise.

**Property Administration Department also provided the following comment on the application**

It is also noted that the HSC obtained a conditional approval to sublease the property to HCM to operate a country market subject to specific conditions, the noteworthy condition which are applicable to this application are as follows:

- Trading will be limited to 60 stalls.
- Trading will be limited to Saturdays, one Sunday a month, public holidays and Wednesday evenings as were initially approved.
- The necessary building plans for the structures are submitted and approved before any work are commenced with, with the explicit restriction that the proposed stall may not exceed the height of 5.5m and no stall with a container will be allowed.
- The position of the market must be moved 5 metres away from this fence, to ensure a buffer zone.

In addition to these conditions the municipality reserves the right to amend this approval once the land use planning process, including the SDP indicating the parking, is finalised as it will influence the number of stalls, requirements regarding parking and the use of the sublease area. It is thus explicitly stated that the approval to sublease is subject to the outcome of the land use planning process, thus if the latter is not approved, the sublease approval will be withdrawn.

The first concern with increasing the approved 60 traders, is the lack of parking. This is also as it will not only be 60 traders, but also their assistants, helps, etc. which can increase the number of people managing a stall increase to at least 2 per stall (given a more realistic total of 120 people/users for the 60 stalls). The applicant did not submit any proof of agreements being in place with Bosko Church and Generations School to make use of their parking areas (some which are enclosed). No details are given as to the conditions associated to such alleged agreements, e.g. when can it be use, how will it be managed, etc. Then the main concern is that the approval of the land use planning application is a permanent right where the alleged agreements are only temporary rights. In allowing a permanent right on the basis of a temporary agreement can have legal consequences.

The second concern is how it will be managed to ensure that they keep to the ±90 traders (as there were talks about 120 traders). What will the recourse be if it found that there are indeed more traders. How will the main lessee distinguish between a trader and the trader's assistant, etc?

Increasing the number of traders is not supported.

Currently the trading is limited to Saturdays, one Sunday a month, public holidays and Wednesday evenings as initially approved.

The Property Administration Department did research on similar markets throughout South Africa and it was clear that the majority of these markets only trade on Saturdays as is the current situation of the HCM and as was approved initially. It is rightly stated by the town planner that "Daily trading will fall under commercial use and is not in line with the character of the market as envisioned by Council and the Sports Club. Further as previously stated, the market is a secondary use to the sporting facility and should therefore not take precedence over the use of the other sporting facilities". Thus, if containers / permanent structures are allowed with daily trading, the use will definitely be business related (not even linked to sports related) which is not in line with the zoning of the property as well as the intended use in terms of the lease entered into between the municipality and the Hermanus Sports Club.

From the contents of the application, it is clear that the applicant intends to operate a formal business for profit purposes from the property. Especially as this will not be a sports related business in line with the main lease, any approval will be a deviation from the approved use of the whole property as contained in the main lease. Even if the argument is that it is recreational, all recreational leases of the municipality are done to non-profit organisations and not for profit purposes.

Increasing the trading to daily trading is not supported.

Various inconsistencies were indicated in the motivation as opposed to the sublease entered into by the HCM.

In conclusion the Property Administration Department does not support the application as:

- a) No additional traders can be allowed.
- b) No additional trading days can be allowed.
- c) No containers for storage/use to be allowed.
- d) Additional approval will have to be obtained for the tents and covered area as this proposal is not the same as which was submitted with the application to sublease.

**Response from Town and Spatial Planner**

The above comment from Property Administration is noted and the concern regarding the inconsistency with the sublease agreement is shared. The comments provided will be considered in the evaluation of the application.

**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.

The objectives relating to:

**Spatial Justice**

N/A

**Spatial Sustainability**

The application will not impact valuable agricultural and sensitive environmental land as the area it market will be relocated on does not have indigenous plant species.

**Efficiency**

Existing property will be developed in line with the original intent in terms of the location of the country market.

**Spatial Resilience**

The application is in line with spatial planning policies.

**Good Administration**

Procedure as determined by the relevant B-Law of the Municipality has been followed and a good public participation process was followed.

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

The application is consistent with the planning principles.

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

No changes are made in terms of the zoning of the property nor are there any additional densification proposals.

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

N/A

**10.6 Impact on Municipal engineering services**

No impact.

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

No investigations required.

### 10.8 Existing and proposed zoning comparisons and considerations

The application is in line with the Overstrand spatial documents.

### 11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

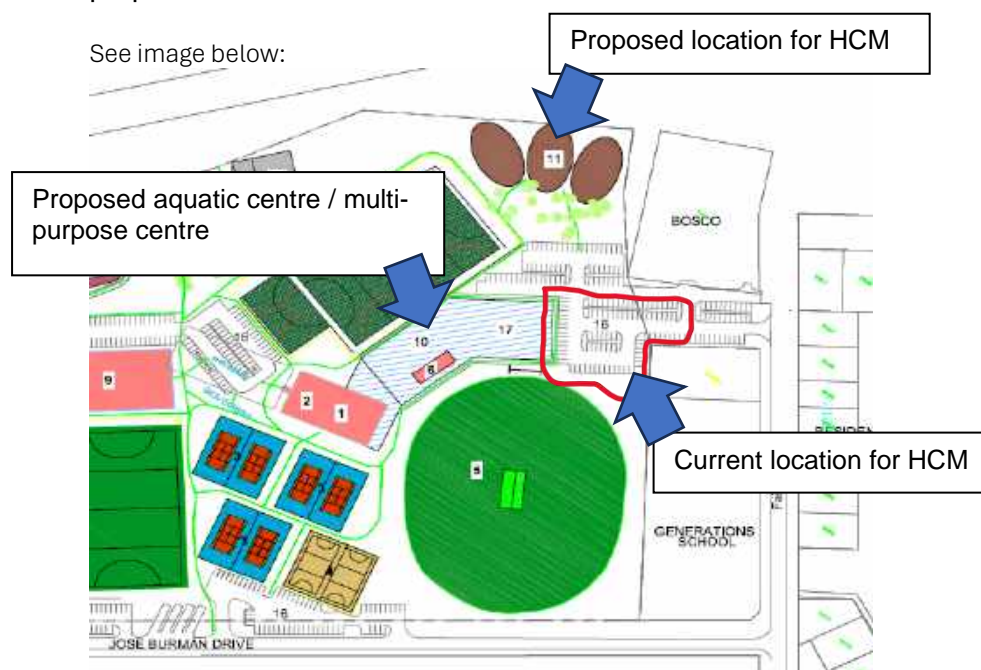
### 12. THE DESIRABILITY OF THE PROPOSAL

The application entails the following:

- **Amendment of the Site Development Plan** in terms of Section 16(2)(l) of the By-Law to reflect the new position, stall layout and parking layout of the Hermanus Country Market.
- **Amendment of condition of approval** in terms of Section 16(2)(h) of the By-Law to allow for sixty (60) stalls within the new lease area and to allow for extended operating days and to increase the number of tenants to ninety (90).

It must be firstly stated that the 2021 SDP for the Hermanus Sports Centre indicated the Hermanus Country Market (HCM) would be situated at the northern side of the site next to Bosko Church. At its current location (next to Generation School) the HCM obstructs planned parking area and a section of the aquatic centre/multi-purpose centre.

See image below:



The need is therefore established to relocate the market in order for the municipality to implement the SDP or any future amendments thereof. It can be agreed that the new location is in keeping with the municipality's intent to allow for the further development of the Hermanus Sports Centre while allowing for ease of use and access to the facilities. The proposed relocation of the market can be supported.

The relocation of the HCM the applicant requests several changes be made to how the market is operated. The proposed changes are as follows:

- to allow for 90 traders within the 60 stalls;
- to extend the operating days to allow the HCM to operate on additional days as the opportunity presents itself, and
- to allow for a change in design to allow for tent structures and a covered stall area.

Each of the abovementioned changes proposed has an impact on the usage of the Hermanus Sport Centre and therefore needs to be considered from a town and spatial planning perspective. Each point will be discussed below:

#### **TO ALLOW FOR 90 TRADERS WITHIN THE 60 STALLS**

It should firstly be considered what a trader is. It is the person who has the right to trade from a unit. In addition to the trader there might be one or two assistants. With the 60 stalls the intention from the municipality was to restrict the number of traders to 60 (with the respective assistants). The addition of another 30 traders would mean that in effect there will be 30 additional market stalls as some stalls will simply be split in two. Keeping in mind that that the 30 additional traders would also have their own assistants at the stall. The issue which then arises is where will the traders, their assistants and perspective clients park? The current parking layout at the sports centre only has a finite number of parking bays and there are several sporting facilities which still need to be developed. The additional parking areas are therefore to be provided at another location in order to protect the availability of the parking bays for sporting events. It should be noted that the parking must be available on a permanent basis as the market seeks to operate 'as and when' the opportunity arises which could essentially mean at any time or day of the week.

Initially the applicant proposed the parking at Bosko Church grounds and at the Generations School. However, the representative from both facilities have commented that they cannot allow for permanent parking as this would severely impact their operations.

The applicant then provided an agreement and site plan for Hermanus High School indicating that an area is available for 30 additional parking spaces. However, the 30 traders (and 30 additional market stalls) will require at least two parking spaces, one for the trader and one for the customer, therefore 60 parking spaces are required. The agreement was also questioned as to whether the school would allow parking on a permanent basis. The agreement simply states that parking will be provided on market days. However, "on market days" is not defined in the agreement and the motivation is to have the market on any day where the opportunity arises. The concern is therefore that the market will be operated on days when the school is open and could lead to a safety issue for the scholars. The principle also confirmed that the agreement currently is to have parking available during the weekends throughout the year, during school holidays and during official public holidays. The intent is not to have the parking available during school operating hours.

Considering the aforementioned the addition of 30 additional traders cannot be support as the parking cannot be secured on a permanent basis and the municipality cannot approve a use on a “wait and see” principle. Should permanent rights be secured for 30 additional traders (and their market stalls) then permanent parking must be available. This discussion also leads into the second point/request to extend the operating days to allow the HCM to operate on additional days as the opportunity presents itself.

**TO EXTEND THE OPERATING DAYS TO ALLOW THE HCM TO OPERATE ON ADDITIONAL DAYS AS THE OPPORTUNITY PRESENTS ITSELF:**

The HSC is essentially first and foremost the location where sporting events and facilities are provided for the community as a whole. The country market is limited to in scope and footprint in order not to detract from or invade on the sporting events and facilities. The proposed additional days may adversely affect the functionality of Generation Schools Hermanus, the neighbouring church, and the sports grounds in terms of parking and noise as rightfully pointed out in the objections.

By allowing the additional days to trade would detract from the character of the sports centre as it will become a commercial venture and not be a market as originally intended. If daily trading is allowed, the use will definitely be business related (not even linked to sports facilities) which is not in line with the zoning of the property as well as the intended use in terms of the lease entered into between Overstrand Municipality and the Hermanus Sports Club.

In addition to the above the applicant failed to provide financial statements to support the statement that the “specific” days have limitations on the HCM’s abilities to maintain its standard operating procedures”. No indication is given as to the costs of running such a business in order to consider additional traders and additional days.

The applicant further failed to state how the proposed additional days will affect the other sub-lessees on the property, the users thereof or any subsequent development of the Sports Complex as stipulated in the main agreement.

Considering the aforementioned the proposed additional days cannot be supported from a town and spatial planning perspective, and the days should be restricted to the days as set out in the sub-lease agreement which states that trading will be limited to Saturdays, one Sunday a month, public holidays and Wednesday evenings.

**TO ALLOW FOR A CHANGE IN DESIGN TO ALLOW FOR TENT STRUCTURES AND A COVERED STALL AREA**

The applicant is correct in stating that the original 2013 SDP for the Hermanus Sports Centre was non-descript and only indicated 60 stalls. The current proposal for the amendment of the SDP will be to allow for the proposed placement as depicted on the SDP as submitted with the application. In terms of the Overstrand Land Use Scheme the municipality must determine the development parameters that apply when a SDP is approved. To ensure continuity with the sub-lease agreement and the outcome of this application the proposed development parameters are as follows;

- Only 60 stalls can be developed.
- The height of the stalls will be restricted to 5.5m from base level.
- Any lighting used during nighttime markets must be downward facing and emitted away from the nature reserve.
- A strategic fence must be placed on the boundary between Fernkloof and the HCM lease area. The Environmental Management Section must be contacted for specification.
- The position of the market must be moved 5 metres away from this fence, to ensure a buffer zone between the market stalls and the boundary of the Fernkloof Nature Reserve.
- Ablution facilities be provided.
- That the covering of areas and the final design of the units first be presented to the municipality, the HSC and the Hermanus Heritage Committee prior to the submission of building plans.
- No music be allowed.

### 13. RECOMMENDATION

1. that the comments be noted:
2. that the application for amendment of the Site Development Plan in terms of Section 16(2)(l) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to the Remainder of Erf 1253, Hermanus to reflect the new position and stall layout of the Hermanus Country Market, **be partially approved**, in terms of the provisions of Section 61 of the By-Law;
3. that the application in terms of Section 16(2)(h) of the By-Law for the amendment of conditions of approval to allow for sixty (60) stalls within the new lease area and to allow for extended operating days and to increase the number of tenants to ninety (90), **not be approved**, in terms of the provisions of Section 61 of the By-Law;
4. that the recommendation in 2. above be subject to the following conditions:
  - (a) that this approval is only for the relocation of the market to the northern part of the Hermanus Sport Centre's grounds;
  - (b) that a final (updated) version of the Site Development Plan be submitted to the Town- and Spatial Planning Department for final clearance approval by the relevant departments and the Hermanus Heritage Committee, prior to the submission of building plans. The final (updated) version must indicate the design and placement of the structures in line with the parameters as stated in this decision;

- (c) that the development of the Hermanus Country Market be limited to the following parameters:
- only 60 stalls can be developed;
  - the height of the stalls will be restricted to 5.5m from base level;
  - any lighting used during nighttime markets must be downward facing and emitted away from the nature reserve;
  - strategic fence must be placed on the boundary between Fernkloof and the HCM lease area. The Environmental Management Section must be contacted for specification;
  - the position of the market must be moved 5 metres away from this fence, to ensure a buffer zone between the market stalls and the boundary of the Fernkloof Nature Reserve;
  - ablution facilities be provided;
  - that the covering of areas and the final design of the units first be presented to the Municipality, the HSC and the Hermanus Heritage Committee prior to the submission of building plans, and
  - no music be allowed.
- (d) that building plans be submitted to the Building Control Department for approval, and that all conditions of the Building Control – and the Fire Department be complied with at that stage;
- (e) that all the conditions in the Services Report, Waste Management, Environment Management Services (attached as Annexures F-H) be complied with;
- (f) that the applicable rates and service tariffs, as determined by the annual budget is applicable, which tariffs are automatically adjusted in terms of the annual budget;
- (g) that this approval does not absolve the applicant from compliance with any other relevant legislation, and
- (h) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with;
5. that the applicant, and the persons who commented, be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2020 regarding the above decision.

#### **14. REASONS FOR RECOMMENDATION**

##### Reasons for partially approval

- ❖ The relocation of the market is in the best interest of the Hermanus Sports Centre and for the continuation, and development thereof.
- ❖ The development parameters as stated in the decision will allow for the continuation of the market while protecting the rights and usability of the facilities surrounding the market.

Reasons for non-approval

- ❖ The additional traders will require at least 2 parking bays per stall to accommodate the trader, the assistant and the possible customer therefore at minimum 60 parking bays are required and only 30 is indicated on site.
- ❖ Additional parking cannot permanently be secured in terms of the lease agreement between the Hermanus High School and the Hermanus Country Market.
- ❖ The lease agreement does not specify which days are permitted and vaguely refers to “on market days”.
- ❖ The Country Market is to be subservient in use, character and operations to that of the primary functions and uses of the facilities of the Hermanus Sports Centre.
- ❖ The development parameters as stated in the decision will allow for the continuation of the market while protecting the rights and usability of the facilities surrounding the market.
- ❖ To allow for trading as and when the opportunity arises will open opportunity for the market to operate whenever possible which will lead to daily trading.
- ❖ Should the use and scope of the market not be limited it will definitely be business related (not even linked to sports related) which is not in line with the zoning of the property as well as the intended use in terms of the lease entered into between Overstrand Municipality and the Hermanus Sports Club.
- ❖ No information is provided as to the costs of running such a business in order to consider whether the additional traders and days are beneficial to the market and the sports club.
- ❖ The applicant further failed to state how the proposed additional days will affect the other sub-lessees on the property, the users thereof or any subsequent development of the Sports Complex as stipulated in the main agreement.

**15. ANNEXURES**

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Objections received
Annexure E:	Comment on the objections from the applicant
Annexure F:	Services Report
Annexure G:	Comment: Waste Management
Annexure H:	Comment: Environmental Management
Annexure I:	Comment: Property Administration

**SIGNATURES****AUTHOR:**

Name: **PETRUS ROUX**

SACPLAN Reg No: **A/2246/2015**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**REGISTERED PLANNER**

Name: **H VAN DER STOEP**

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# 1. Locality Plan Remainder of Erf 1253 - Hermanus



Hermanus Sport Club Lease Area

Plan prepared by: Thian Jansen

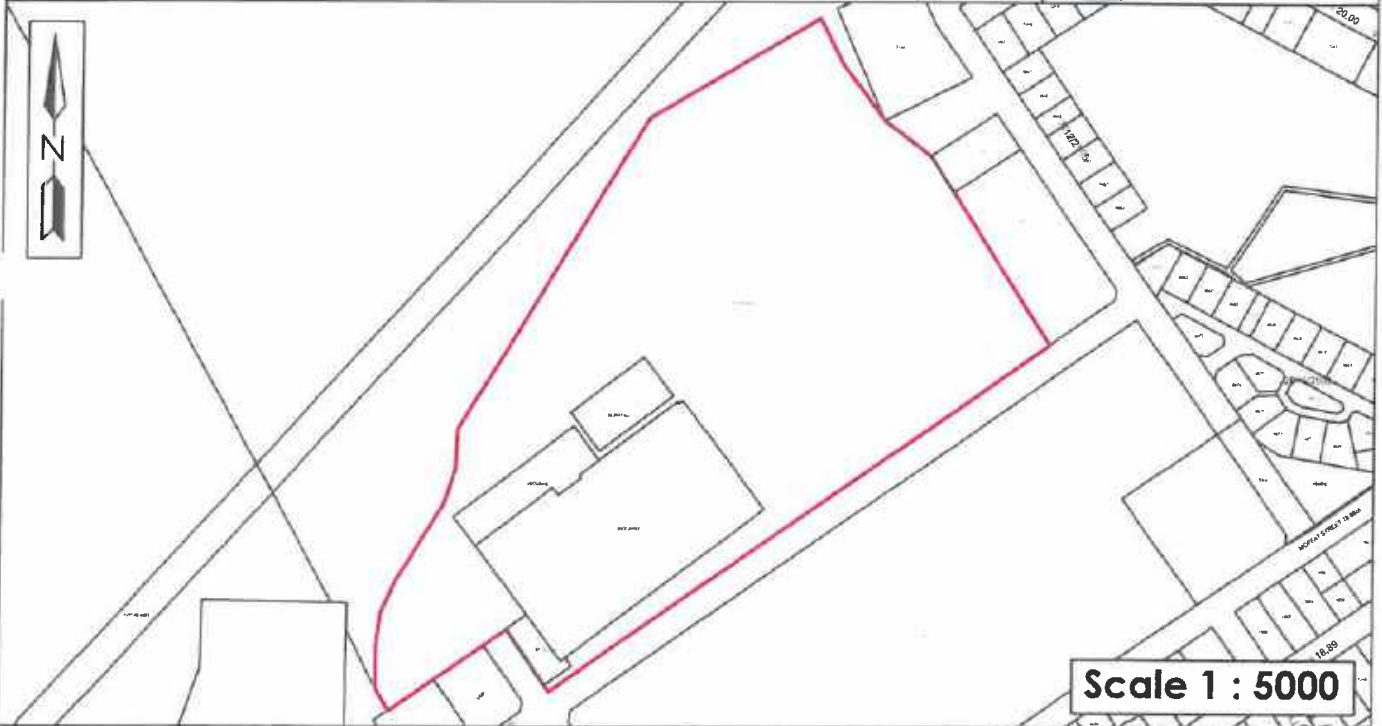
Tel: 028 313 1411

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Unit B, Standard House,  
Corner of Royal and Dirkie Uys  
Street Hermanus, 7200



**Project Office**  
Town Planning & Project Management



**Scale 1 : 5000**



**Scale 1 : 10000**



## MOTIVATION

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**1. ABBREVIATIONS**


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<b>OM</b>	Overstrand Municipality
<b>OMLUS</b>	Overstrand Municipality Land Use Scheme, 2020
<b>BY-LAW</b>	Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020
<b>PSDF</b>	Western Cape Provincial Spatial Development Framework, 2014
<b>MSDF</b>	Overstrand Spatial Development Framework, 2020
<b>OS2</b>	Open Space Zone 2: Public Open Space

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**2. PROPERTY DETAILS**


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<b>Erf Number</b>	Remainder of Erf 1253 Hermanus
<b>Extent</b>	110 528m <sup>2</sup> (Subject lease area: 3 176 m <sup>2</sup> )
<b>Zoning</b>	Open Space Zone 2: Public Open Space

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**3. BACKGROUND AND INTENT**


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The subject property, the Remainder of Erf 1253 Hermanus, is owned by the Overstrand Municipality and forms part of the municipal commonage. The commonage contains various areas, including public roads, road reserves and open spaces in the vicinity of the subject property. Recognizing the potential for community development, the municipality has entered into several lease agreements for sections of the commonage, allowing lessees to develop and provide enhancements that benefit the entire community.

One of the most substantial lease area allocations was designated for the Hermanus Sports Club (HSC), which was granted the right to develop a general sports and recreational facility. This particular lease area encompasses a wide range of facilities, including the HSC Clubhouse, Squash Courts, Tennis Courts, Netball Courts, Cricket Oval, Cricket Clubhouse, Hockey Field with Astro-Turf, Multi-purpose Sports Fields, an Outdoor Amphitheatre, BMX Track, Skateboard Park, Pigeon Club - Club House, Padel Courts, a Gym, a future Aquatic Centre, and future Sports Accommodation. Additionally, nestled within the HSC lease area is the Hermanus Country Market (HCM), which has been sub-leasing a portion of the lease area from the HSC since 2012. The original lease area is illustrated in **Plan 1 – Locality Plan**.

The submission of this application is firstly in compliance with a memorandum of understanding that was entered into between the Municipality, HSC, and HCM. According to this memorandum of understanding, the HCM is obligated to submit this application, with a commitment to relocate to its intended position as specified in the historic site development plan (SDP). Refer **Plan 4 – Approved Site Development Plan 2013**, which outlines the market's location adjacent to Bosko Church.

The submission of this application is secondly giving effect to a draft sub-lease agreement to be entered into between HSC and HCM and to ensure that the utilisation of the sub-lease area as agreed upon between the parties has the relevant land use approvals. The purpose of this application is thirdly to ensure the continuity of HCM's operations and

File 23/35

REMAINDER OF ERF 1253 HERMANUS  
SEPTEMBER AND AMENDED NOVEMBER 2023

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## MOTIVATION

to fulfil the aspiration of maintaining this beloved market as a cherished part of the Overstrand area.

The HCM has been in its existing location since commencement of their sub-lease agreement with the HSC in 2012. As a method to ensure and show commitment in working together, the HCM has agreed to relocate to a new location as illustrated below, the internal layout of the sub-lease is only a draft:

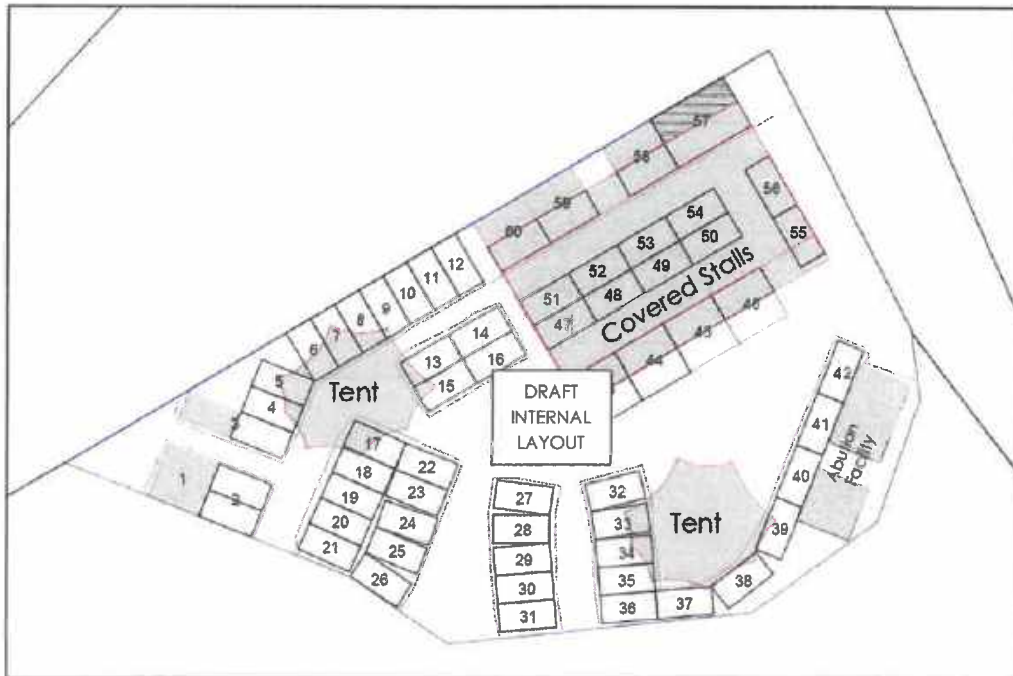


Figure 1: Proposed HCM location

To ensure a viable market is able to be operated in its new location, the HCM needs to optimise the utilisation of the market by introducing additional market days and types of focussed markets, for which land use approval from the Overstrand Municipality is required.

It is the intention of the HCM to utilise the proposed lease area for market activities and the OMLUS provides the following definition for a market:

*"market" means an outdoor venue for the sale of fresh produce, food and beverages, crafts, art and manufactured goods to the public.*

A market can be considered as an extension of the primary uses which are allocated to the subject property due to its zoning, namely Open Space Zone 2: Public Open Space.

In terms of the OMLUS, Open Space Zone 2: Public Open Space has a primary use of public open space which is defines as:



## MOTIVATION

*"public open space" means land which is in public ownership, used primarily for outdoor sports, play, rest or **recreation** or as a park area or nature area, and includes associated buildings, infrastructure and uses.*

The HCM will use the lease area as a market which is considered as a recreational activity open for the enjoyment of the public. It also *"includes associated buildings, infrastructure and uses"* that ensures the market's related infrastructure that supports the HCM to operate, is allowed in terms of the OMLUS.

It's essential to clarify that this definition should not be confused with the definition of a *"recreational facility."* The latter is considered a consent use according to the OMLUS within the zoning of the subject property. These two definitions serve distinct purposes and legal status within the regulatory framework, and it's crucial to differentiate between them to ensure compliance and proper understanding of the land use on the subject property.

The OMLUS states that: *"recreational facilities" means the use of land to practice a particular sport or combination of sports and general recreation and includes a clubhouse and associated infrastructure and buildings, indoor and outdoor swimming pools and associated infrastructure, and a shooting and driving range but does not include any building or structure that is used for business, or any other use not aligned to or dependant on the sport concerned.*

No application for a recreational facility is being submitted, since the use of the market has already been classified as a recreational use, which aligns with the primary land use right and does not require any additional land use rights.

#### 4. PROCEDURE TO ACHIEVE THE PROPERTY OWNER'S INTENT

WRAP compiled this report to ensure the property owner's intentions are met. The following is proposed:

**4.1 Amendment of the Site Development Plan** to reflect the new position and stall layout of the Hermanus Country Market in terms of Section 16(2)(l) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

As mentioned in section 3 above, the Hermanus Country Market (HCM) has been operating from the current lease area since 2012, becoming a significant cornerstone of tourism in the Overstrand area. Throughout its operation, the HCM has successfully introduced a variety of unique traders, enriching the experience for the public and offering essential support to local artisans and entrepreneurs. However, as a consequence of ongoing negotiations between the Overstrand Municipality (OM), Hermanus Sports Club (HSC), and the HCM, certain traders have found themselves particularly vulnerable in the present uncertain situation.

Within the HCM's dynamic marketplace, a diverse assortment of traders has come together, ensuring that visitors encounter a wide array of offerings on any given market day. This eclectic mix adds vibrancy and character to the market atmosphere, creating an enticing and ever-evolving space for exploration. Visitors have the opportunity to



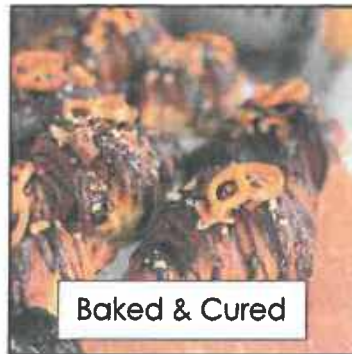
## MOTIVATION

peruse and purchase a range of products, from handcrafted goods to delectable culinary delights, all while engaging with the local community and supporting its entrepreneurial spirit.

The HCM offers the following:



Eat-on-site



Baked & Cured



Fresh Produce



Beverages



Art & Ceramics



Jewelry & Cosmetics



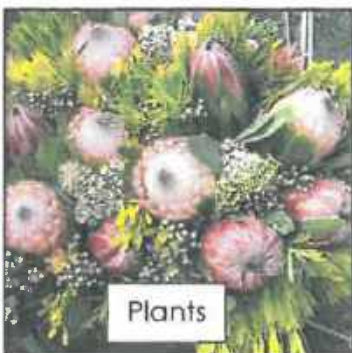
Clothing



Leather & wood



Eco & Recycling



Plants



General Handicrafts



Kids Activities & Toys



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It is worth emphasizing that for some of these traders, their livelihoods are intricately tied to the operations of the market. The ongoing negotiations, therefore, have created uncertainty and challenges for these individuals and businesses. As the HCM looks toward its future, it is essential to find a solution that not only ensures the continued success of the market but also supports these traders who play a vital role in its unique tapestry of offerings.

In the historic Site Development Plan (SDP) of 2013, the proposed area for the HCM is not clearly illustrated, this includes location, size, and shape of the lease area. As a result, an application is being submitted to allow the HCM's proposed sub-lease area to be indicated as the amended location for the HCM. **Refer Plan 5 & 5.1 – Proposed Draft Site Development Plan.** It's crucial to emphasize that while the proposed internal layout of the stalls and footpaths may undergo changes, the approval of the Amended Site Development Plan primarily pertains to the location, size, and shape of the sub-lease area. It is requested that a final site development plan be submitted as part of a condition of approval.

The proposal is to have the HCM operating on a new lease area which has an extent of  $\pm 3176\text{m}^2$ , refer to the figure below:

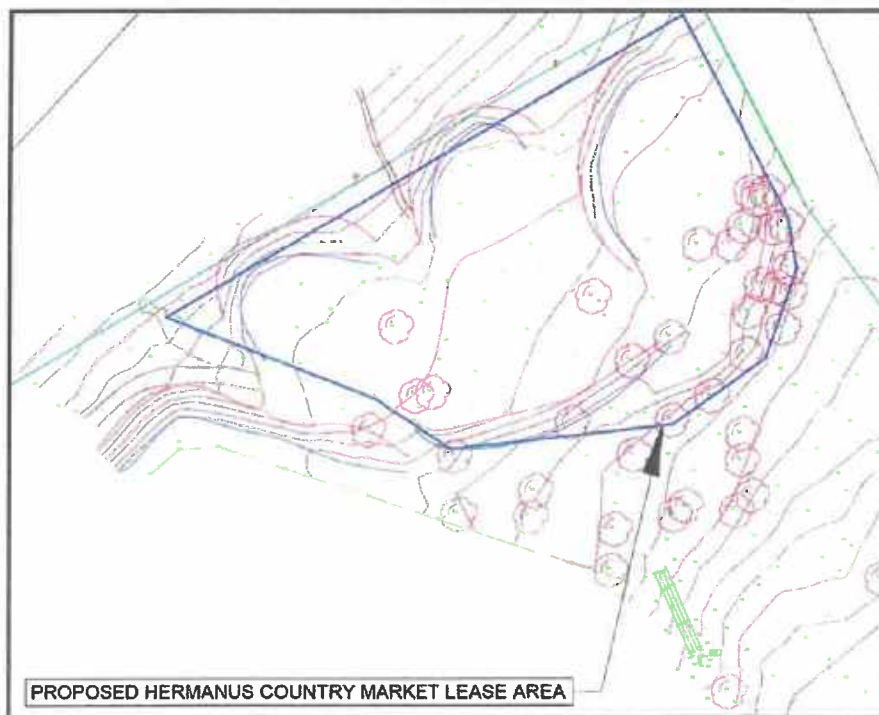


Figure 2: Topographical Survey of the new lease area

#### 4.2 Amendment in respect of an existing approval to make provision for an increase in the number of traders, and additional market days in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

During previous communications with the OM, it was indicated that if there were proposed changes to the operation of the HCM after the relocation, it would require



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approval from the Municipality. This requirement results from a council decision, as advised by the OM's Town Planning department. The decision in question pertains to the approval of the historic site development plan and the activities allowed on the site.

These changes are discussed in detail below, although the main change proposed by the HCM pertains to the number of traders and the HCM's operations on the new site.

### A. Number of traders:

In the original Site Development Plan (SDP) of 2013, a total of **60 stalls** were indicated (refer to **Plan 4 – Approved Site Development Plan 2013**). It's important to note that the proposed amendment does not involve an increase in the number of stalls. Instead, the proposal is to maintain the same number of **60 stalls** within the new lease area, as outlined in **Plan 5 & 5.1 – Proposed Draft Site Development Plan**. Stall layouts vary, offering different orientations, sizes, and options that cater to the diverse needs of traders. It's important to emphasize that no additional stalls are being proposed; only the number of traders is being considered to increase.

Alongside the stalls, the HCM is proposing two weatherproof tents and a covered structure spanning multiple stalls. This addition will enable the HCM to persistently offer its market goods and provide a fulfilling experience to tourists even during rainy weather conditions. The tent will undergo continued tensioning and will be required to be signed off by a structural engineer. The position of the tents is being indicated on the **Plan 5.1 – Proposed Draft Site Development Plan**.

Given the unique requirements of individual traders, each trader will be accommodated within a designated space tailored to their specific needs. This approach acknowledges that not every trader requires the same amount of space, and each trader is unique. This flexibility also opens the possibility for traders to share spaces within the same stall area. Additionally, some traders may require more than one stall to operate effectively. Notably, larger stall operators, such as those offering food and beverages, are already designed to accommodate multiple stalls. The market setup allows for the easy allocation of two stalls to a single trader where required. On the other hand, smaller traders who may not have the capacity to fill or financially support an entire stall, will also be accommodated within the 60 allotted stalls. This inclusivity ensures that these smaller traders can continue to offer their goods and services to the public, contributing to the market's legacy over the past decade in its current location.

The relocation of the Hermanus Country Market comes at great cost, which needs to be recouped over the lease period which is only possible if the proposed lease period as contained in the draft lease agreement is agreed upon and that 90 traders are allowed at the market.

While the proposal maintains the same number of stalls as outlined in the approved site development plan, the maximum number of traders being proposed will be limited to 90. It's important to acknowledge that changes in the shape and layout of the lease area necessitate an amendment to the site development plan to align with the new configuration. The change in the method of operation for the HCM necessitates an amendment in respect of an existing approval. This adjustment ensures that the market



## MOTIVATION

operates efficiently within the updated space while adhering to the intended historical framework.

### **B. HCM Operations:**

In addition to altering the lease area, the proposal seeks to modify the operational schedule of the market. Presently, the market is permitted to operate and trade on specific days, which include Saturdays, Sundays and Public Holidays.

The HCM wants to secure the flexibility to operate and trade whenever opportunities arise. The current restriction to specific days has limitations on the HCM's ability to maintain its standard operating procedures while hindering its potential to achieve its overarching goal: attracting and retaining as many visitors as possible to the Hermanus area.

Expanding on this motivation, granting the HCM the flexibility to operate on a more extended schedule aligns with several key objectives. Firstly, it enhances the market's economic contribution to the community by allowing for increased trading days. This translates into more opportunities for local artisans and vendors to showcase their products, thereby bolstering the local economy.

Secondly, offering a wider range of operating days enables the HCM to cater to a broader audience. Tourists and residents alike can enjoy the market's offerings at their convenience, potentially boosting tourism and encouraging repeat visits to Hermanus and Overstrand area.

Furthermore, the HCM's desire to adapt to changing circumstances and opportunities reflects its commitment to remaining a dynamic and integral part of the Hermanus area. By being open to trade whenever feasible, the market can respond more effectively to special events, festivals, and seasonal variations in tourism. Festivals in this regard refers to special market events for example a pumpkin carving festival, where visitors have the opportunity to carve pumpkins while traders still sell food and drinks.

While also being able to provide new opportunities to provide unique markets which are more specialised than currently being catered for. Examples include the following:

Allowing local vendors, a platform and space to provide fresh produce daily to both the public and the local businesses, only allowing the market to operate once a week limits the freshness of the produce as it needs to be stored and only made available once a week.

One significant advantage of allowing local vendors to offer fresh produce daily is the direct and immediate access to high-quality, locally sourced goods. With a daily market presence, residents and businesses can rely on a consistent supply of fresh fruits, vegetables, artisanal products, and other essential items. This not only promotes healthier eating habits within the community but also supports local farmers and producers, fostering a more sustainable and resilient local economy.



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The proposal does not entail having the entire market operate as it currently does. Instead, it opens the door to the possibility of establishing "mini markets" where one or two vendors can benefit from the opportunity to trade whenever the opportunity arises.

Secondly, the proposal aims to establish focused markets that the Hermanus Country Market (HCM) cannot accommodate on a weekly or weekend basis. Instead, these specialized markets would be organized based on opportunity/supply and demand, which might arise monthly, quarterly, or even just once a year. Examples of such markets include jewellery or pottery markets, where the HCM would extend invitations to specialized vendors to showcase their products and curate an entire market experience around these unique offerings.

Furthermore, the concept of these focused markets goes beyond mere economic considerations. It represents an exciting opportunity to infuse the Hermanus area with a sense of variety and novelty. By intermittently introducing specialized markets like jewellery or pottery exhibitions, the HCM can breathe new life into the local market scene. Such events not only draw in visitors seeking unique and artistic treasures but also serve as platforms for artisans to display their craftsmanship and creativity.

These focused markets can be envisioned as vibrant hubs of culture and creativity, offering an enriching experience for both residents and tourists. For instance, a pottery market could showcase an array of meticulously handcrafted ceramics, inviting attendees to explore the intricate artistry behind each piece. Similarly, a jewellery market could bring together skilled jewellers and artisans, enabling them to present their exquisite creations while fostering a deeper appreciation for the craft.

Moreover, the sporadic nature of these focused markets adds an element of anticipation and excitement to the local calendar. It becomes an event that residents and visitors eagerly await, a unique spectacle that punctuates the seasons and brings a fresh, dynamic energy to Hermanus. As these markets become established, they may evolve into cherished traditions, contributing to the area's cultural identity and fostering a sense of community pride.

The proposal to introduce focused markets within the Hermanus Country Market's framework promises not only economic benefits but also cultural enrichment and community engagement. These periodic events have the potential to transform the local market scene into a dynamic tapestry of creativity, offering residents and visitors a diverse range of experiences to savour throughout the year. By embracing these opportunities, the HCM can play a pivotal role in shaping Hermanus as a destination known for its vibrant and ever-evolving market culture.

### **C. HSC operations:**

As previously discussed, the HSC has wide range of facilities that provide the community with general sports and recreational facilities. These facilities, including tennis courts, cricket ovals, and multi-purpose sports fields, have long been integral to promoting a healthy and active lifestyle among residents and visitors alike.



## MOTIVATION

The HCM seamlessly integrates into this narrative by complementing the broader vision for the HSC. While the HSC primarily focuses on traditional sports and recreational activities, the HCM adds an extra layer of richness to the community experience. It brings forth a different dimension of leisure and engagement, one that revolves around local craftsmanship, creativity, and entrepreneurship.

The synergy between the HCM and the HSC lies in their shared commitment to community well-being and enrichment. The HCM contributes to the cultural and social tapestry of the area, offering a platform for artisans, food producers, and entrepreneurs to showcase their talents and products. In doing so, it not only bolsters the local economy but also enhances the overall quality of life for residents and the overall appeal of Hermanus as a destination.

In essence, the HCM's presence within the HSC's facilities underscores the importance of diverse recreational opportunities within a community. It highlights the significance of balancing traditional sports with cultural and artistic endeavours, creating a more holistic and fulfilling experience for everyone who calls Hermanus home or visits this vibrant coastal town.

Currently, the HCM operates primarily on Saturdays and Sundays, coinciding with the peak activity of the HSC and the entire precinct. These weekends are the busiest times, and the HCM is presently permitted to operate during these periods and have been for the better part of a decade. The proposal, however, seeks to extend the market's trading hours beyond these peak times and during low peak for the other operators in the HSC.

### **D. Parking and Access:**

Given the extensive range of facilities housed within the HSC lease area, it's important to note that parking requirements are collectively accommodated across the entire site and is also underlined as such in the proposed sub-lease agreement between the HSC and the HCM. This all-encompassing approach extends to accommodating the parking needs of not only the HCM, but also other facilities such as the clubhouse and gym. Over time, the historical operation of the HSC has demonstrated the compatibility of the HCM with the other activities and amenities hosted on the property.

The property itself boasts a total of 580 parking bays, ensuring ample space to accommodate visitors and members of the various facilities. Additionally, there are five designated bus parking bays, reflecting a comprehensive approach to accessibility for group visits and events.

This integrated approach to parking underscores the synergistic relationship between the HCM and the broader HSC facilities. It not only facilitates convenient access for marketgoers but also contributes to the overall efficiency and convenience of the site as a whole. Moreover, it reflects the commitment to ensuring that diverse community offerings, from sports and recreation to artisanal markets, coexist harmoniously to benefit residents and visitors alike.

In essence, the shared parking arrangements and ample capacity underscore the philosophy of a multifaceted community hub, where the diverse needs and interests of



## MOTIVATION

the public are considered and accommodated. This approach fosters a vibrant and inclusive atmosphere within the HSC's grounds, ultimately enhancing the overall experience of those who come to enjoy the various amenities and events offered.

As these facilities on the HSC operate independently, with no direct interconnection and varying operational hours, it becomes necessary to consider the combined parking requirements outlined in Section 17.1.4 of the OMLUS.

In addition to the parking being provided on the HSC's grounds, the HCM has agreements in place with the Bosko Church, Generations school as well as the Hermanus High School specifically to be utilised for parking by the additional traders, which reduces the need for parking on the HSC's grounds. Refer to Plans 5.2 & 5.3 for the additional parking area that may be used.

## 5. APPLICATION

Considering the above, application is made for the following:

- 5.1 Amendment of the Site Development Plan** to reflect the new position and stall layout of the Hermanus Country Market in terms of Section 16(2)(l) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 5.2 Amendment in respect of an existing approval** to make provision for an increase in the number of traders, and additional market days in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

## 6. LAND USE ENVIRONMENT

The subject property is located in the Eastcliff area, an established neighborhood in Hermanus. The property is surrounded by Residential Zone 1: Single Residential and Public Open Spaces properties. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan).

## 7. TITLE DEED

Title deeds T3350/1924 & T16775/2004 (refer **Annexure B**) were perused and there are no restrictive conditions that prohibit the proposed development.

## 8. ZONING

The following zoning parameters were assessed in conjunction with the OS2 OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (q) of the OM By-Law:





## MOTIVATION

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### 9. SERVICES

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The availability of services is a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA and is herewith illustrated.

#### **Electricity, Water and Sewage**

The subject property has an historic connection to the local services networks, which includes electricity, water, and sewage.

The HCM will be required to reconnect to these services once they relocated. The HCM has however agreed in the proposed sub lease agreement to use the existing ablution facilities until such time that the aquatics centre is built, when they will need to provide new ablution facilities as indicated on the Proposed Draft Site Development Plan.

As no new proposal is being made, it is not predicted that the relocation of the HCM will have an effect on the existing services in the area.

#### **Solid Waste**

Solid waste generated on the market days will be collected and disposed of at the nearest transfer station at the expense of the HCM.

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### 10. NEED AND DESIRABILITY

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The need and desirability of the approval and implementation of this proposal in accordance with Section 66 (1) (c) of the OM By-Law can be illustrated as follow:

#### **Need and desirability.**

The need for the land use application is a result of addressing all the land use requirements and ensuring the property meets the needs of the owners. To achieve this, permanent departures are required.



## MOTIVATION

The Hermanus Country Market (HCM) has a significant positive impact on the socio-economic fabric of the community in several ways:

- **Local Employment:** The market serves as a platform for local artisans, entrepreneurs, and small business owners to showcase and sell their products. By offering these individuals a venue to generate income, the HCM contributes to reducing unemployment and fostering economic independence within the community.
- **Economic Growth:** The presence of the market attracts both residents and tourists, leading to increased foot traffic in the area. This, in turn, boosts sales for local businesses, such as cafes, restaurants, and shops, which benefit from the increased customer flow generated by the market. The multiplier effect of this economic activity has a cascading impact on the local economy.
- **Support for Local Producers:** The HCM encourages the consumption of locally produced goods and artisanal products. This support for local producers not only sustains existing businesses but also encourages the growth of new enterprises, promoting economic diversity and resilience.
- **Cultural Preservation:** The market often features traditional crafts and locally made products, preserving and celebrating the cultural heritage of the region. This cultural enrichment fosters a sense of community pride and identity, contributing to the social well-being of the area.
- **Community Gathering Place:** The market acts as a communal gathering space where residents and visitors come together. This fosters a sense of belonging and strengthens social bonds within the community, which can have positive mental health and social cohesion benefits.
- **Tourism Boost:** The HCM is a tourist attraction in its own right. Tourists seeking unique and locally crafted souvenirs are drawn to the market, which, in turn, promotes tourism in the area. Increased tourism brings revenue to the region, benefiting local businesses and creating job opportunities in the hospitality sector.

Socio-economic impact



**MOTIVATION**

	<ul style="list-style-type: none"> <li>• Entrepreneurial Development: Aspiring entrepreneurs often use the market as a starting point to test their business concepts and build a customer base. This nurturing environment encourages entrepreneurship, creativity, and innovation within the community.</li> <li>• Education and Awareness: The market provides opportunities for educational initiatives, workshops, and demonstrations. These activities can raise awareness about various topics, from sustainable living to traditional crafts, further enriching the community's knowledge base.</li> </ul> <p>In sum, the Hermanus Country Market is more than just a market; it's a catalyst for positive socio-economic change within the community. Its ability to empower local businesses, stimulate economic growth, and foster community connections demonstrates its profound and lasting impact on the region's social and economic well-being.</p>
Compatibility with surrounding uses	The HSC was granted a lease to develop a general sports and recreational facility, the market is aligned with the use as has been agreed upon historically.
Impact on the external engineering services	Refer Section 9.
Impact on safety, health and wellbeing of the surrounding community	It is not predicted that the proposal will have an impact on safety, health and wellbeing of the surrounding community.
Impact on heritage	The subject property is not listed in the OM Heritage Register.
Impact on the biophysical environment	It is not anticipated that the proposed development will have any negative impact on the biophysical environment.
Traffic impacts, parking, access and other transport related considerations	Refer to the motivation above.



## MOTIVATION

### **Impact on views, sunlight and character of the area**

The proposed relocation of the HCM will find its place nestled among mature, existing trees. As the new location is currently vacant, we anticipate that this move will naturally alter the surrounding views. However, it's essential to emphasize that this relocation is primarily a relocation of the existing market. Consequently, it is not anticipated that there will be a significant, dramatic change in the character of the area as a result of this move.

### **Economic impact**

The Hermanus Country Market (HCM) brings about several positive economic impacts:

- **Income Generation:** The HCM provides a platform for local artisans, small businesses, and entrepreneurs to sell their products. This income generation benefits individuals who might otherwise struggle to find stable employment or income sources, contributing to their financial well-being.
- **Local Business Support:** The market attracts visitors and residents alike, leading to increased foot traffic in the surrounding area. This, in turn, benefits nearby businesses, such as restaurants, cafes, and shops, as they experience higher sales during market days.
- **Job Creation:** The operation of the market necessitates support staff, such as vendors, organizers, security personnel, and maintenance crews. These roles translate into job opportunities within the community, further bolstering the local economy.
- **Tourism Promotion:** The HCM is often a tourist attraction, drawing visitors to the area. This influx of tourists stimulates tourism-related businesses, including accommodation providers, tour operators, and transportation services, resulting in increased economic activity.
- **Networking, Collaboration and Marketing:** The pyramid diagram of traders highlights the interconnectedness of vendors within the market. Many traders rely on each other for sourcing raw materials or finished products. If the HCM is not allowed to relocate and operate as proposed, it could disrupt this network, impacting the livelihoods of numerous traders and potentially leading to a ripple effect throughout the local economy.

Furthermore, there's a vital marketing dimension to consider. Participating as a trader at the HCM provides businesses with a unique promotional opportunity. Historical data demonstrates that as traders are exposed to the market's visitors and the general public, their businesses often experience growth beyond the market's boundaries. This expanded reach can have far-reaching positive effects on local entrepreneurship and economic development.

- **Multiplier Effect:** The money generated at the HCM doesn't stop at the market gates. It continues to circulate within the community, creating a multiplier effect. Money spent at the market often finds its way into other local businesses and services, amplifying its economic impact.



## MOTIVATION

- **Entrepreneurship:** The HCM fosters entrepreneurship and creativity, as many vendors use the market as a steppingstone to start or expand their businesses. This entrepreneurial spirit can lead to the development of new products and services, further diversifying the local economy.
- **Community Investment:** The market often reinvests its proceeds into the community, whether through charity initiatives, infrastructure improvements, or supporting local causes. These investments contribute to the overall health and vitality of the community.

The HCM plays a crucial role in the local economy by generating income, supporting businesses, creating jobs, promoting tourism, facilitating collaboration among traders, and fostering entrepreneurship.

Additional considerations include the concept of the "urban dividend" generated by the HCM. The urban dividend encompasses the synergy among people, the economy, and the place, enhancing the capabilities of individuals, fortifying economic resilience and productivity, and creating job opportunities. It also contributes to creating a more liveable and pleasurable environment, fostering greater social integration, safety, and improved access to opportunities.

In essence, it represents an optimal scenario where the growing concentration of an economically active population translates into heightened economic activity, increased productivity, and accelerated rates of growth. The HCM frequently functions as an incubator or launching pad for stallholders, enabling them to embark on their own formal business ventures. This process leads to the employment of more individuals and their eventual integration into the formal economy.

In contrast, other larger investments made by "semi-businesses" within the HSC lease area often yield minimal or non-existent urban dividends, with their facilities and services accessible only to those who can afford the associated membership fees.

Given the proposed capital investment in the market and the urban dividend it has historically generated and will continue to create in its relocated form. The HCM undeniably provides numerous benefits to the entire community, contributing to economic growth, social cohesion, and the overall well-being of the residents.



## MOTIVATION

### 11. POLICIES AND REGULATIONS

#### 11.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

The subject property is located within the 'Protected Area Buffer' of the EMOZ. The purpose thereof is to protect the integrity of National, Provincial and Municipal Nature Reserves from negative external pressures/impacts while reducing pressure on core areas and to assist in preserving their value to the eco-cultural tourism economy of the Overstrand through alignment of appropriate land use and regulation.

To ensure compliance with the guidelines set out in the EMOZ the application was evaluated in terms of the provisions of Schedule A & B of the Environmental Management Overlay Zone 2020:

SCHEDULE A PROHIBITED ACTIVITIES IN OVERSTRAND ENVIRONMENTAL MANAGEMENT OVERLAY ZONES		
Prohibited Activity	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Protected Area Buffer	
Agricultural practices within this EMOZ which may cause water logging and siltation.	X	N/A
Planting or harbouring of declared emerging weeds on properties within and adjacent to this EMOZ.	X	N/A
Development or agriculture on slopes steeper than 1:4.	X	N/A
Establishment of Informal settlements or Temporary Relocation Areas.	X	N/A
No land user within this EMOZ may utilise the vegetation in a vlei, marsh or within the flood area of watercourse in a manner that may cause the deterioration or damage to the natural agricultural resources.	X	N/A
Placement of religious symbols or memorabilia.	X	N/A
Harvesting /collection of kelp / seaweed in municipal designated "no-take" zones.	X	N/A
Harvesting, collection, moving, loading drying of kelp /seaweed, with a valid Seaweed Harvesting Permit or an exemption in terms of Section 81 or the MLRRA issued by the DAFF.	X	N/A
Stockpiling, drying, processing or loading of marine resources beyond areas designated, demarcated and signposted by the Municipal Council for such purposes.	X	N/A



## MOTIVATION

Modification of the littoral active zone / functional dune systems in absence of approved management plans.	X	N/A
Feeding, disturbing / pursuit of fauna.	X	N/A
Disturbance, modification or destruction of the environment or species within special management areas designated, demarcated and signposted by the Municipal Council from time to time.	X	N/A
Defacing/damaging / removing of any notice, sign, barrier building or other infrastructure.	X	N/A
Playing or tampering with any rope, float, buoy, vessel, shelter or similar life - saving device.		N/A
Staying overnight.	X	N/A
The discharging of domestic effluent / grey water into all natural systems.	X	N/A
Tampering with security / surveillance infrastructure.	X	N/A
Defacing of rocky outcrops and placement of memorial plaques, religious symbols or structures on natural features.	X	N/A
Graffiti, vandalism or damaging of municipal infrastructure.	X	N/A
Littering	X	N/A
Disposal of cigarette butts, ash or other hazardous materials in any place or manner other than a receptacle designated for such items	X	N/A
Dog walking / exercising of dogs in non- designated zones.	X	The market is pet friendly.

**SCHEDULE B  
ACTIVITIES ONLY PERMITTED WITH COUNCIL CONSENT IN OVERSTRAND ENVIRONMENTAL OVERLAY ZONES**

A) Activities Only Permitted With Council Consent	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Protected Area Buffer	
Removal or destruction of vegetation which is protected and/or of conservation concern.	X	N/A
Excavation and destruction or removal of substrate (soil, substrate, rock, shellgrit, dune sediment, mineral deposits).	X	N/A
Discharging of pool backwashing or untreated grey water or the channelling of storm water into open	X	This is noted and will not occur on the subject property.



## MOTIVATION

spaces without the necessary approval from the Municipality.		
<b>B) Permit Upon Approval By Delegated Authority and / Receipt of Tariff</b>	<b>Applicable Environmental Management Overlay Zone (EMOZ)</b>	<b>Applicable to the application or not</b>
	<b>Protected Area Buffer</b>	
Installation of conservancy tanks or biological treatment plants within 50 metres from the edge of a watercourse / wetland.	X	N/A
Access from private properties to open spaces, including the removal of vegetation and the establishment of paths, structures and infrastructure.	X	N/A
Commercial filming.	X	N/A
Construction or placement of any temporary object, building, shelter, path or structure.	X	N/A
Use of engine or motor driven vehicles, remotely piloted aircraft or any other means of transport or other conveyances beyond designated, demarcated and signposted areas.	X	N/A
<b>C) Council Authorisation Pending Consent Use Application / Lease Agreement / Applicable Tariffs as applicable</b>	<b>Applicable Environmental Management Overlay Zone (EMOZ)</b>	<b>Applicable to the application or not</b>
	<b>Protected Area Buffer</b>	
Buildings / Structures associated with: Taking of water, storing of water, impeding or diverting flow, stream flow reduction, altering the bed, banks, course characteristics, outflow structures or discharge pipes.	X	N/A
Application for the designation of industrial sites and activities associated with the seaweed harvesting, collection, drying, transport and processing fishery.	X	N/A
Encroachment of private buildings, structures, infrastructure, access routes.	X	Immovable structures will be the property of the OM.
Commercial Harvesting/collection and removal of any natural resource.	X	N/A
Construction or placement of any permanent object, building, shelter, pathway or structure.	X	The proposal is to develop the area.



## MOTIVATION

### 11.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)

The property is not located within the HPOZ.

### 11.3 Spatial Planning Policies

The consistency of the proposed development with the applicable spatial development policies will herewith be illustrated. The spatial policies which are pertinent to the submitted proposal are the following:

<b>PSDF</b>
<p>The PSDF is a product of a provincial inter-departmental and inter-governmental collaboration under the guidance of the inter-departmental steering committee in collaboration with the private sector, academia, and non-governmental organisations. This broad participatory process has created a shared spatial vision that is intended to inform spatial development patterns in urban and rural areas in the province.</p> <p>Throughout the PSDF the importance of developing integrated and sustainable settlements as an objective of the framework is highlighted. The PSDF also provides a settlement agenda which addresses the full spectrum of Western Cape settlements irrespective of their size from metropolitan Cape Town to the smallest hamlets.</p>
<b>OMSDF</b>
<p>The Municipal Spatial Development Framework is a sectoral component of the IDP (Integrated Development Plan) that, in terms of the MSA (Municipal Systems Act), and is aimed at providing general direction to guide decision making on an ongoing basis, aiming at the creation of integrated, sustainable and habitable regions, cities, towns and residential areas.</p>

The PSDF and OMSDF are frameworks to be interpreted on a local level. National policies, such as the National Development Plan, National Spatial Development Frameworks etc. provide guidelines on several important aspects which includes human settlements. To focus on provincial and local policies will ensure alignment with the above-mentioned higher hierarchy of legislation and policies.

#### **PSDF**

To ensure the proposal is aligned with the PSDF as the market not only proposes to attract tourists to the Overstrand area but also provide employment opportunities which have been identified as a key challenge that needs to be addressed in terms of the provincial framework.

*“Diversifying from the Western Cape’s traditional ties with European markets as the main consumers of the Province’s agricultural exports and source of most of its overseas visitors, OneCape 2040 targets African, Asian and South American markets in trade and marketing expansion programs. Moving forward the Western Cape is positioned as:*

- i. Gateway to Africa, strategically situated between the West and East.*
- ii. International tourism destination that has a unique lifestyle offering.*
- iii. Region of global excellence in ecological, creative, scientific and social innovation.*
- iv. International entrepreneurial destination of choice.*



## MOTIVATION

v. *Leader and innovator in the green economy."*

In addition to the above, the Overberg Tourism Visitor Trends January - December 2022 from Wesgro that indicates that the 10,8% of the tourist that visit the Overberg area comes as a result of the markets, refer to the figure below:

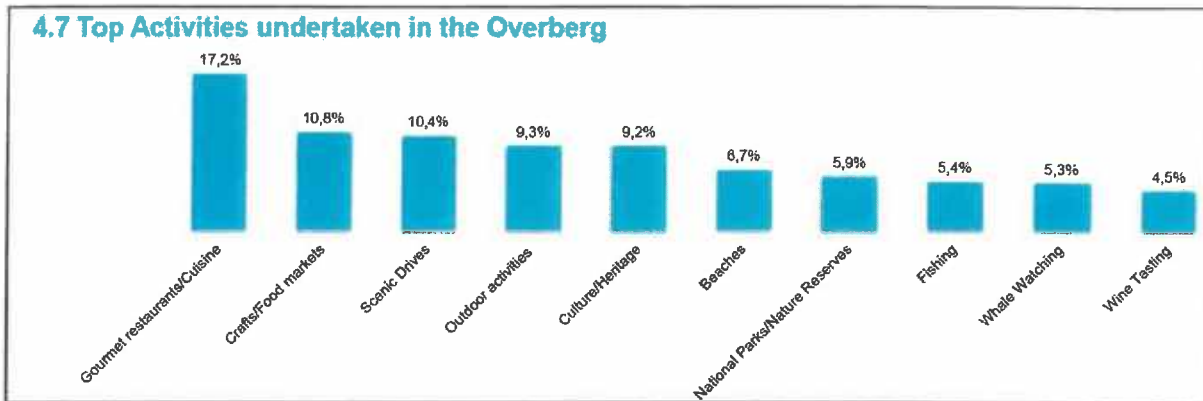


Figure 3: Extract from Wesgro Visitor Trends

As markets continue to provide employment opportunities and attract visitors they should be supported and allowed to be operated to ensure maximum attractiveness.

### OMSDF

The Overstrand Municipal Spatial Development Framework (OMSDF) stands as a crucial document, offering essential guidance for spatial development within the municipality. It is crafted in accordance with national, provincial, and municipal planning legislation, policies, and plans, including SPLUMA, LUPA, By-Laws, PSDF, and the IDP. The primary aim of the OMSDF is to steer appropriate land use and spatial development within the urban boundary, ensuring that development proposals harmonize with the shared spatial vision.

The OMSDF's focusses on the growth of employment opportunities within its boundaries should be supported to continue the growth that has been experienced over the past few decades as illustrated by the figures included in the OMSDF.

In addition to the above the OMSDF also states that Tourism is a major economic driver in the Overstrand and its popularity as a holiday destination results in a fourfold increase of its population over the holiday seasons. In addition to the pristine beaches dotting the coastline the Overstrand boasts of three Blue Flag beaches and a number of major tourism areas/attractions of national and international significance. One of these attractions have been identified as the HCM that attract visitors on a weekly basis that visit Hermanus and spends their money and time in the area.

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



## MOTIVATION

### 12. PLANNING PRINCIPLES

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

#### **Spatial justice**

Spatial justice refers to planning proposals that do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal is not expected to have an effect on the past apartheid spatial development imbalances.

#### **Spatial sustainability and efficiency**

Spatial sustainability involves planning proposals aimed at creating communities that are environmentally and economically sustainable. In terms of spatial sustainability and efficiency, the Hermanus Country Market (HCM) can have a positive impact by promoting sustainable and efficient land use and development. Here's how the market aligns with these principles:

##### Spatial Efficiency:

- **Multi-Use Spaces:** The HCM often operates within existing spaces, such as parks, town squares, or community centres. By utilizing these multi-use areas, the market minimizes the need for new construction or dedicated spaces, optimizing the use of existing infrastructure.
- **Compact Footprint:** The market typically operates within a compact footprint, with vendors situated closely together. This spatial arrangement maximizes the utilization of available space, reducing the environmental footprint associated with larger, sprawling developments.
- **Shared Infrastructure:** In many cases, the HCM shares infrastructure, such as parking facilities, with the surrounding community or other local facilities. This shared usage ensures efficient use of resources and minimizes the need for redundant infrastructure.

##### Spatial Sustainability:

- **Local Sourcing:** The HCM often emphasizes locally sourced products and crafts. This promotes spatial sustainability by reducing the carbon footprint associated with transporting goods over long distances. It encourages consumers to support local producers, enhancing the resilience of the local economy.
- **Sustainable Practices:** The Market prioritize sustainable practices, such as waste reduction, recycling, and the use of renewable energy sources. These efforts align with spatial sustainability goals by reducing the market's environmental impact and promoting responsible resource management.
- **Community Engagement:** By fostering community engagement and local participation, the HCM promotes sustainable community development. Engaged communities are often more invested in the long-term sustainability of their area, leading to responsible land use practices and environmental stewardship.



## MOTIVATION

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- **Cultural Preservation:** The market's emphasis on local and traditional crafts contributes to the preservation of cultural heritage and spatial sustainability. It encourages the continued practice of traditional crafts, which can have ecological and cultural significance.

In essence, the Hermanus Country Market, like other similar markets, can be seen as a spatially efficient and sustainable model of economic and community development. By optimizing the use of existing spaces, supporting local economies, promoting responsible resource management, and engaging the community, it aligns with the principles of spatial sustainability and efficiency, contributing to a more sustainable and resilient spatial environment.

### **Spatial resilience**

This proposal is not in conflict with any spatial planning policies or other OM regulations which is a hallmark of resilience. The policies identified earlier in Section 11.3 are guided by a higher hierarchy of several policies and legislation that the proposal is aligned with.

### **Good administration**

The OM has a credible track record of good administration regarding the method of public participation. Public participation forms an integral part of the land use planning process.

The public participation process provides people who may be affected by the proposal with an opportunity to provide comment and to raise issues of concern about the proposal or make possible suggestions that may result in an enhanced outcome of which both parties benefit. Comments will be reviewed and considered after which it will be addressed accordingly.



## RECOMMENDATION

### 13. EVALUATION

In conclusion, this application for the Hermanus Country Market (HCM) represents not only a continuation of a cherished community tradition but also a testament to the commitment to sustainable growth, economic empowerment, and cultural preservation. The HCM has long been a beacon of vitality in our community, and this proposal ensures that it will continue to thrive while adhering to the principles of spatial justice, sustainability, and efficiency.

By allowing the relocation, expanding its operational days, and introducing focused markets, the HCM aims to create more opportunities for local vendors, promote economic development, and celebrate our cultural heritage. The market's compatibility with its surroundings, its positive impact on spatial justice, and its efforts toward spatial sustainability and efficiency underscores its significance as a dynamic and inclusive community asset.

It is believed that the HCM is not just a marketplace but a catalyst for positive change within the local community, producing an urban dividend. It enriches the lives of the community by providing economic opportunities, preserving culture, and fostering a sense of togetherness. With this application, the HCM are taking a step forward in ensuring that the market continues to serve as a vibrant and harmonious part of our community for years to come. This application should be positively considered as it is believed that it is aligned with the values and aspirations of our community, contributing to the betterment of our shared home.

Finally, the proposed development is expected to provide an increased economic boost for the OM. This aligns perfectly with the OM's objectives of promoting sustainable economic growth in the region. In conclusion, the proposed development represents a well-conceived and thoroughly planned project that adheres to the principles of spatial sustainability, promising to contribute significantly to the long-term viability of the Voëklip area and the broader Overstrand region.

### 14. RECOMMENDATION

Based on the abovementioned motivation, it is recommended that the following be approved:

- 14.1 Amendment of the Site Development Plan** to reflect the new position and stall layout of the Hermanus Country Market in terms of Section 16(2)(l) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 14.2 Amendment in respect of an existing approval** to make provision for an increase in the number of traders, and additional market days in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

5.1 Inset of Proposed Draft  
Site Development Plan  
Hermanus Country Market  
Remainder of Erf 1253, Hermanus

Plan Number: 23/35

Plan prepared by: Thian Jansen on 2023/11/29


Based on plans from Frilayson Van Der Merwe Architects

All distances are approximate and subject to a survey

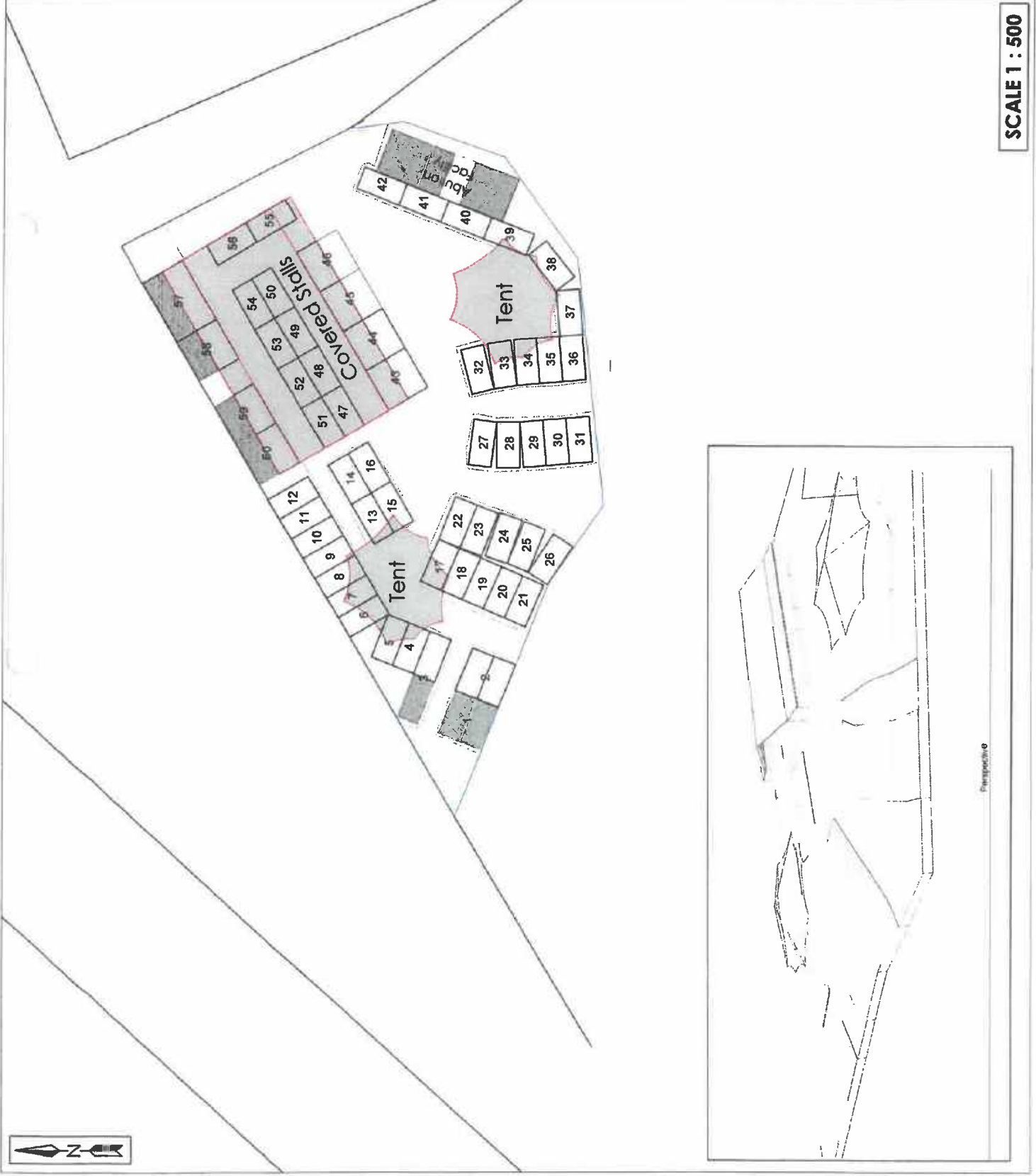
Tel: 028 313 1411

Email: admin@wrapgroup.co.za

Unit 6, Standard House,  
Corner of Royal and Dikke Oys  
Street Hermanus, 7200



**Project Office**  
Town Planning & Project Management



SCALE 1 : 500

Perspective


5.2 Additional Parking  
Erf 7164, Hermanus  
Bosko Church

Plan Number: 23/35  
 Plan prepared by: Thian Jansen on 2023/11/29  
 Based on plans from Finlayson Van Der Merwe Architects

All distances are approximate  
 and subject to a survey

Tel: 028 313 1411  
 Email: admin@wrapgroup.co.za  
 Unit B, Standard House,  
 Corner of Royal and Dittie Uys  
 Street Hermanus, 7200

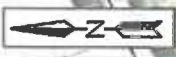
**Project Office**  
 Town Planning & Project Management




33 Parking Bays

BOSKO

SCALE 1 : 500



5.3 Additional Parking  
Erf 11014, Hermanus  
Generations

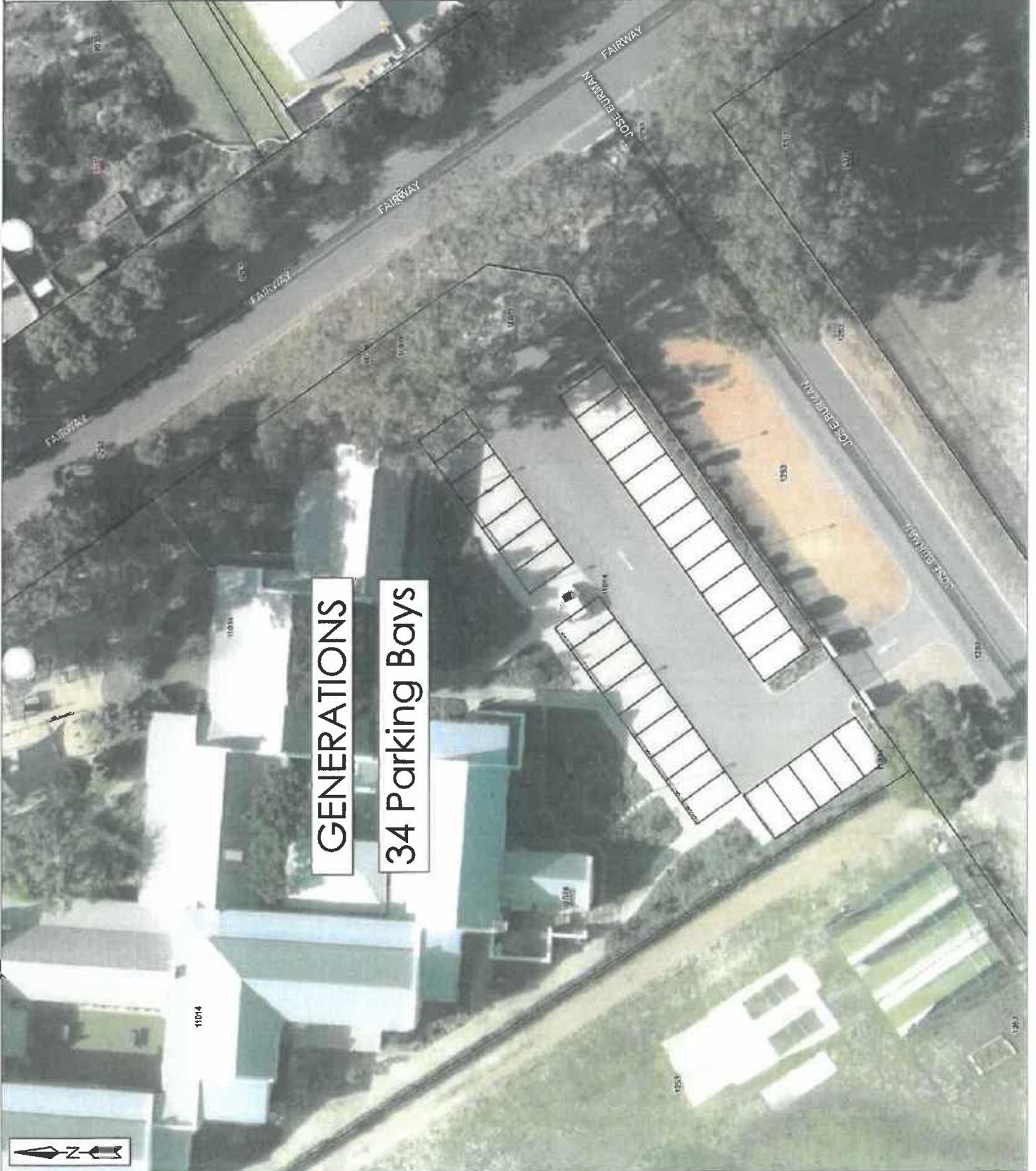
Plan Number: 23/35

Plan prepared by: Thian Jansen on 2023/11/29

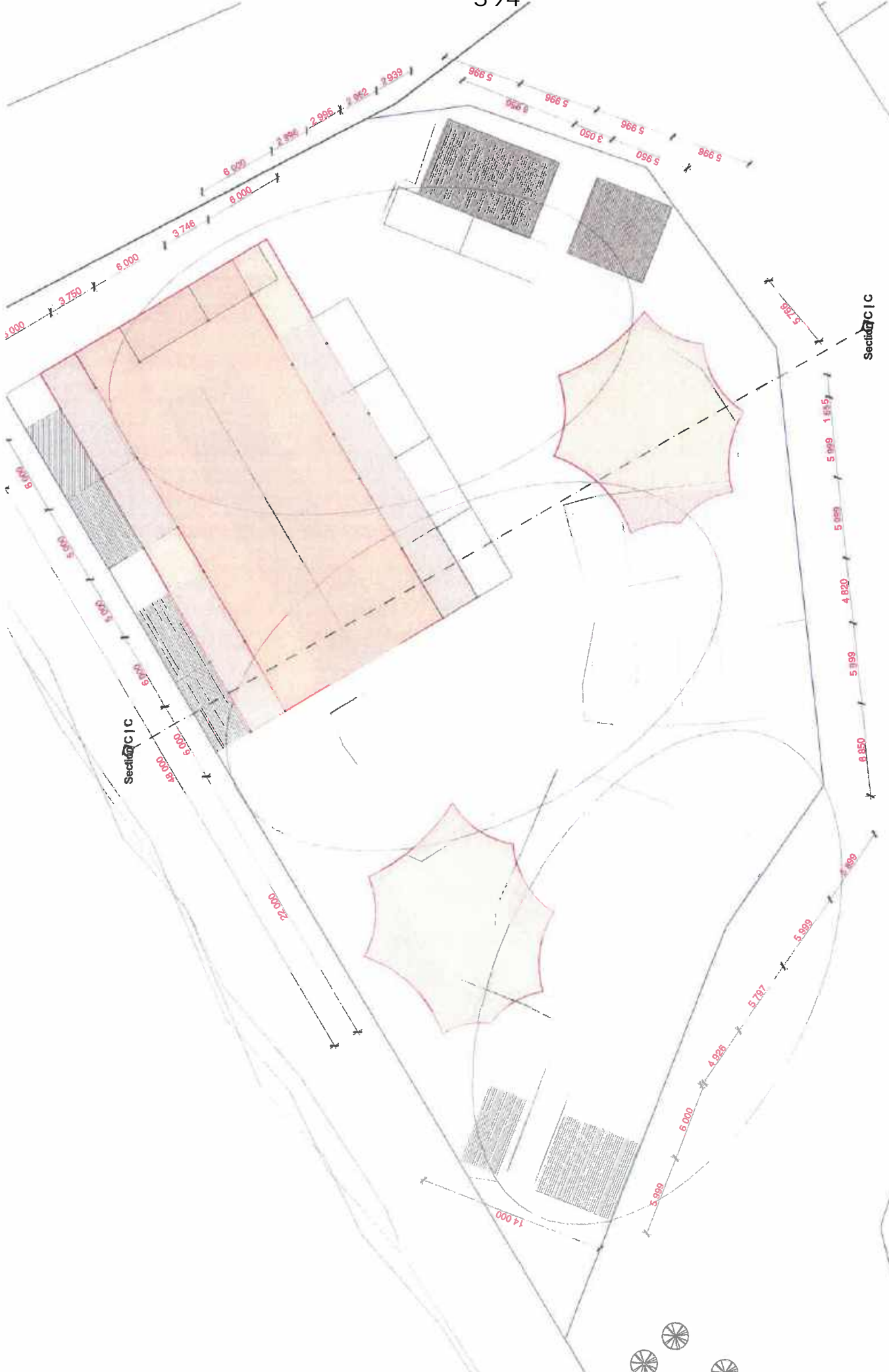
All distances are approximate  
and subject to a survey

Tel: 028 313 1411

Email: admin@wrapgroup.co.za  
Unit B, Standard House,  
Corner of Royal and Dirkie Uys  
Street Hermanus, 7200



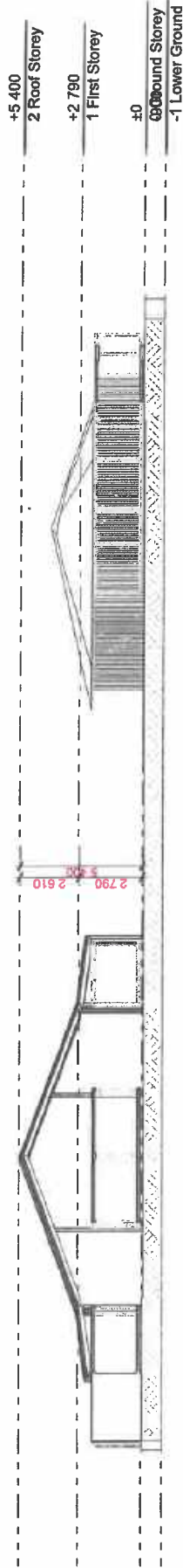
**GENERATIONS**  
**34 Parking Bays**



**HERMANUS MARKET TEMPORARY APPLICATION - REF 2023.10.30 LAYOUT**

Scale 1:250 @ A31 Wednesday, 29 November 2023

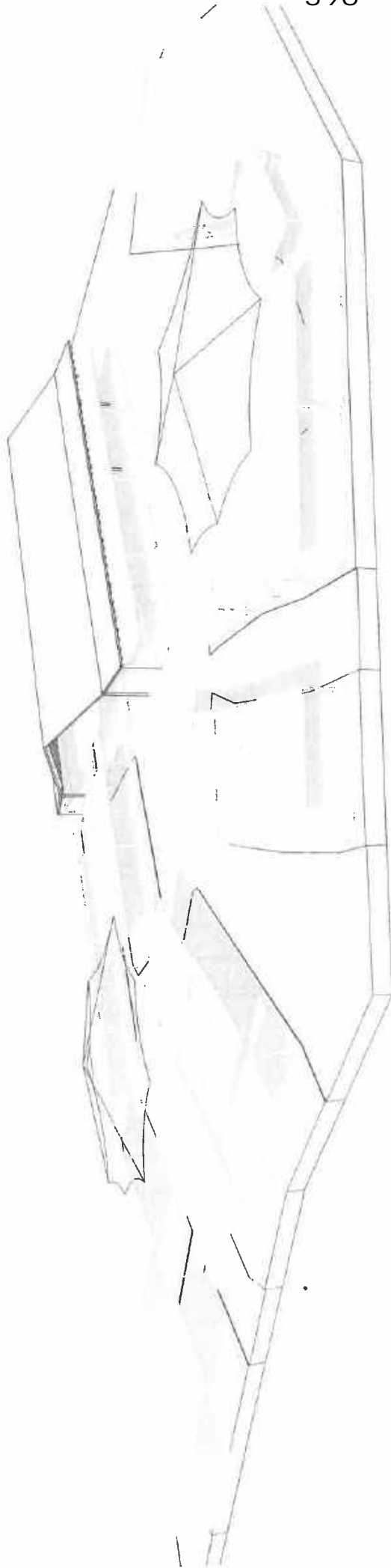
#Contact Full Address



Section C | C

Scale 1:200

HERMANUS MARKET TEMPORARY APPLIATION - REF 2023.10.30 | SECTION  
 Scale 1:200 @ A31 Wednesday, 29 November 2023  
 #Contact Full Address



Perspective

HERMANUS MARKET TEMPORARY APPLI ACTION - REF 2023.10.30IPERSPECTIVE

Scale 1:125 @ A31 Wednesday, 29 November 2023

#Contact Full Address

**Petrus Roux**

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**From:** Mario Marchio <[mario.marchio@bosko.org.za](mailto:mario.marchio@bosko.org.za)>  
**Sent:** Wednesday, 28 February 2024 09:40  
**To:** Petrus Roux  
**Subject:** Further to my previous email about the parking at Bosko

Good morning Petrus. As I believe this is going to be a permanent agreement, I cannot give my permission for the use of Bosko parking facilities ad infinitum as I am not in a position foresee whether I might have need of said parking at a later stage.

For the time being though, I have no objection.

Have a super day

Mario Marchio

Hello again, I have just been informed that the parking would be required not only on Saturday mornings but also during the week. This is unfortunately NOT permissible as both Bosko and Shofar Church need the parking for their various functions.

Further to that please be advised that many years ago I have given permission verbally and very loosely for the use of our parking against a small monthly donation to the School - which I still have to receive.

However, we might have to use the parking also on a Saturday - especially the church - for weddings or funerals.

Hence this cannot be a binding permanent agreement in any way.

We are happy to help the Hermanus community wherever possible.

Sorry for not noting this earlier.

Mario Marchio

**Alida Conradie**

**From:** arthur taute  
**Sent:** Sunday, 17 March 2024 19:50  
**To:** Alida Conradie  
**Cc:** Bev Joubert; Andre Louw; Willem Skein; Thinus Kruger; Mikebailey0961; David Johnston  
**Subject:** Country Market

Hi Alida,  
 In this matter I represent Fairbanks Village which encompasses the 6 houses opposite the country market along Fairways Avenue.

We are delighted to hear that the market will have a permanent home and that trading hours will be extended to improve its sustainability.

We believe that noise should not be a problem as we are shielded by the Bosco church hall, which in itself is sometimes excessively noisy at night!

However, we do have concerns regarding increased traffic on Fairways avenue during market hours and conflicts with pedestrian traffic and would urge that:

1. The access and egress to the parking be improved and paved, and that the entire traffic safety situation be assessed in view of the limited sight distance towards Fernkloof Drive as well as the sight distance in the other direction being limited by cars parked on the sidewalk on the west side of Fairways Avenue during market hours.
2. Additional walkways on the west side of the road be considered for the increased duration of pedestrian traffic, and possibly with improved lighting for night-time pedestrian traffic.
3. The traffic calming represented by the 3-way stop at the intersection of Fairways and Jose Burman Street be monitored and improved over time, possibly with speed humps or a roundabout at that point.
4. The extent of the required parking in the precinct be assessed as when busy market days are combined with school and other sports activities parking space is at a premium. The advent of the aquatic centre and other facilities may also require increased parking and related walkways.

Regards,

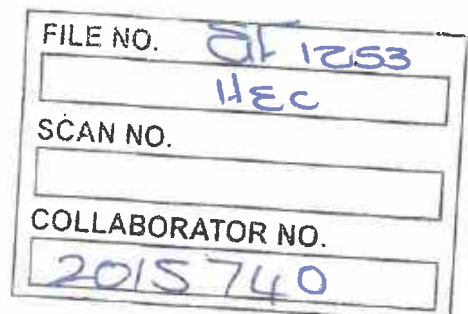
Arthur Taute

Postnet Suite 132,  
 Private Bag X16,  
 Hermanus,  
 7200

38 Fairways Avenue  
 Hermanus  
 7200



*TP-n./thean  
 (17.01.24)*



*TP*



BELASTINGSBETALERSVERENIGING  
**HERMANUS**  
RATEPAYERS ASSOCIATION

*TP. n. Theoalt  
(H. Olivier)*

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
25 MAR 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

**Submission by the Hermanus Ratepayers Association (HRA) in respect of the amended Site Development Plan for the Hermanus Country Market located at Erf. 1253 Eastcliff.**

The HRA is in favour of the relocation of the Hermanus Country Market (HCM) to the site as indicated on the plan submitted by Wrap Consultants.

The HRA is in support of the rationale for the continued operation of the HCM as set out in the application.

The HRA has a concern regarding the restriction on the number of stalls permitted as this is potentially restrictive to maximizing the economic viability of the HCM.

The number of traders has been mentioned in the application and we feel that this is an issue which is the domain of the HCM and has no real bearing on the Site Development Plan.

The operator of the HCM should be at liberty to decide which traders will operate on which days given the number of available stalls.

The HRA also has a concern regarding the restriction on the permitted trading days. Whilst we would not like to see trading 7 days per week there are often opportunities over long weekends as well as mid-week holidays which would be suitable for the HCM to operate.

While we wouldn't like to see the HCM as some kind of informal shopping centre there is certainly a case for more frequent operation. We would request the Overstrand Municipality (OM) to provide a rationale for any restrictions which they propose in this regard.

The HRA is in favour of the proposal that all the available parking bays defined for the entire Hermanus Sports Club (HSC) footprint be taken into consideration when determining parking requirements.

**Hermanus Ratepayers Association**

16th March 2024

FILE NO. <i>EF 1253</i>
<i>1130</i>
SCAN NO.
COLLABORATOR NO.
<i>2019043</i>

*TP*

Alida Conradie

1253 HEC

From: Leentjie Van Schalkwyk <  
 Sent: Friday, 22 March 2024 16:41  
 To: Alida Conradie  
 Subject: Beswaar teen die HCM



Overstrand Munisipaliteit

Beswaar teen verhuring van munisipale grond aan HCM:

Ek teken ten sterkste beswaar aan teen die verhuring van openbare spasie deur OM aan HCM en die hersoenering van die beoogde openbare spasie.

HCM is 'n privaat besigheid en nie 'n NPO nie. Alle besigheidseienaars huur of koop besigheidspersoneel teen 'n reuse premie in Hermanus en gaan die uitgawes en risiko aan om 'n inkomste te genereer en lewer 'n bydra tot werkskepping in Hermanus.

In my opinie skep OM 'n president met die verhuring van grond aan 'n private besigheid sonder 'n tenderproses. Dit skep 'n president en plaas OM op risiko dat nog individue dieselfde voordele eis.

Was daar 'n tenderproses?

'n OM bereid om ander besighede en individue ook vir 'n periode van 35 jaar te subsidieer om hulle infrastruktuur te betaal en in plek te kry?

Hoe kan 'n privaat besigheid op munisipale eiendom goedgekeur word, teen minimale uitgawes, wat 7 dae 'n week in direkte kompetisie is met besighede in en om Hermanus wat astronomiese huur en premies betaal?

Neem ook in ag dat toegangroetes na/van HCM reeds onder enorme druk is en volgende gaan daar weer vanaf die belastingbetalers wees om die paaie te vergroot.

My voorstel is dat HCM, soos enige ander besigheid, 'n stuk grond gaan koop en dit ontwikkel.

H van Schalkwyk

33 Nico van der Merwe straat  
Sandbaai

TP. D. Thegale  
(M. Olivier)

FILE NO.	ET 1253
	HEC
SCAN NO.	
COLLABORATOR NO.	2019235

TP

1253 HEC

Alida Conradie

**From:** Jevron Epstein  
**Sent:** Friday, 22 March 2024 15:12  
**To:** Alida Conradie  
**Subject:** Objection

**Importance:** High

TP-n. Theaak  
(H. Olivier)



Dear Mr P Roux,

I am writing to formally express our objection to the proposed operation of a community market on erf 1253 Eastcliff, mainly due to its proximity to Generation Schools Hermanus. While we understand the necessity for businesses to relocate and evolve, we have significant concerns regarding the potential implications this market may have on our institution and its surrounding community.

Firstly, it is imperative to highlight our general support for the market's relocation as per the applicant's notice. We do not oppose this move; however, we must address several critical issues that may arise from its operation in the proposed location.

Our primary concern pertains to the proposed trading hours and days. It is crucial to emphasize that the original site development plan outlined specific trading days and hours for the market. We respectfully request that any deviations from these predetermined parameters be carefully reconsidered, as they may adversely affect the functionality of Generation Schools Hermanus, the neighbouring church, and the sports grounds. Already, during Saturday trading hours, the area experiences significant parking constraints, impeding the full functionality of our facilities. Therefore, we urge the market to adhere strictly to the agreed-upon trading hours and to meet the requisite parking requirements to mitigate any potential disruptions to our operations.

Furthermore, we wish to draw attention to a letter previously submitted to the municipality expressing our interest in developing an aquatic centre. While we acknowledge and support the market's relocation, we caution that any decisions made regarding its operation must take into account the broader development plans for the area, including potential future projects such as the aquatic centre. Consistency in land use and adherence to zoning regulations is paramount to ensuring the harmonious coexistence of various community amenities and facilities.

In conclusion, while we acknowledge the value that the market may bring to the community, particularly in its new location, we cannot overlook the potential challenges it poses to the functionality and well-being of Generation Schools Hermanus and its surrounding infrastructure. We respectfully urge the relevant authorities to carefully consider our objections and take appropriate measures to address our concerns in the decision-making process.

Thank you for your attention to this matter. Should you require any further clarification or information, please do not hesitate to contact us.

FILE NO. TP 1253  
HEC  
SCAN NO.  
COLLABORATOR NO.  
2019238

TP

Kind regards,

**Jevron Epstein**  
Chief Executive Officer  
Head Office

Tel: +27 (0)21 205 5922  
[www.generationschools.co.za](http://www.generationschools.co.za)



Legal Disclaimer: This message contains privileged and confidential information intended only for the use of the addressee named above. If you are not the intended recipient of this message, you are hereby notified that you may not disseminate, copy or take any action based on the contents thereof; kindly inform the sender immediately. Any views expressed in this message are those of the individual sender, except where the sender specifically states them ( ) be the view of Generation Education (Pty) Ltd. While every care has been taken in preparing this document, no representation, warranty or undertaking (expressed or implied) is given and no responsibility nor liability is accepted by any member of Generation Education (Pty) Ltd as to the accuracy of the information contained herein, or for any loss arising from reliance on it.

TP. N. Heat  
403  
(H. Olivier)

OVERSTRAND MUNISIPALITEIT  
REKORDSLETTEN  
ANNEXURE E1/20  
13 JUN 2024  
DOCUMENT CONTROL  
OVERSTRAND-MUNICIPALITY



# Project Office

Town Planning & Project Management

FILE NO. ET 1253  
Hermanus  
SCAN NO.  
COLLABORATOR NO.  
2062262

Our Reference: 23/35  
Your Reference: 1253 HEC

12 June 2024

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

Attention: Mr Petrus Roux

**REMAINDER OF ERF 1253 HERMANUS: AMENDMENT OF THE SITE DEVELOPMENT PLAN TO REFLECT THE NEW POSITION AND STALL LAYOUT OF THE HERMANUS COUNTRY MARKET AND AMENDMENT IN RESPECT OF AN EXISTING APPROVAL: COMMENT ON OBJECTIONS**

Your letter dated 5 April 2024, refers.

The comments and objections received are addressed herein.

Project Planning | Project Feasibility | Land Use Applications | Project Execution Management | Liquor Licensing

Unit B, Standard House,  
Cnr Royal and Dirkie Uys Street  
Hermanus

PostNet Hermanus Suite 170  
Private Bag X16, Hermanus,  
7200

Tel: +27 (0)28 313 1411  
Email: admin@wrapgroup.co.za  
Web: www.wrapgroup.co.za



WRAP Group Established 2002

VP  
13 JUN 2024

<b><u>COMMENT</u></b> <b>NUMBER OF STALLS</b>
Hermanus Ratepayers Association
<b><u>RESPONSE</u></b>
This comment is noted and agreed with. As mentioned throughout the application, the needs of each trader vary. Additionally, the requirements of each trader may change over time. By facilitating the growth of businesses at the Hermanus Country Market (HCM), it provides small businesses with a platform to expand and move into larger spaces, even if it is only from a small stall to a larger one.
<b><u>OBJECTION</u></b> <b>PARKING</b>
<u>Objectors</u> M Marchio obo Bosko A Taute Hermanus Ratepayers Association
<b><u>RESPONSE</u></b>
<p>The proposed relocation of the HCM is not expected to generate additional parking requirements, as the extent and number of stalls are not being increased. There was a comment from the municipality that the additional traders need to be accommodated elsewhere, as 30 additional traders are being proposed. The motivation stated that the parking area of the Generations school will be used, but since then the objector has made the stance that the parking will be used by themselves, the HCM had to investigate alternative options.</p> <p>A formal lease agreement has been entered into between the Hermanus Country Market and the Hermanus High School to allow the HCM to utilise a portion of the Hermanus High School for the provision of an additional 30 parking bays. Access to the parking will be managed by staff of the HCM on market days.</p> <p>The management of the parking was motivated in the land use application which was advertised for comment. The comment from the Hermanus Ratepayers Association is agreed with and aligns with what was motivated in the application. Refer to attached <b>lease agreement (Annexure A)</b> and <b>parking Layout (Annexure B)</b>.</p>
<b><u>OBJECTION</u></b> <b>TRAFFIC</b>
<u>OBJECTORS</u> A Taute H van Schalkwyk
<b><u>RESPONSE</u></b>
The comments are noted, and the application was also circulated to the Overstrand Engineering Department for comment. If any traffic calming measures or alterations are required, it will be addressed by the department. It is important to note that no upgrades of any existing services are required, as the market will only be replicated in its new position with the same extent as it currently has.

**OBJECTION  
TRADING DAYS**

OBJECTORS

Hermanus Ratepayers Association  
J Epstein obo Generation School

**RESPONSE**

- The comment is duly noted. There is no intention from the owners to operate a "shopping centre." Being voted as the number five market in South Africa, the owners do not wish to lose its appeal with their clients.

The market does not aim to operate 7 days a week, but it is proposed not to be limited by specific days. As the objector correctly noted, there are certain days on which market operations could be successful.

- The comment from J Epstein is duly noted, but as extensively motivated in the report, the specialty markets are not planned for every day or week. As the need arises, the HCM would like to have the flexibility to plan a market that is not limited to a specific day of the week.

The concerns raised are duly noted, and the HCM will maintain continuous communication to ensure that no disruptions occur to any property or entity in the vicinity of the Hermanus Sports Club.

**OBJECTION  
VALID OCCUPATION / TENDER**

OBJECTORS

H van Schalkwyk

**RESPONSE**

The comment is duly noted. As the proposal aims to replicate the market from its current position to a new location, additional space is neither required, nor requested.

It is important to clarify that the Hermanus Sports Club (HSC) is the lessee of the property, while the Overstrand Municipality remains the property owner. The HSC is the entity responsible for managing the lease areas and is permitted to sublease in terms of their agreement with the Overstrand Municipality. They sublease space to tenants at rental which they regard as profitable and serving their best interest.

The HCM currently pays and will continue to pay a market related rent for the lease area. The cost of the relocation of the new market will be carried by the HCM and when added to the monthly rental payable, it compares well to market related rentals for commercial space over the lease period.

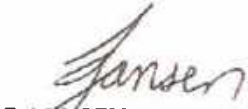
Additionally, it is of great importance to emphasize that the HCM is leasing the premises from the Hermanus Sport Club and not directly from the Overstrand Municipality.

**Conclusion**

The comments and objections are noted and were sufficiently addressed in this response. The objections conveyed a sense of support for the relocation of the market, although uncertainty was expressed regarding the potential impact of the proposed use of the market on the surrounding area and properties. As addressed herein and emphasized throughout the submitted application, the owners of the HCM are making it a priority to ensure the sustainability of the market in its new location. This entails enabling traders to grow and move into the formal business sector while also providing them with increased access to unique market offerings as they arise.

Considering the response, it is recommended that the planning application be approved as submitted.

Yours faithfully



**T. JANSEN**  
**PROFESSIONAL TOWN PLANNER (A/2858/2019)**

**ANNEXURE A: LEASE AGREEMENT**

**LEASE OF IMMOVABLE PROPERTY**

**A PORTION OF ERF 5310 HERMANUS**

**1 JUNE 2024 TO 30 APRIL 2034**

## **LEASE AGREEMENT**

### **1. PARTIES**

1.1 Hermanus High School, hereafter called the LESSOR, of De Villiers Street, Hermanus 7200, represented by Michael Smuts in his capacity as Principal.

and

1.2 Hermanus Country Market (Pty) Ltd (Registration number 2021/807911/07), hereafter called the LESSEE of a Portion of Erf 5310 Hermanus, represented by Elaine Bayer of 16 End Street, Sandbaai, Hermanus in her capacity as Director.

### **2. INTERPRETATION**

In this Agreement, unless the context indicates otherwise, the following expressions shall have the meanings assigned to them hereunder -

2.1 **The premises:** A portion of Erf 5310 Hermanus as depicted on the sketch plan, attached as Annexure A.

2.2 **The Rental:** The amount referred to in 4.1.

### **3. LETTING AND HIRING**

3.1 The LESSOR hereby lets to the LESSEE, who hereby hires, the Premises subject to the terms and conditions contained in this agreement.

*MS*  
*EB*  
*AK*

3.2 The Premises shall be used as parking on days that the Hermanus Country Market operates.

#### 4. RENTAL

4.1 The Rental shall be the fees collected by The Hermanus Country Market for their staff/clients who park on the premises on market days.

4.2 Rental shall be paid monthly in arrears on the last day of each month free of any deduction or set-off, at the offices of the LESSOR or electronic transfer if preferred by LESSOR.

#### 5. LEASE PERIOD

5.1 The lease shall commence on the 1 June 2024 and shall continue until 30 April 2034.

5.2 The LESSEE will have the option to renew this lease agreement by written notification to the LESSOR at least 6 (six) months before termination of the lease for a further period of 9 (nine) years and 11 (eleven) months on the same conditions as this lease.

5.3 Either party may cancel this agreement by giving the other party three (3) months written notice.

#### 6. ADDITIONAL PAYMENTS BY THE LESSEE

6.1 The LESSEE shall on demand pay to the LESSOR -

6.1.1 all legal costs, as between attorney and client, incurred by the LESSOR in respect of any legal steps taken by him against the LESSEE to enforce any of LESSEE's obligations in terms of this Agreement.

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KBS  
CE

In the event of the LESSEE failing to make payment of any of the foregoing, the LESSOR shall have the right, without prejudice to his other rights in law or under this Agreement, to affect payment himself and recover the amount(s) so expended from the LESSEE.

**7. ACKNOWLEDGEMENT BY LESSEE**

The LESSEE acknowledges that -

- 7.1 the Premises are let subject to the conditions contained in the title deed of the Premises or of the land on which the Premises are situated (as the case may be) and the provisions of any applicable town planning scheme; and
- 7.2 he has inspected the Premises and that they are suitable for the purpose for which they are let; and
- 7.3 he will have no claim for damages whatsoever against the LESSOR if for any reason the Premises do not become suitable for the purpose for which they are let.

**8. PAYMENT OF RATES AND TAXES AND LEVIES**

The LESSOR shall not be liable to pay rates and taxes in respect of the Premises to the local authority concerned.

**9. PROHIBITION AGAINST SUBLETTING AND PARTING WITH POSSESSION**

The LESSEE shall not -

- 9.1 cede his rights or assign his obligations hereunder; or
- 9.2 sublet the Premises or any portion thereof; or

9.3 part with possession of the Premises or any portion thereof without the LESSOR's prior written consent which, in the case of 9.2 and 9.3, shall not be unreasonably withheld.

## 10. OCCUPATION

10.1 Notwithstanding any receipt given for rental paid in terms of the lease, the LESSEE shall have no claim for damages or other right of action against the LESSOR, nor be entitled to cancel this Lease, should the LESSOR be unable to give the LESSEE occupation of the Premises on the date of commencement of the lease for any reason whatsoever not attributable to wilful default on the part of the LESSOR, and the LESSEE undertakes to accept occupation from whatever date the Premises are available, subject to a remission of rental in respect of the period on non-occupation.

10.2 Should the LESSEE fail to take occupation of the Premises on the date upon which the Premises are made available to him for occupation, the LESSOR may, without incurring any liability whatsoever towards the LESSEE, immediately cancel this Agreement without notice. Provided that this clause shall not apply if the LESSOR and LESSEE have agreed in writing that the LESSEE will not take physical occupation of the Premises on the said date.

10.3 In the event of the LESSEE not being able to enjoy the beneficial occupation of the Premises as a result of them being materially damaged by fire, earthquakes, weather storms, riot activity or the like, and the LESSOR -

10.3.1 failing within 30 days of the date of the damage to give the LESSEE written notice that he intends to keep the lease alive, this lease shall be deemed to have been cancelled on the date that the damage occurred

and the LESSOR shall refund to the LESSEE all rentals paid in advance beyond the date of such damage; or

10.3.2 having given notice to the LESSEE as aforesaid the LESSOR shall restore the Premises to a tenable condition as expeditiously as practicable and the LESSEE shall be entitled to a total or partial remission of rental according to the extent to which and the period for which he was deprived of beneficial occupation of the Premises.

Save as provided in 10.3.1. and 10.3.2, the LESSEE shall have no other claims whatsoever against the LESSOR.

## 11. DEFECTS AND MAINTENANCE

11.1 It is hereby recorded that at the time of conclusion of this Agreement the Premises are in a good state of repair and condition. Should the LESSEE at the time of taking occupation of the Premises discover any defects in the Premises and/or any of the goods, he shall within 3 (three) days of such occupation give written notice of any such defect at the time of conclusion of this Agreement to the LESSOR. Failure on the part of the LESSEE to give such notice shall be deemed to be an acknowledgement on his part that the whole of the Premises including all the goods are in a good and proper state of repair and condition.

11.2 It is specifically recorded that any notice given by the LESSEE in terms of 11.1 shall not place any obligation on the LESSOR to repair the Premises or the goods concerned, the intention being that such notice will serve only to record the state of repair in which the LESSEE took occupation of the Premises and the goods. It is furthermore specifically recorded that save as is otherwise provided in this Agreement, the LESSOR shall not be obliged to effect repairs to or maintain the Premises or the goods, and LESSEE shall not be entitled to withhold the

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*CC MS*

Rental or to claim any refund in respect of Rental paid, by reason of any defect whatsoever in the Premises or the goods.

11.3 The LESSEE undertakes, to maintain at his own cost the Premises for the full duration of the lease in the same state of repair as they were received by him, reasonable fair wear and tear excepted, alternatively to reimburse the LESSOR for the cost of replacing or repairing any breakages or defects. Notwithstanding the generality of this clause, the LESSEE specifically undertakes to –

11.3.1 keep the grounds of the Premises in a clean and tidy condition, free from all litter and rubbish.

11.4 Should the LESSEE fail to maintain the Premises and/ or goods in the manner specified in this clause, the LESSOR shall be entitled, in addition to any other rights or remedies available to him in terms of this Agreement, to carry out the necessary maintenance work at his discretion and to recover the full cost thereof from the LESSEE.

11.5 On termination of the lease, the LESSEE shall restore the whole of the Premises to the LESSOR in the same good order and condition as they are at present, fair wear and tear excluded. The LESSOR shall within 7 days after restoration of the Premises to him inspect the Premises and notify the LESSEE in writing of all damages to or defects in the Premises for which the LESSEE is liable in terms of 11. Failure on the part of the LESSOR to give such notice shall be deemed to be an acknowledgement on his part that the whole of the Premises including all the goods are in a good and proper state of repair and condition.

**12. USE OF THE PREMISES BY THE LESSEE**

The LESSEE shall use the Premises solely for parking for staff and customers on market days and hereby specifically undertakes not to –

- 12.1 contravene any law, by-law or regulation applicable in respect of the Premises;
- 12.2 or permit any nuisance upon the Premises;
- 12.3 or allow pets or other animals to damage the Premises; or
- 12.4 make any alteration or addition to the Premises without the written consent of the LESSOR.

**13. IMPROVEMENTS**

- 13.1 Any improvements made by the LESSEE on or to the Premises during the period of the lease with the consent of the LESSOR, shall become the property of the LESSOR on termination of the lease and the LESSEE shall not be entitled to remove any such improvement or claim from the LESSOR any compensation in respect thereof.
- 13.2 Notwithstanding the provisions of 13.1 above, the LESSOR shall be entitled at the termination of the lease to demand in writing that any improvement or addition made by the LESSEE be removed by the LESSEE at his own cost. The LESSEE shall at his own expense and to the satisfaction of the LESSOR repair all damage and/or defects caused by such removal.
- 13.3 Should the LESSEE fail to comply with a demand made by the LESSOR in terms of 13.2, the LESSOR shall be entitled, in addition to any other

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remedy or right available to him in terms of this Agreement, to have the relevant improvement and/or addition removed and to recover the costs thereof from the LESSEE, including the cost of repair of all damage and/or defects caused by such removal.

#### 14. INDEMNITY

The LESSEE indemnifies and keeps the LESSOR indemnified against all liability whatsoever caused or arising, that may be the direct or indirect result of the use of the Lease Area or improvements, and against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against the Lessor or incurred or become payable by the Lessor at the suit of any person.

#### 15. BREACH

In the event of either one of the parties (*"the defaulting party"*) committing a breach of any of the terms of this Agreement and failing to remedy such breach within a period of 7 (seven) days after receipt of a written notice from the other party (*"the aggrieved party"*) calling upon the defaulting party to remedy the breach complained of, then the aggrieved party shall be entitled at his sole discretion and without prejudice to any of his other rights in law and/or in terms of this

Agreement, either to claim specific performance of the terms of this Agreement or to cancel this Agreement forthwith and without further notice and claim damages from the defaulting party; Provided that if the LESSEE commits a breach of the provisions of this Agreement three times in any calendar year, then upon the third breach, the LESSOR shall be entitled immediately to implement either of the remedies referred to above, without first having to give the LESSEE written notice to rectify such breach.

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**16. DOMICILE**

16.1 Each party choose *domicilium citandi et executandi* at his address as set out in 1 above, at which address all notices and legal process in relation to this Agreement or any action arising therefrom may be effectually delivered and served.

16.2 Any notice given by one of the parties to the other (*"the addressee"*) which –

16.2.1 is delivered by hand to the addressee's *domicilium citandi et executandi* shall be presumed until the contrary is proved to have been received by the addressee on the date of delivery; or

16.2.2 is mailed from an e-mail address within the Republic of South Africa to the e-mail address of the other party, shall be presumed, until the contrary is proved, to have been received by the addressee on the date of sending.

16.3 Either party shall be entitled, on written notice to the other, to change the address of his *domicilium citandi et executandi*.

**17. GENERAL**

17.1 The parties agree to the jurisdiction of the magistrate's court in connection with any action or suit arising from this Agreement or the cancellation thereof.

17.2 This Agreement constitutes the sole and entire agreement between the parties and no warranties, representations, guarantees or other terms and conditions of whatsoever nature not contained herein shall be of any force or effect.

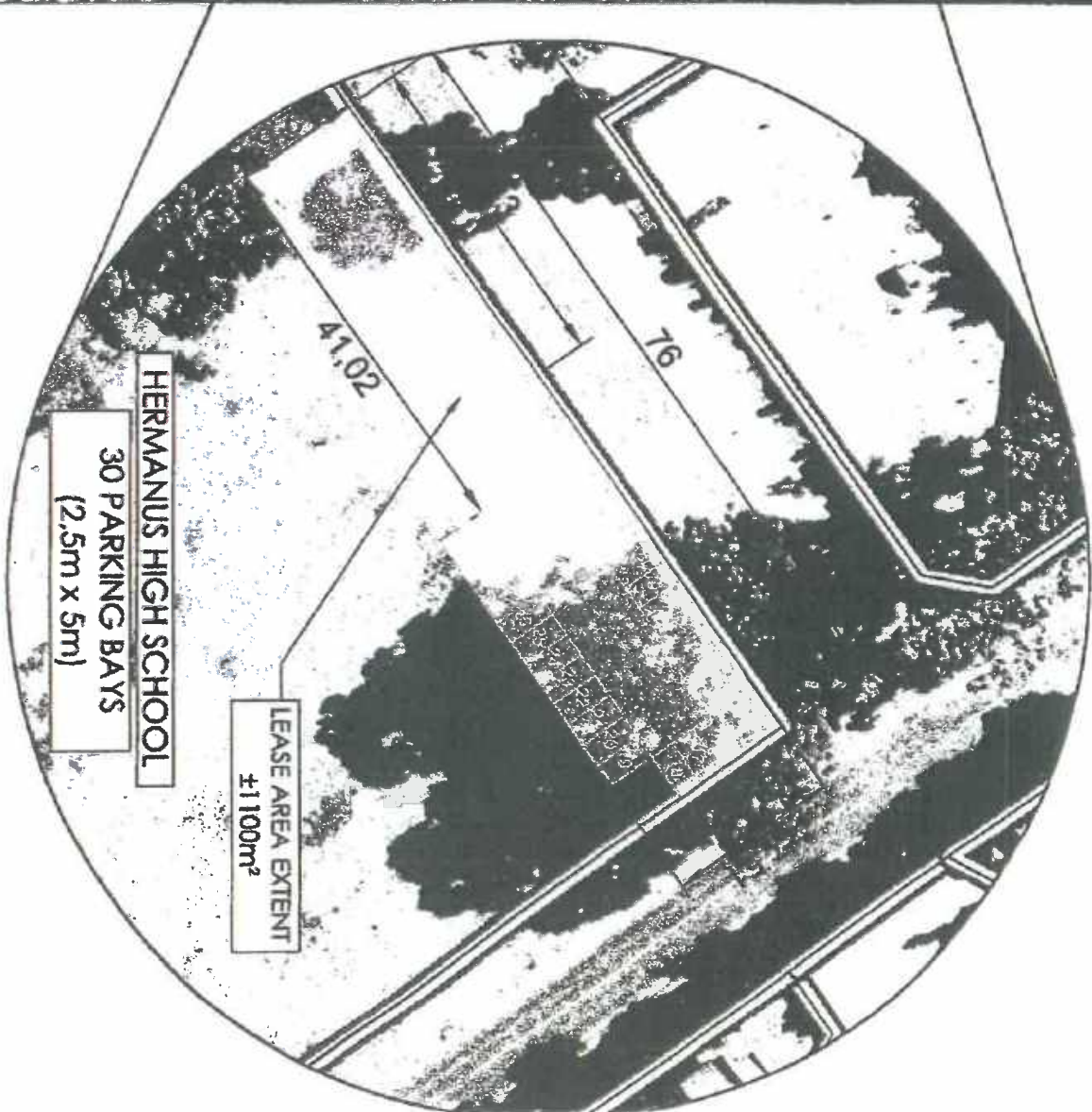
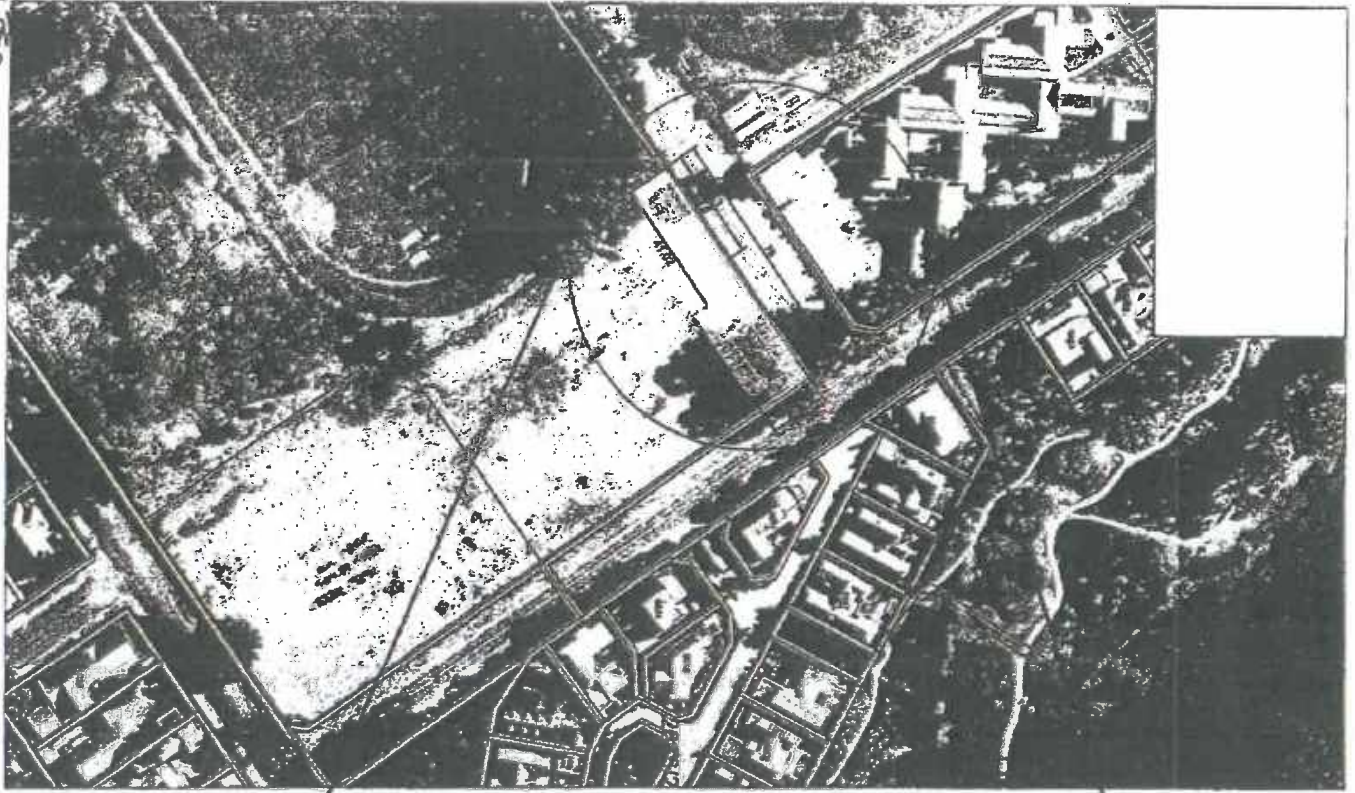
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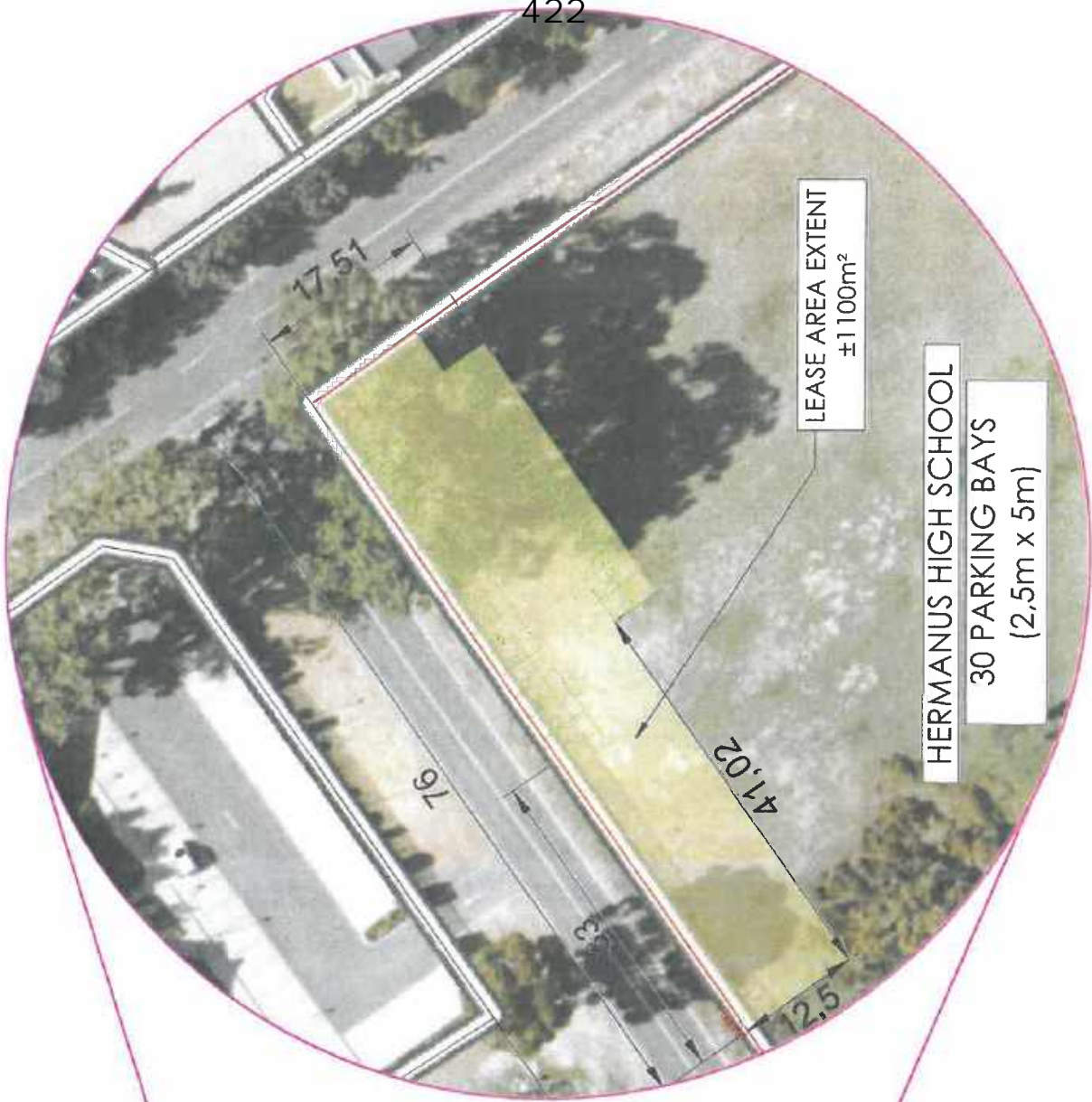
**ANNEXURE A**

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*[Handwritten initials]*

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**ANNEXURE B: PARKING LAYOUT**



**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR AMENDMENT OF THE SITE DEVELOPMENT PLAN (SDP) &  
CONDITIONS OF APPROVAL: REMAINDER ERF 1253, EASTCLIFF (4480/2023)**

Stormwater (SW)	:	Refer to conditions
Electricity	:	Refer to conditions
Water	:	Refer to conditions
Sewer	:	Refer to conditions
Roads and traffic	:	Refer to conditions

**Conditions:**

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the 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 no reservation of on-street parking be allowed;
7. that stormwater discharged from higher lying properties and generated in the catchment area of the property be allowed to drain freely through the property;
8. that stormwater reticulation and connection(s) to the municipal system be provided at the owners cost, if required.

  
**DENNIS HENDRIKS**  
**SENIOR MANAGER:**  
**ENGINEERING SERVICES**

  
**DATE**

**Alida Conradie**

---

**From:** Craig Mitchell  
**Sent:** Friday, 05 April 2024 14:55  
**To:** Alida Conradie  
**Cc:** Anja le Roux  
**Subject:** RE: Erf 1253, Eastcliff - Request for additional information

Hi Alida

I am happy with the comments thanks please just make sure that they are added to the file.

Regards

**Craig Mitchell**

Manager Solid Waste: Planning  
Overstrand Municipality  
M: 083 321 5591 | T: 028 313 5045  
E: [cmitchell@overstrand.gov.za](mailto:cmitchell@overstrand.gov.za)

**From:** Alida Conradie <[alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)>  
**Sent:** Friday, April 5, 2024 2:41 PM  
**To:** Craig Mitchell <[cmitchell@overstrand.gov.za](mailto:cmitchell@overstrand.gov.za)>  
**Subject:** FW: Erf 1253, Eastcliff - Request for additional information

Hi Craig

Sien onderstaande terugvoering vanaf die aansoeker soos versoek.

Vriendelike Groete

**Alida Conradie**

Administrator, Town & Spatial Planning Department Overstrand Municipality  
A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20 .  
T: 028 313 8900 | F: 028 313 2093 | E: [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)

**From:** WRAP <[admin@wrapgroup.co.za](mailto:admin@wrapgroup.co.za)>  
**Sent:** Friday, April 5, 2024 11:56 AM  
**To:** Alida Conradie <[alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)>  
**Subject:** RE: Erf 1253, Eastcliff - Request for additional information

Good morning

We received you comments below with reference to the country market and their waste management.

Please see response below from the market operators:

**Alida Conradie**

---

**From:** WRAP <admin@wrapgroup.co.za>  
**Sent:** Friday, 05 April 2024 11:56  
**To:** Alida Conradie  
**Subject:** RE: Erf 1253, Eastcliff - Request for additional information

Good morning

We received your comments below with reference to the country market and their waste management.

Please see response below from the market operators:

1. the estimated volumes that will be generated per market day?;

20 – 30 black bags

2. which transfer station will be used to dispose of the waste that was generated on the day?;

The Schulphoek waste transfer station is used.

3. what time will the waste be delivered to the transfer station?;

Waste is delivered at 3pm after the market's operation.

4. how will waste be managed during evening markets?, and

Each stall has a bin to accumulate waste, once full the black bag is collected and deposited on a trailer owned by the market.

5. no mention is made in the document or drawings to show where the waste will be temporary collected / stockpiled on the market operational days before removing from site

Full black bags are stored on a closed trailer, once the market is closed the waste is delivered to the waste transfer station on the same day after every market.

No storage of waste will be allowed on site and not stockpiling occurs overnight.

Please let us know if you have any additional questions.

**Kind Regards,**

**THIAN JANSEN**

**PROFESSIONAL TOWN PLANNER**

Email: [admin@wrapgroup.co.za](mailto:admin@wrapgroup.co.za)

T: +27 (28) 313 1411 | M: +27 (72) 122 7704

Unit B, Standard House, Cnr Royal and Dirkie Uys Street

PostNet Hermanus Suite 170

Private Bag X16, Hermanus, 7200

[www.wrapgroup.co.za](http://www.wrapgroup.co.za)



File reference:	Erf 1253 4480/2023
Date:	15 February 2024
AJF	

## INTERNAL MEMORANDUM

<b>From</b>	: Town Planning Department
<b>Town Planner</b>	: Mrs. P. Roux (Town Planner)

**TO:**


<u>Area Manager</u>	<u>Building Control Department</u>	<u>District Health</u>	<u>Electrical Department</u>	<u>Environmental Officer</u>
<u>Fire Department</u>	<u>Infrastructure and Planning</u>	<u>Local Heritage Committee</u>	<u>Operational Services</u>	<u>Property Administration</u>
<u>Tourism</u>	<u>Traffic Department</u>	<u>Ward Councillor</u>	<u>Waste Management</u>	

<b>Applicant</b>	<b>WRAP PROJECT OFFICE ON BEHALF OF OVERSTRAND MUNICIPALITY</b>
<b>Property Details</b>	<b>REMAINDER OF ERF 1253, FAIRWAYS AVENUE, EASTCLIFF, HERMANUS</b>
<b>Application Description</b>	<b>APPLICATION FOR AMENDMENT OF THE SITE DEVELOPMENT PLAN (SDP) &amp; CONDITIONS OF APPROVAL</b>

**ATTACHMENTS:**

1. Notice	Should the information be insufficient for you to make an informative comment, please list any additional documentation that you would require to make informed comments.
2. Locality Map	
3. Motivational Report	
4. Building Plans	

**YOUR DEPARTMENT'S COMMENTS:**

In the report they say the following:	
<b>Solid Waste</b>	
Solid waste generated on the market days will be collected and disposed of at the nearest transfer station at the expense of the HCM.	
Please ask the applicant to provide the following additional information	
1 the estimated volumes that they will generate per market day.	
2 Which transfer station they intend to use to dispose of the waste that was generated on the day	
3 What time they will be delivering the waste to the transfer station as I think the market end after the transfer station closing time.	
4 What about evening markets if they are approved how will that waste be handled?	
5 There is no reference in the report or on any of the drawing provided to show where the waste will be temporary collected / stockpiled on the market operational days before been removed off site. Please provide additional info.	
Lastly, I would recommend that the get billed SA1Q rate for waste disposal the no removal rate per unit/site?	
Signature:	
Date:	4 April 2023

TPA-EMS-240606-02

Town Planning Application on 06-06-2024

Generated on Unitil by Penelope Aplon on 10-06-2024



Basic Information

<b>Captured Reference</b>	06-06-2024 16:11	<b>Call Time</b>	06-06-2024 16:11	<b>Captured By Office</b>	EMS
<b>District</b>	Overberg	<b>Status</b>			Open
<b>Municipality</b>	Overstrand				

Description

APPLICATION FOR AMENDMENT OF THE SITE DEVELOPMENT PLAN (SDP) & CONDITIONS OF APPROVAL

Application Details

**File Reference** Erf 1253 4480/2023  
WRAP PROJECT OFFICE

**Applicant** ON BEHALF OF  
OVERSTRAND  
MUNICIPALITY

**Property Details** REMAINDER OF ERF  
1253, FAIRWAYS  
AVENUE, EASTCLIFF,  
HERMANUS

Application Comments

Please receive the following comments regarding the new proposed location of the Hermanus Country Market.

- Any lighting used during nighttime markets must be downward facing and emitted away from the nature reserve.
- A strategic fence must be placed on the boundary between Fernkloof and the HCM site. The purpose is to prevent any illegal parking on the nature reserve. The Environmental Management Section must be contacted for specification.
- A Fire management plan must be submitted. This should address procedures in the event of a fire at the market, exit points ect.
- A Waste management plan must be submitted. This should address issues such as recycling, food containers and single-use plastics.
- An application for "noise exemption" must be submitted to the Environmental Management section, should amplified sound by part of the market.
- The SDP is subject to the scrutiny of the Fernkloof Advisory Board.

Application Types

Amendment of SDF/Sectorial Plans

Closing Comments

Penelope Aplon

.....  
10/06/2024.....

.....

**Alida Conradie**

**From:** Anja le Roux  
**Sent:** Thursday, 25 July 2024 11:41  
**To:** Alida Conradie; Ricardo Andrew; Andre Olivier; Yvienne Smith  
**Cc:** Riaan Kuchar  
**Subject:** RE: Erf 1253, Eastcliff - Hermanus Country Market

Good day Alida

I stand with my initial comments.

What I must mention is that I noted that they are now indicating that they do not intend to trade 7 days a week, but as and when needed (thus not be bound by specific days). This is not what they applied for initially. If no limit on days is placed, it will give them a right to trade every day, which I cannot support.

As to the lease agreement. I have serious doubts as to whether the School is authorised to enter in such an agreement. What concerns me the most is that adults might have access to a school premises during the day when children are attending the school. How will this be monitored and is it permissible in terms of legislation? People who frequent the market will most probably make use of alcohol, etc. and then go back to their cars parked on the school grounds. Is the South African Schools Act not applicable to access to schools by, i.e. members of the public.

For example:

- "13. Public schools on State property.—(1) In this section, immovable property owned by the State includes immovable property held in trust on behalf of a tribe by a trust created by statute.*
- (2) Subject to section 20 (1) (k), a public school which occupies immovable property owned by the State has the right, for the duration of the school's existence, to occupy and use the immovable property for the benefit of the school for educational purposes at or in connection with the school.*
- (3) The right referred to in subsection (2) may only be restricted—*
- (a) by the Member of the Executive Council; and*
- (b) if the immovable property is not utilised by the school in the interests of education.*
- (4) The Member of the Executive Council may not act under subsection (3) unless he or she has—*
- (a) informed the governing body of the school of his or her intention so to act and the reasons therefor;*
- (b) granted the governing body of the school a reasonable opportunity to make representations to him or her in relation to such action;*
- (c) duly considered any such representations received.*
- 20. Functions of all governing bodies.—(1) Subject to this Act, the governing body of a public school must—**
- (k) at the request of the Head of Department, allow the reasonable use under fair conditions determined by the Head of Department of the facilities of the school for educational programmes not conducted by the school;*
- 36. Responsibility of governing body**
- (4)(a) A governing body may, with the approval of the Member of the Executive Council—*
- (i) lease, burden, convert or alter immovable property of the school to provide for school activities or to supplement the school fund of that school; and*
- (ii) allow any person to conduct any business on school property to supplement the school fund.*
- (b) A governing body may not allow any activity on school property that is hazardous or disruptive to learners or prohibited by this Act."*

This said, there are also Safety Measures at Public Schools Regulations. I do not know whether it was amended in 2006 as I cannot see whether the latter amendment was approved, but the 2001 regulations stipulated as follows:

- "5. Access to public school premises-**
- (1) Subject to the Constitution, laws and national and provincial policies, the HOD or principal of any public school may and for such timeframes as may be necessary—*
- (a) take such steps as he or she may consider necessary for the safeguarding of the public school premises, as well as for the protection of the people therein; and*
- (b) direct that the school may only be entered in accordance with the provisions of subregulation (2).*

- (2) *No person shall without the permission of the principal or HOD enter into any public school premises in respect of which a direction has been issued under subregulation (1) (a), and for the purpose of the granting of that permission the principal or HOD may require of the person concerned to—*
- (a) *furnish his or her name, address and any other relevant information required by the principal or HOD;*
  - (b) *produce proof of his or her identity to the satisfaction of the principal or HOD if necessary;*
  - (c) *declare whether he or she has any dangerous object or illegal drugs in his or her possession or custody or under his or her control;*
  - (d) *declare what the contents are of any vehicle, suitcase, attache case, bag, handbag, folder, envelope, parcel or container of any nature which he or she has in his or her possession or custody or under his or her control, and show those contents to him or her;*
  - (e) *subject himself or herself and anything which he or she has in his or her possession or custody or under his or her control to a search by a person of the same gender, an examination by an electronic device, sniffer dogs or other apparatus in order to determine the presence of any dangerous object or illegal drug; and*
  - (f) *hand to the principal or HOD anything which he or she has in his or her possession or custody or under his or her control for examination or custody until he or she leaves the premises.”*

I trust that you find the above in order.

**Ms Anja Le Roux**

Divisional Manager: Property Management, Planning & Development Directorate  
Overstrand Municipality

Corner of Molteno & Viljoen Street, Onrustrivier, 7201

.A: +27 (0) 83 461 9383 | T: +27 (0) 28 316 5623 | F: +27 (0) 28 316 3721 | E: [anjaleroux@overstrand.gov.za](mailto:anjaleroux@overstrand.gov.za)