

# OVERSTRAND MUNICIPALITY



## PUBLIC PLACE TRADING POLICY

*Approved by Council  
29 November 2023*

Responsible Directorate:

Community Services and Area Management

4 October 2023



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## 1. DEFINITIONS

For purposes of this policy, unless otherwise stated, the following definitions shall apply:

Businesses Act	Means the Businesses Act, No. 71 of 1991 including any regulations issued thereunder.
Demarcated public trading area	Means an area on municipal land allocated and marked for public trading and published in the Provincial Gazette.
Illegal goods	Goods that are illegal to sell or to buy (including but not limited to counterfeit goods as defined in the Counterfeit Goods Act No. 37 of 1997) and Second-hand Goods Act, 2009 No. 6 .
Public Trader	Means a trader which trades within the demarcated public trading areas, and which holds a permit (in the form of an informal trader), has a lease agreement (in the form of a lessee) or partakes in an authorised special event, within a demarcated area.
Informal trader	Means a person, or an enterprise which is not registered or incorporated in terms of the corporate laws of South Africa, and who or which engages in informal trading whether such person is registered as an informal trader or not.
Law Enforcement officer	Shall be an officer who is duly authorized to function as a peace officer in terms of Commissioner of Oath and Justice of Peace Act of 1975
Lease-holder	Means a trader who has been granted a lease agreement with the Municipality to conduct trading in a trading area.
Permit-holder	Means an trader who has been granted a permit by the municipality to conduct informal trading, or a trader who has been granted a permit by the Events Coordinator on the recommendation of the events committee to partake in a special event, in a demarcated trading area.
Events	May include, but are not limited to, sport and sporting events, night markets, flea markets, bazaars, traditional events, fundraising events, cultural events, music festivals, promotional events and religious events and as further defined in the Overstrand Municipality : Events Policy.
Municipal Land	Means any land in public ownership and includes land zoned as, Open Space Zone 1: Nature Reserve, Open Space Zone 2: Public Open Space and Transport Zone 2: Road and Parking (TR2 B - public road and public parking).

## 2. PREAMBLE

The Constitution of the Republic of South Africa, 1996 provides that Municipal government is responsible for "trading regulations" and "street trading" within its area of jurisdiction, and a local government's objective is to promote social and economic development.

The Municipality recognizes that trading and more specifically informal trading, makes an important contribution to the economic and social environment of Overstrand and thereby helps to include many who would otherwise be economically excluded.

The Municipality acknowledges the need to shift away from a culture of prosecution to a culture of accommodation of entrepreneurs and public traders. The emphasis is shifting away from punitive law enforcement towards creating a supportive environment for the public trading sector to thrive and the entrepreneurial spirit to growth within the community.

The Overstrand Municipality's Public Place Trading policy contains provisions that govern public trade within designated trading areas on Municipal Land. Certain definitions and provisions of this Policy will apply to the By-law to ensure consistency and effective law enforcement.

## 3. LEGISLATIVE FRAMEWORK

The following are key legislative imperatives that provide a mandate to Overstrand Municipality to support, manage and control activities within the Public Trading sector.

LEGISLATION	RELEVANCE
Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996)	Section 22 of the Constitution of the Republic of South Africa (the Constitution) provides for the freedom of trade, occupation and profession. It provides that "every citizen has the right to choose their trade, occupation or profession freely." It is accepted that this freedom extends to public and informal trading. Section 22 of the Constitution further provides that "the practice of a trade, occupation or profession may be regulated by law."
The Businesses Act 71 of 1991	Prescribes the different type of businesses which require business licenses prior to trading.
The National Road Traffic Act 93 of 1996	Determines where, on public roads, a trader may/may not trade.
The Promotion of Equality and the Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)	Prohibits the state or any person from discriminating unfairly against any person on the grounds of race or gender through the denial of access to opportunities for rendering services or by failing to take steps to reasonably accommodate the needs of such persons.

Regulation 918 promulgated under the Health Act 63 of 1977	Establishes the manner for the application and issue of Certificates of Acceptability.
The Atmospheric Pollution Prevention Act 45 of 1965	Establishes the framework for the prevention of pollution in the atmosphere and provides for matters incidental thereto.
Counterfeit Goods Act 37 of 1997	Introduces measures aimed against the trade of counterfeit goods.
Overstrand amendment By-Law on Municipal Land Use Planning 2020	Determines where and how Overstrand Municipality may allow for public and informal trading.
Public Place Trading By-law	The document regulating how the Overstrand Municipality will manage public trading.
Note: The Area Manager posts have been omitted in the new draft municipal organogram. The duties of the Area Manager will then be the responsibility of the new post / equivalent post as per the amended municipal organogram.	

#### 4. POLICY SCOPE, OBJECTIVES AND PRINCIPLES

##### 4.1 Policy Scope

The different types of public trading that take place in the municipality are covered by the policy, namely:

Trader Description	Trader Types
Permit Traders	Informal Traders & Seasonal Traders
Lease Agreement Holders	Lease Holders of restaurants, eateries and formal market traders
Traders for Events	As contained in the Events Policy

The different types of demarcation of areas to accommodate the different types of trading.

Colour Code	Trader Demarcation Areas	Trader Types
Yellow	Roadside trading in front of business	<ul style="list-style-type: none"> <li>Lease Holders</li> </ul>
Blue	Market Trading	<ul style="list-style-type: none"> <li>Lease Holders</li> <li>Informal Traders</li> <li>Events &amp; Seasonal Traders</li> </ul>
Red	Business Hive Trading	<ul style="list-style-type: none"> <li>Lease Holders</li> <li>Informal Traders</li> <li>Events &amp; Seasonal Traders</li> </ul>
Green	Roadside trading in front of properties other than business zoning	<ul style="list-style-type: none"> <li>Lease Holders</li> <li>Informal Traders</li> <li>Events &amp; Seasonal Traders</li> </ul>

## 4.2 Policy Objective

Overstrand Municipality acknowledges the relevance and contribution of public traders and specifically informal trading to the economic and social life of the area. Trading provides some income to those who are unemployed as well as providing an alternative to established traditional formal sector retail options. Public trading will also foster an entrepreneurial spirit in the community.

The main aim of the Public Place Trading Policy is to create a favourable economic environment that recognizes informal trade as a legitimate expression of business and economic activity through effective management, control and law enforcement.

## 4.3 Guiding Principles

The key principles that govern the Municipality's approach to public trading are economic, social and spatial:

### a) Economic Principles

Economic growth will be facilitated through:

- Linking the development and growth of trading areas to commercial zones to create viable hubs of business activity that will mutually benefit formal/informal businesses.
- Providing a range of facilities, capacity building and business support services that caters for the different levels of public traders, from the weekly Saturday trader and small survivalist trader to larger traders.
- Ensuring that the buildings and property owned by the Municipality are used for the maximum social and economic development of the community within which they are located; and
- Targeting highly accessible and visible locations for the promotion of tourism related trading in order to derive benefit for public traders from the tourism potential.

### b) Social Principles

The promotion of equity within Overstrand to create a dignified trading area through:

- Spreading public spending in an equitable manner throughout the area with an emphasis on the historically disadvantaged parts of the Overstrand area that have not historically benefited from Public Sector investment.
- Viewing the location of Public Sector investment as an opportunity to improve the general environmental condition of the historically disadvantaged areas of the region.
- Viewing the location of Public Sector investment as an opportunity to integrate communities that have historically been spatially separated; and
- Providing basic services such as water and refuse facilities to all areas where public health and public safety are at risk.

### c) Spatial Principles

Public trading contributes to the value of public spaces as amenities, place of dignity, and has the potential to be a catalyst for generating positive public spaces through:

- Developing those areas that will have most significant impact on the largest number of people, i.e., areas with large flows of pedestrian traffic.
- Allocating spaces for public trading areas in accordance with broad spatial planning policies of Council and the Spatial Development Framework; and
- Providing minimal infrastructure for public trading, which would vary depending on the type of activity.

## 5. DEMARCATION PROCEDURE

### 5.1 Demarcation by way of Section 6 of the Businesses Act of 1991

Demarcation in terms of Section 6 of the Businesses Act of 1991 shall be applied in the following manner:

- Overstrand Municipality may, by resolution, demarcate areas for the purposes of public trade on municipal owned land.
- Once such resolution is taken, the Municipality shall advertise the resolution with the intended areas to be demarcated, for public comment for 30 days.
- Once the demarcated areas have been advertised for 30 days, and the comments from the public has been considered, the Municipality shall take a resolution to publish the demarcated areas in the Provincial Gazette for a period of 60 days.

Demarcation in terms of Overstrand amendment By-Law on Municipal Land Use Planning 2020

- The Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020 grants legislative competence to the MPT (Municipal Planning Tribunal) and the AO (Authorised Official). The MPT and the AO therefore have the legislative competence to approve areas identified for Public Trading in terms of the required process for each applicable zoning.

## 6. APPLICATION TYPES AND PROCESS

A permit or lease agreement will have to be obtained depending on the type of occupation, as seen below:

### 6.1 Lease agreement (Additional trading areas)

This will be for trading areas for the purpose of outdoor seating for restaurants or to display goods on the sidewalk outside commercial properties. Although the trading areas are demarcated in terms of this policy, a lease agreement in terms of the Administration of Immovable Property Policy will be required. These applications will be administered and managed by the Property Administration Department. No additional or altered form of use may be incorporated other than stipulated in the lease agreement.

### **a. Seasonal / Special lease agreements**

These agreements will be to trade at specific places for a specific period and/or purpose as approved by the Municipality. These are typically for areas of high demand and limited space, such as seasonal trading at beaches and other demarcated areas on municipal land. Although these trading areas are demarcated in terms of this policy, a lease agreement in terms of the Administration of Immovable Property Policy will be required. These applications will be administered and managed by the Area Managers.

### **b. Ad hoc trading permits**

This is an annual permit issued to anybody applying to trade on specific demarcated trading areas. No trading areas will be allocated, and trading may take place on a first come first service basis. Tariffs will be determined by the municipal Council during the annual budget process. These applications will be administered and managed by the Area Managers.

### **c. Events trading**

This will be a trading permit which will permit trading at an event which is approved in terms of the Overstrand Municipality: Events Policy. It will be the Event Organiser's responsibility to manage the traders and ensure that the trading is set up and conducted according to the event permit and the approval thereof. The permit will be issued by the Area Manager with the approval of the event.

*Note: The Area Manager's post has been omitted per the new organogram. The events licenses will be evaluated and granted per the new post created as the duly authorised person to perform these duties.*

## **7. Criteria for trading permits and lease agreements**

### **7.1 Criteria for road-side outdoor trading (in front of Business zoned erven) bays**

- Only shop owners directly adjacent to the trading bay will be eligible and will be dealt with according to the Fixed Asset Management Policy.

### **7.2 Criteria for road-side and informal ad hoc trade areas not adjacent to business zoned erven or areas earmarked for public trading.**

- The public trader must be in possession of a valid South African identification document or working permit;
- There must be sufficient product diversity in an area to ensure the needs of consumers are appropriately met as well as ensuring sufficient market share for traders, for them to operate profitably; and
- In the case of foodstuffs, the trader must be in possession of the required business license and certificate of acceptability by the Overstrand District Municipality.

### 7.3 Criteria for Event trading

- Dealt with according to Events Policy

## 8. PERMITS

The municipality will consider the following factors when considering an application for a permit:

- The applicant's ability to meet the trading hours for the relevant trading area as the municipality may determine;
- The need to give preference to applicants that are historically disadvantaged individuals;
- The nature of the trading goods which the applicant intends selling, or the services which the applicant intends rendering, bearing in mind the nature of the businesses within that trading area or in its immediate vicinity;
- The need to give preference to unemployed applicants; and
- The applicant who shares a household with a permit-holder is not a dependent or financially reliant upon such permit-holder.

Other conditions:

- No person may conduct trading on municipal land without a valid lease agreement, permit or approval as issued by the municipality; and
- The municipality may charge an application fee and a trading fee.

## 9. ASSISTANCE TO ENTREPRENEURS SEEKING TO START TRADING

### 9.1 Trader's support strategy

- Support for traders is provided through a Department as delegated by the Municipal Manager.

### 9.2 Provision of infrastructure

- **In certain instances**, the municipality provides basic infrastructure to traders by utilizing its capital budget to build shelters for public traders. The structures that are built are rented to the traders under condition as contained in the lease agreement. Ad hoc infrastructure may include toilet facilities, hand basin and wash up areas.

## 10. TARIFF STRUCTURE

The tariff as included in Council's annual budget or in specific cases as may be decided by a professional valuer.

## 11. LAW ENFORCEMENT

To ensure, a clean, safe and healthy environment for Overstrand's residents and visitors, the conduct of traders will be strictly monitored. Anti-social and other unruly behaviour will be viewed as misconduct.



- No trader will be permitted to continue such business in a manner, which creates a nuisance, is a danger or threat to public health and safety, or damages any Council property;
- Disciplinary and appeal procedures will be dealt with as outlined on page 32 in paragraph 62 in the Municipal Systems Act 32 of 2000;
- Where a trader violates the permit conditions, he/she will be informed in writing of the violation and the course of action. Permit fees will not be refundable if the permit is revoked or suspended;
- Disciplinary measures could include a warning, a suspension for a specified period or the total withdrawal of such trading permit;
- The trader will have the opportunity to put his/her case forward at an inquiry and he/she will be permitted to submit written representations to the Municipal Manager or delegated official; and
- In the case of a trader being refused a permit or having his/her permit revoked, the appeal procedures will be followed through the Appeals Committee. In terms of the Municipal Systems Act, should the complaint be about a Council Official it must be referred to the Municipal Manager, should the complaint be about the Municipal Manager it should be referred to the Executive Mayor.

#### 11.1 Removal and impoundment

- A Law Enforcement Officer may remove and impound any goods of a Public Trader which he/she reasonably suspects is being used, has been used or is intended to be used for or in connection with public trading which is in contravention of this policy or any other applicable law.
- The removal and impoundment of goods may be conducted irrespective of whether or not such goods are in the possession or under the control of any third party at the time.
- Any Law Enforcement Officer who removes and impounds must, except where goods have been left or abandoned, issue the Public Trader a receipt which:
  - itemizes the goods to be removed and impounded;
  - provides the address where the impounded goods will be kept;
  - states the period of impoundment;
  - states the terms and conditions which must be met to secure the release of the impounded goods;
  - states the impoundment fee to be paid to secure release of the impounded goods;
  - states the terms and conditions on which unclaimed goods will be sold or otherwise disposed of; and
  - provides the name and address of a municipal official to whom any representations regarding the impoundment may be made and the date and time by which representations must be made.
- The Municipality may at any time after the impoundment sell, destroy or otherwise dispose of:
  - impounded perishable goods if the goods represent or might represent a health risk or a nuisance; and
  - Foodstuffs that are unfit for human consumption.
- Impounded goods other than perishable goods may be sold by the municipality if the owner does not, or is unable to, pay the impoundment fee within one month from the date of impoundment of those goods.

- If in the reasonable opinion of a Law Enforcement Officer, a Public Trader is suspected of trading in illegal goods, then those goods may be immediately confiscated and, in the event of such a confiscation, the Authorized Official must immediately surrender the suspected illegal goods to the possession of the South African Police Service.
- When an employee or agent of a Public Trader contravenes a provision of any public trading policy or public trading permit, the Public Trader shall be deemed to have committed such contravention himself or herself unless such Public Trader satisfies the court that he/she took reasonable steps to prevent such contravention.
- A person is guilty of an offence if he/she.
  - Trades without a trading permit or approval;
  - Contravenes any provision of this policy;
  - Contravenes any condition on which a permit has been issued to him or her;
  - Contravenes any provision of an applicable By-Law; and
  - Threatens, resists, interferes with or obstructs any Law Enforcement officer in the performance of official duties or functions in terms of or under this Policy.

## 12. DISPUTE RESOLUTION PROCEDURE

All traders that were informed by the Area Manager or Manager Property Administration Division that their application was unsuccessful or when a permit has to be recalled shall be entitled to appeal such decision in terms of the normal administrative justice process. The process shall be as follows:

- The Public Trader shall request in writing to the Department to furnish reasons why he/she was not successful. The Department must respond within 7 days of receipt of request.
- Once the Department furnishes the Public Trader with reasons, the Public Trader shall be afforded the opportunity to make written representations to an appeals committee dealing with the appeal. The committee shall consist of the Municipal Manager or Delegated Official; and
- Once the ad hoc Appeals Committee has reached its decision, it shall communicate such decision to the Public Trader in writing within 14 days.

## 13. REGULAR REVIEW PROCESSES

The Public Place Trading Policy must be reviewed when necessary to ensure that it complies with the Municipality's strategic objectives and applicable legislation.

<b>POLICY SECTION:</b>	Community Services and Area Management
<b>CURRENT UPDATE:</b>	
<b>PREVIOUS REVIEW:</b>	
<b>APPROVAL BY COUNCIL:</b>	29 November 2023









## Betty's Bay - Commercial Parking Public Place Trading Area





## Betty's Bay - Beach Parking Public Trading Area









**Legend**

 Market trading

**Farm 213/0**

**PROTEA**

**MAIN**

**RIVER**

**MAIN**



**Baardskeerdersbos - Public Place Trading Area**







Legend

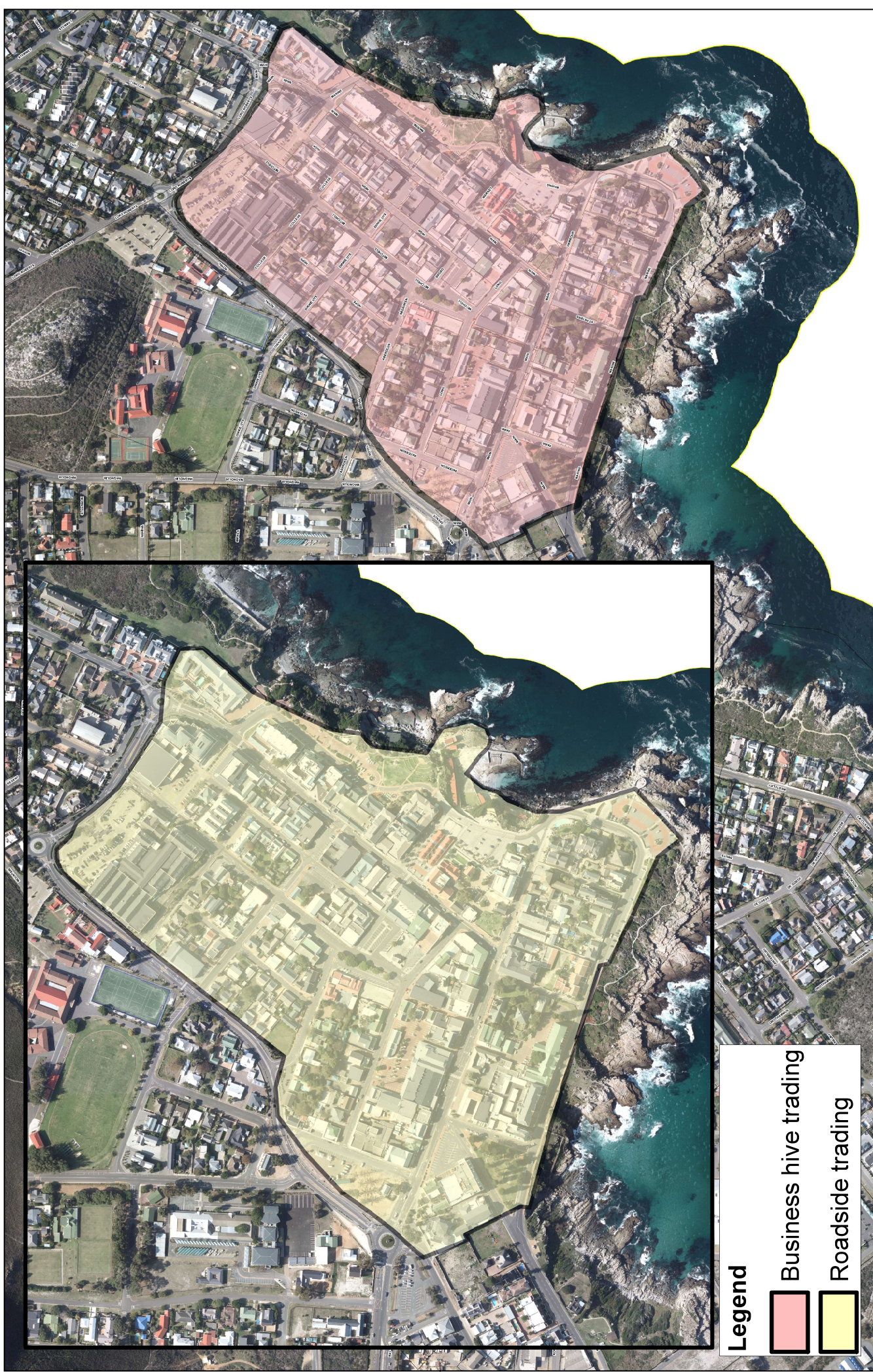


Market trading



Hermanus (Voëklip Skulpiesbaai) - Public Place Trading Area





## Hermanus (CBD) - Public Place Trading Area





## Hermanus (CBD) - Public Place Trading Area

### Legend

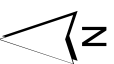


Market trading





# Hawston - Thusong Centre Public Place Trading Area







## Legend

 Market trading



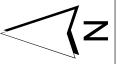
Hawston - Public Place Trading Area











## Franskraal - Beach Public Place Trading Area





## Fisherhaven - Botrivier Lagoon Public Place Trading Area





## Eluxoweni - Public Place Trading Area

Legend

Market trading







Erf 243



Erf 7248

MALVA

POT POURRIE

Legend



Market trading



Zwelihle & Mount Pleasant - Public Place Trading Area









## Voëlklip & Kammabaai - Public Place Trading Area



Erf 645/0 & 443

Unregistered erven

**Legend**

 Market trading



Stanford - Public Place Trading Area







Legend



Market trading

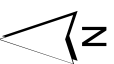
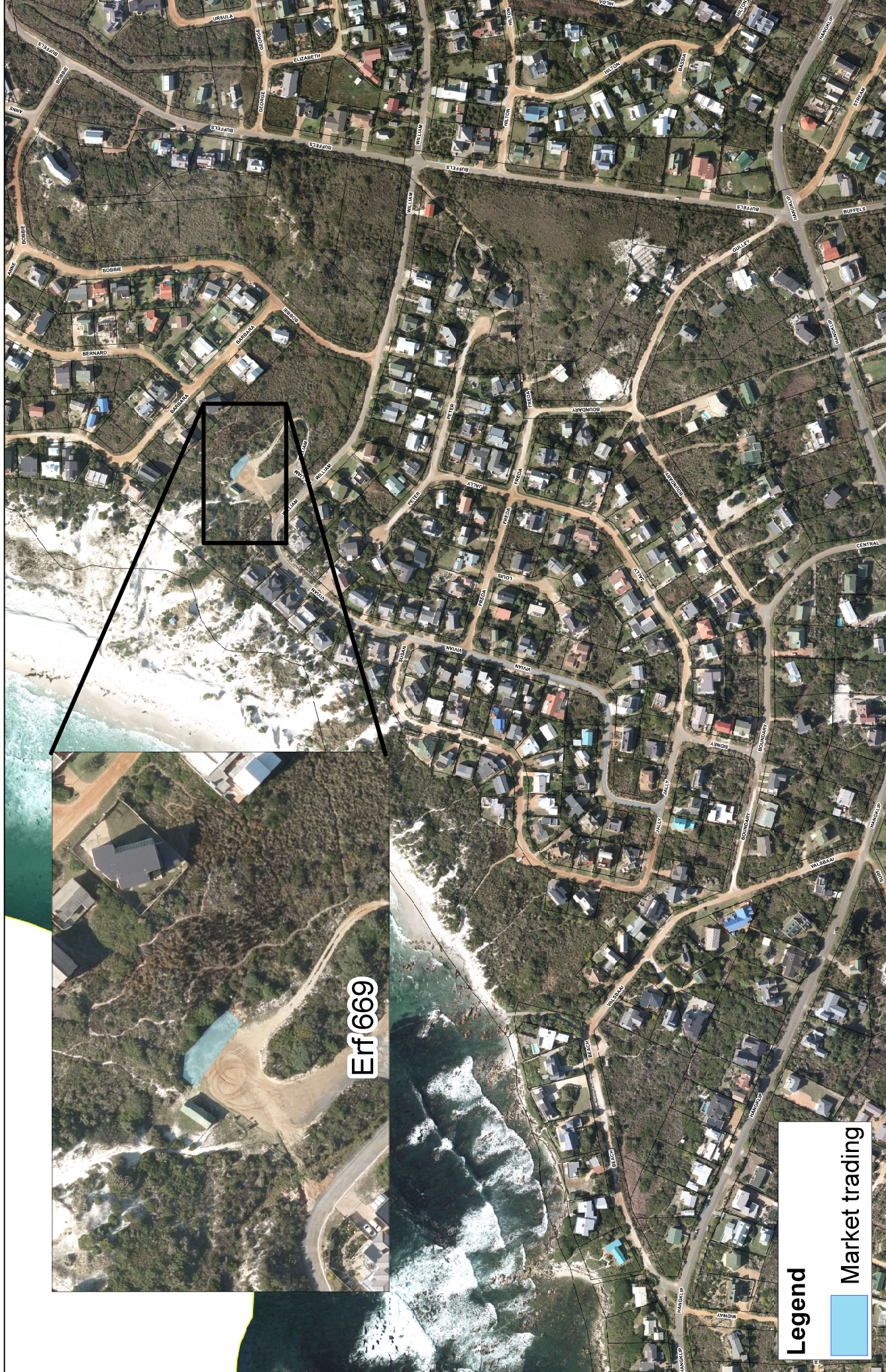
## Sandbaai - Public Place Trading Area





## Pringle Bay - Community Hall Trading Area





# Pringle Bay - Beach Public Place Trading Area





Legend

Market trading



Pringle Bay - Community Hall Public Place Trading Area





# Pearly Beach- Public Place Trading Area

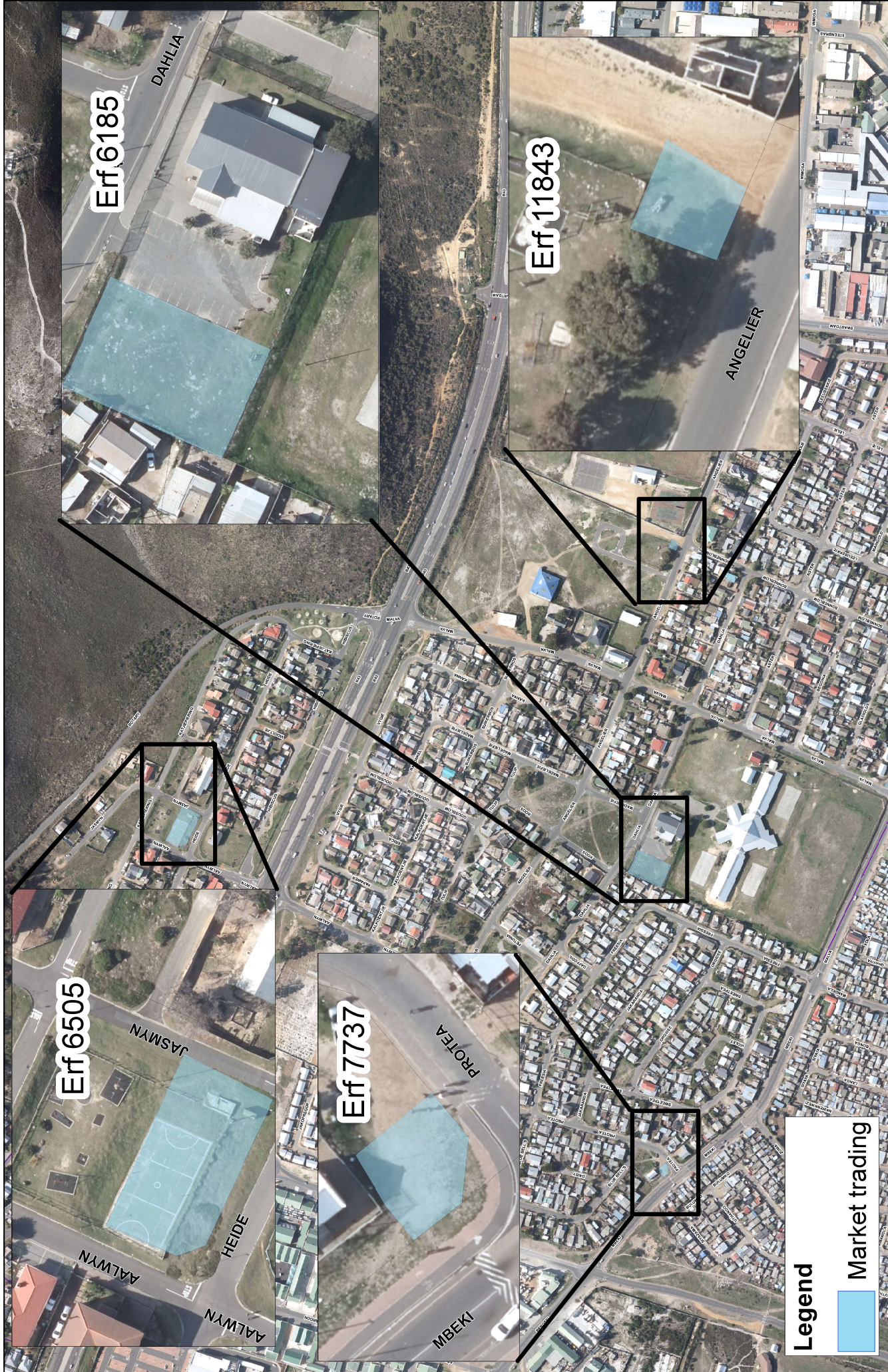












## Mount Pleasant - Public Place Trading Area

















Kleinmond - Beach Trading Area

**Legend**

Market trading





## Kleinbaai - Harbour Public Trading Area