OVERSTRAND MUNISIPALITEIT
GEDEELTE 141 ('N GEDEELTE VAN GEDEELTE 133) VAN DIE PLAAS HANGKLIP NR. 559, AFDELING CALEDON: AANSOEK OM OPHEFFING EN WYSIGING VAN BEPERKENDE TITELAKTEVOORWAARDES, VERGUNNINGSGEBRUIK EN AFWYKING: PLANNING PARTNERS (nms FREE LIFE TRUST)

Kragtens Artikel 47 en 48 van die Overstrand Munisipaliteit Gewysigde Verordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) word hiermee kennis gegee van die volgende aansoeke van toepassing op Gedeelte 141 ('n Gedeelte van Gedeelte 133) van die Plaas Hangklip Nr. 559, naamlik:

Opheffing en Wysiging van Beperkende Titelaktevoorwaardes
Aansoek ingevolge Artikel 16(2)(f) van die Verordening met verwysing na Klousules C.1., C.2., C.3., C.4., C.5., C.6., C.7., C.8., C.9., C.10., C.11. en C.12. van Titelakte T8920/2005, asook die wysiging van 'n beperkende titelvoorwaarde met verwysing na Klousule C.13. van Titelakte T8920/2005.

Vergunningsgebruik
Aansoek ingevolge Artikel 16(2)(o) van die Verordening vir 'n Landboubedryf om 'n distilleerdery, proekamer en 'n plaaswinkel/stalletjie te akkommodeer.

Afwyking
Aansoek ingevolge Artikel 16(2)(b) van die Verordening om die straatboulyn vanaf 30m na ± 23,2m te verslap om die voorgestelde aansoek te akkommodeer.

Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weeksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus, by die Bettysbaai Biblioteek, Clarencerylaan, Bettysbaai en by die RESA kantoor, Anemoneweg, Rooiels.

Enige kommentaar op die voorstel moet skriftelik ingedien word in terme van Artikels 51 en 52 van die voorgeskrewe Verordening by die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) voor of op **4 Junie 2021** met die naam, adres en kontakbesonderhede, belang in die aansoek sowel as redes vir die kommentaar aangedui. Telefoniese navrae kan gerig word aan die **Senior Stadsbeplanner, Me. H van der Stoep** by 028313 8900. Die Munisipaliteit mag weier om kommentare te aanvaar na die sluitingsdatum. Enige persoon wat nie kan lees of skryf nie kan die Departement Stadsbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formuleer.

Munisipale Bestuurder, Overstrand Munisipaliteit, Posbus 20, **HERMANUS**, 7200

Munisipale Kennisgewing Nr. 70/2021

OVERSTRAND MUNICIPALITY
PORTION 141 (A PORTION OF PORTION 133) OF THE FARM HANGKLIP NO. 559, DIVISION CALEDON: APPLICATION FOR REMOVAL AND AMENDMENT OF RESTRICTIVE TITLE DEED CONDITIONS, CONSENT USE AND DEPARTURE: PLANNING PARTNERS (obo FREE LIFE TRUST)

Notice is hereby given in terms of Sections 47 and 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) of the following applications applicable to Portion 141 (a Portion of Portion 133) of the Farm Hangklip No. 559, namely:

Removal and Amendment of Restrictive Title Deed Conditions
Application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions with reference to Clauses C.1., C.2., C.3., C.4., C.5., C.6., C.7., C.8., C.9., C.10., C.11. and C.12. of Title Deed T8920/2005, as well as the amendment of a restrictive title condition with reference to Clause C.13. of Title Deed T8920/2005.

Consent Use
Application in terms of Section 16(2)(o) of the By-Law for an Agricultural Industry to accommodate a distillery, tasting room and a farm shop/stall.

Departure
Application in terms of Section 16(2)(b) of the By-Law to relax the street building line from 30m to ± 23,2m to accommodate the proposed application.

Full details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department : Town Planning at 16 Paterson Street, Hermanus, at the Betty's Bay Library, Clarence Drive, Betty's Bay and at the RESA Office, Anemone Road, Rooiels.

Any written comments must be submitted to the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) in accordance with the provisions of Sections 51 and 52 of the said By-law on or before **4 June 2021**, quoting your name, address and contact details, interest in the application and reasons for comment. Telephonic enquiries can be made to the **Senior Town Planner, Ms. H van der Stoep** at 028-313 8900. The Municipality may refuse to accept comment received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a Municipal official will assist them to formulate their comment.

Municipal Manager, Overstrand Municipality, P.O. Box 20, **HERMANUS,** 7200

Municipal Notice No. 70/2021

UMASIPALA WASE-OVERSTRAND INXALENYE 141 (INXALENYE YENXALENYE 133) YEFAMA HANGKLIP NO. 559, ICANDELO LASECALEDON: ISICELO SOKUSUSWA NOKUHLENGAZISWA KWEMIQATHANGO YESIQINISEKISO SESIQINISEKISO, UKUSETYENZISWA KWEMVUME NOKUSEKA: AMAQABANE ACHAPHAZAYO (egameni le FREE TRUST)

Kukhutshwa isaziso ngokumayela neCandelo 47 no 48 loMthetho kaMasipala waseOverstrand ka-2020 woYilo Ukusetynziswa Nokucetyewa koMhlaba Otshintshiweyo (Umthetho kaMasipala), ukuba kufunyenwe ezi zicelo zilandelayo ezimalunga neCandelo 141 (Inxalenye Yenxalenye133) leFama iHangklip No 559 ukuba:

Ukususwa nokuLungiswa kwezithintelo kwiMiqathango yeTayitile
Imeko Zetayitile
Isicelo ngokweCandelo le-16 (2) (f) loMthetho kaMasipala wokususwa kwemiqathango yesithintelo setayitile ngokubhekisele kumagatya C.1., C.2., C.3., C.4., C .5., C.6., C.7., C.8., C.9., C.10., C.11. kunye no-C. 12. Itayitile yobunini T8920 / 2005, ngokunjalo nokulungiswa kwemiqathango yesithintelo setayitile ngokubhekiselele kwiGatya C.13. Itayitile yobunini T8920 / 2005

Imvume Yosetyenziso
Isicelo ngokweCandelo le-16 (2)(o) loMthetho kaMasipala woShishino lwezoLimo ukulungiselela indawo yokuphelisa izixhobo, igumbi lokungcamla kunye nevenkile / ivenkile.

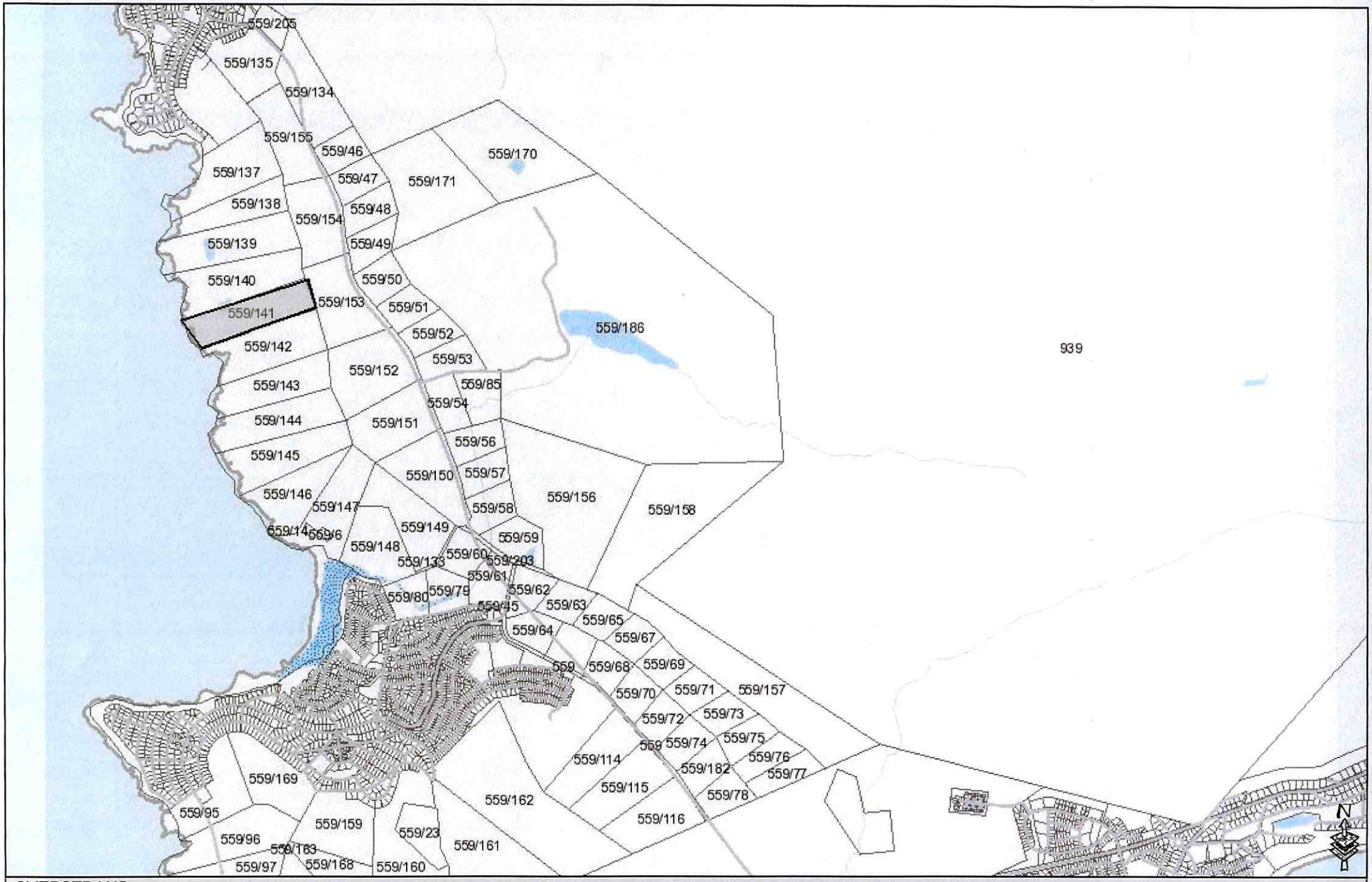
Ukuphambuka
Isicelo ngokweCandelo le-16 (2)(b) loMthetho kaMasipala sokulungisa ulayini wesitalato ukusuka kwi-30m ukuya kwi- ± 23,2m ukulungiselela isicelo esicetywayo.

Iinkcukacha eziphele leyo mayela nesi sindululo ziyafumaneka ukuze zihlolwe phakathi evekini phakathi ko 08:00 no 16:30 kwiSebe: Loyilo Dolophu 16 Paterson Street, Hermanus. nakwiThala leencwadi laseBetty's Bay, Clarence Drive, Betty's Bay and at the RESA Office, Anemone Road, Rooiels.

Naziphi na izimvo ezibhaliweyo mazingeniswe kuMasipala (16 Paterson Street Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) ngokumayela nezibonelelo zamaCandelo 51 nele 52 lalo Mthetho kaMasipala Wasekuhlaleni ingadlulanga i-**4 uJuni wama 2021**, ubhale igama lakho, idilesi yakho kunye neenkcukacha zoqhagamshelwano, umdla wakho kwisicelo nezizathu zokubhala izimvo zakho. Imibuzo ngefowuni ingabuzwa ku-**Senior Town Planner, Ms. H. van der Stoep** ku 028-313 8900. UMasipala angangavumi ukwamkela amagqabaza okuhlomla afunyenwe emva komhla wokuvala. Nabani na ongakwaziyo kufunda okanye ukubhala angatyelela iSebe lokuCeba Idolophu apho igosa lakwamasipala liya kumnceda afake amagqabaza okuhlomla.

Umphathi kaMasipala, Overstrand Municipality, P.O. Box 20, **HERMANUS,** 7200

Isaziso sikaMasipala No. 70/2021



OVERSTRAND MUNICIPALITY

Farm Hangklip 559/141

Date: 2018-01-30

1. INTRODUCTION

This application is submitted on behalf of the Trustees for the time being of The Free Life Trust, the registered landowner of Portion 141 of the Farm Hangklip No 559 Caledon. The property is currently used for residential purposes and includes a dwelling house with a separate outbuilding, a disused horse stable and a small dam. The property is one of a number of smallholdings situated between the coastal villages of Pringle Bay and Rooi-Els within the jurisdiction of Overstrand Municipality. A micro-distillery and associated farm shop is proposed in the disused stable on the subject property. This will require a modest addition to the former stable building. To permit this proposal the following planning applications are necessary:

- Obtain consent for an "*agricultural industry*" and *"farm shop/stall"*,
- Obtain a street building line departure,
- Deletion and amendment of restrictive title deed conditions, and
- Obtain consent to permit "Commercial" activity and "Construction or placement of any permanent object, building, shelter, pathway or structure", as required by the Environmental Overlay Zone Regulations.

The current owners of the property (Leigh and Monique Elves), who also reside permanently on the property, propose to convert the disused stables into a micro-distillery that will produce small batches of bespoke whiskey and gin in handcrafted copper stills. Personalized tours and tastings will also be offered. The proposal will be beneficial from both a local and regional perspective. It represents a "re-cycling" or re-use of an existing building which is no longer used for its original purpose, and will contribute, albeit in a small way, to sustainable economic activity with minimal impacts on the surrounding area.

It needs to be emphasized that the proposal is not a distillery of an industrial scale with concomitant impacts on utility services, traffic generation and waste by-products. The business model has been specifically formulated to make provision for a small scale, family run micro-distillery that is appropriate for the site and its context. The distilling process and business model are described in this report in order to dispel possible misconceptions about the proposal. It is submitted that the proposal is desirable, appropriate, and worthy of approval.

This is a new application and the process for notification and assessment must start afresh based on the information provided in this report. However this application makes use of information gained during a previous application process submitted on 23 January 2018 and subsequently withdrawn on 24 June 2020. The withdrawal of an application is permitted in terms of section 45(1) of then Overstrand Municipality By-Law on Municipal Land Use Planning, now amended as gazetted on 7 August 2020 ('Planning By-Law 2020'). The reasons for the withdrawal were to refine and supplement the written motivation for the application and to undertake further investigations in relation to the restrictive conditions of title.

The necessary supporting documents are included in the associated ***Annexures***.

2. COMPONENTS OF THE APPLICATION

This application contains a number of component applications as provided for in the Planning By-Law (2020). These are described below.

2.1 Consent Uses

Application is submitted in terms of Section 16(2)(o) of the Planning By-Law 2020 to obtain Consent for the establishment of an "a*gricultural industry*" and a *"farm shop/stall"* on Portion

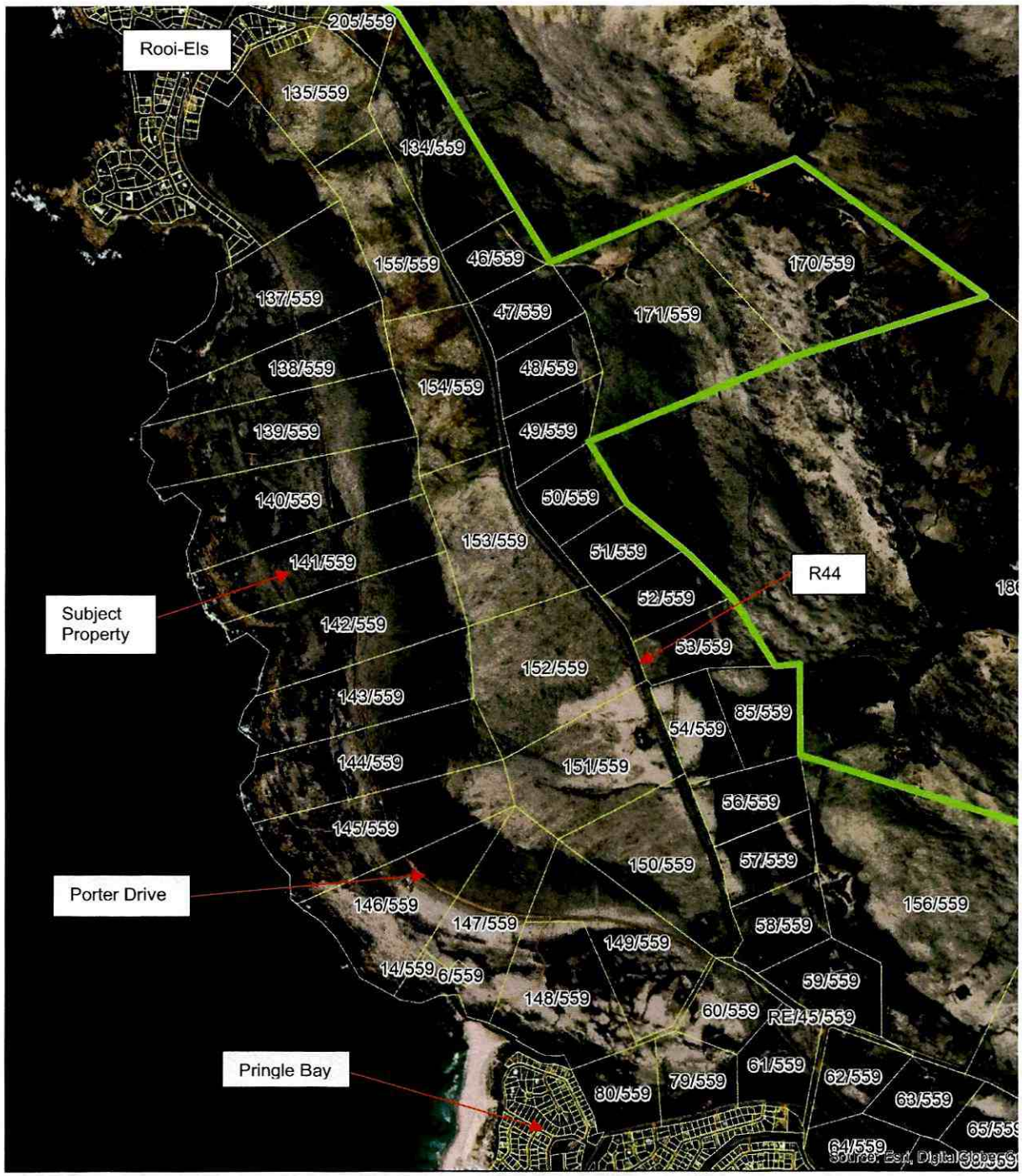


Figure 1: Local Context

141 of the Farm "Hangklip" No 559 Caledon, as provided for in Part 2: Chapter 5, Section 5.1.1(b) of the Overstrand Municipality Land Use Scheme (2020)('Land Use Scheme 2020').

Application is also submitted for Consent to permit "Commercial" activity and "Construction or placement of any permanent object, building, shelter, pathway or structure", as required by the Overstrand Municipality Environmental Overlay Zone Regulations 2020.

2.2 Building Line Departure

Application is submitted in terms of Section 16(2)(b) of the Planning By-Law 2020 to obtain a regulation departure from Chapter 2, Section 5.1.2(b)(i) of the Land Use Scheme (2020) to reduce the street building line from 30m to 23.2m.

2.3 Deletion and Amendment of Restrictive Conditions of Title

Application is submitted in terms of Section 47(1) of the Spatial Planning and Land Use Management Act, 16 of 2013 (SPLUMA) and Section 16(2)(f) of the Planning By-Law to delete restrictive title deed condition C(1) to (13) contained in Deed of Transfer T8920/2005 save for a portion of clause C(13), namely that "No public garages or filling stations shall be erected on the land".

3. SUMMARY OF BASIC INFORMATION

Farm Number & Portion	141 (a Portion of Portion 133) of the Farm "Hangklip" No 559
Registration Division	Caledon
Registered Owner	The Trustees for the time being of The Free Life Trust
Title Deed Number	T8920/2005
Extent	21.9052 ha
Address	Porter Drive, Pringle Bay
Mortgage	None
Zoning Scheme	Overstrand Municipality Land Use Scheme (2020)
Existing Zoning	Agriculture Zone 1: Agriculture (AGR1)
Existing Use	Residential dwelling, outbuilding, small dam & disused stables
Restrictive Conditions of Title	Yes, conditions relating to water rights for the benefit of erf holders & Local Authority of Rooi-Els. A number of conditions are included in the title deed for the sole benefit of Hangklip Beach Estates Ltd, which affect the application.
Current Application	Consent to permit an "*agricultural industry*" and *"farm shop/stall";* regulation departure to reduce the street building line; deletion and amendment of restrictive conditions of title.

4. TOWN PLANNING CONTEXT

4.1 Locality

Portion 141 of the Farm 559 is situated in the Overstrand Municipality's jurisdiction between the coastal villages of Pringle Bay and Rooi-Els. ***Figure 1*** is an aerial photograph that identifies the subject property and its local context. The existing cadastral boundaries have been superimposed in yellow, while the boundary of the Kogelberg Nature Reserve, which lies to the east of the property is indicated in green. The property is part of a broad area including nature reserves, farms and towns that lie within the Kogelberg Biosphere Reserve.

Figure 2 shows the regional context, from which it can be seen that the Overstrand Municipality forms part of the Overberg District Municipality. Pringle Bay is ±85 km from Cape Town city centre and ±60 km from Hermanus. The area is accessible to visitors from Cape Town and the local economy benefits from tourists who visit the attractions found in the district.

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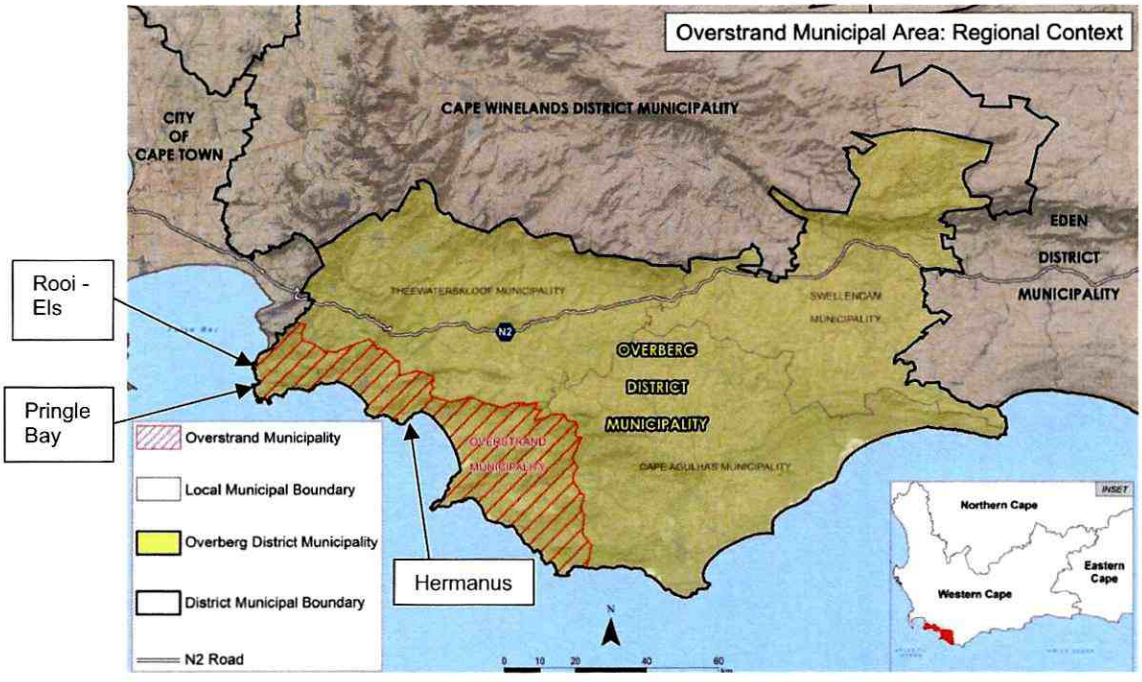


Figure 2: Regional Context

Source: Overstrand Municipality Draft SDF (January 2020)

The subject property is one of a number of smallholdings bounded by the Atlantic Ocean to the west, the foothills of the Kogelberg Mountains to the east and bracketed by Pringle Bay to the south and Rooi-Els to the north. The R44, which is a provincial tarred road, provides the primary vehicular route between Pringle Bay and Rooi-Els.

It is noteworthy that at one time the main route up the coast was along Porter Drive and this was originally designated as a Provincial Road. The Provincial Road authorities subsequently deproclaimed Porter Drive in favour of the R44. Some people have misunderstood this to mean that Porter Drive was closed as a public road, but this is not the case. The deproclamation meant that the status of Porter Drive changed from a Provincial Road to a Local Authority Road. The Surveyor General has confirmed that this road remains a public road in his records.

Both Pringle Bay and Rooi-Els are well known holiday destinations due to the magnificent natural setting and ease of accessibility, although the range of amenities is limited. The subject property is well suited for the establishment of a boutique micro-distillery that will have very limited impact on the natural, built or social environment.

4.2 Land Use

Figure 3 is an aerial photograph of the smallholdings between Pringle Bay and Rooi-Els and shows existing residential dwellings with a red triangle. All the dwellings and ancillary structures are situated on the ocean side of Porter Drive, a fact which will not be changed by

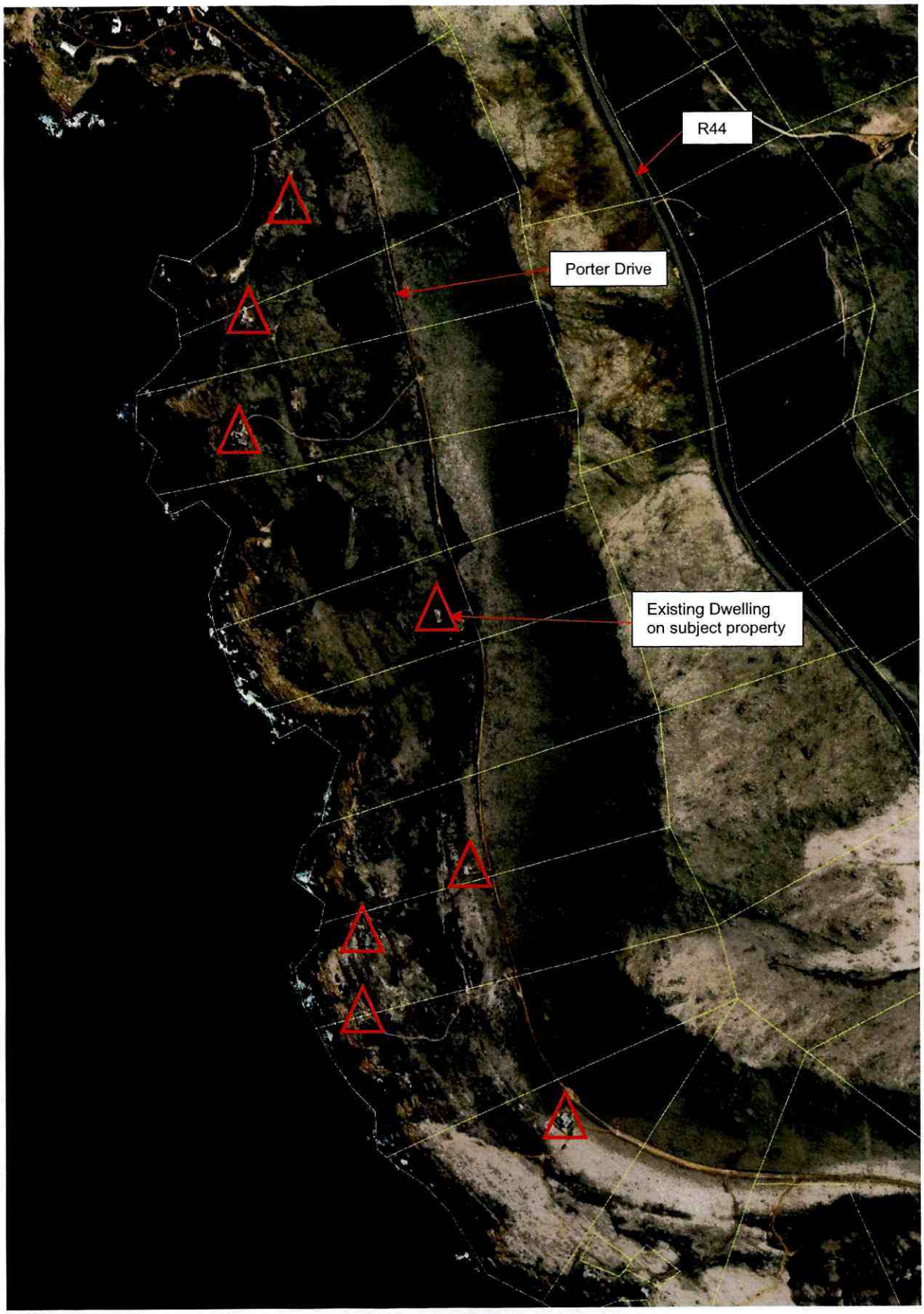


Figure 3: Existing Dwellings on the Small Holdings

this application. There are eight existing dwellings on the various smallholdings, and the subject property has vacant properties on either side.

Most of the existing dwellings are located close to the ocean and away from Porter Drive. The subject property is one of the few that has buildings close to Porter Drive. It is evident there are few activities of a commercial nature on these smallholdings and they are primarily used as holiday homes. As a consequence, their contribution to the local economy is very limited. However, some properties are rented out to visitors for accommodation and one property is occasionally used for film or advertising shoots.

Figure 4 is a photograph of the dwelling, former stable and grove of gum trees on Portion 141 as viewed from the hillside above Porter Drive. The outbuilding is not visible in this photograph and is behind the grove of gum trees.

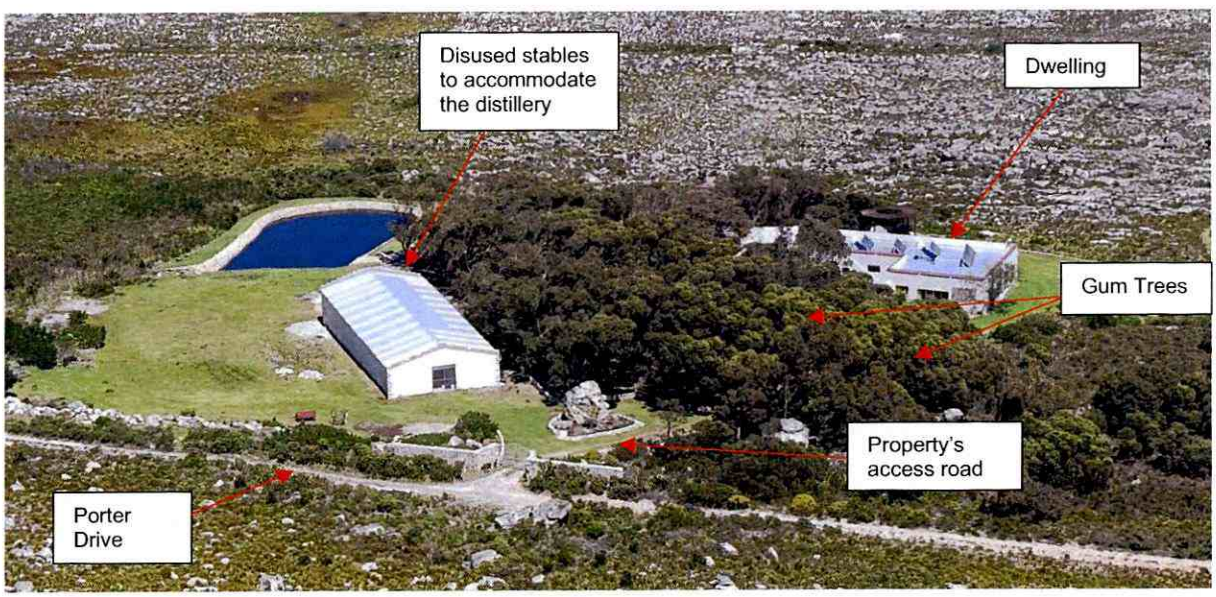


Figure 4: View of Former Stables and Residential Dwelling

Porter Drive, while classified as a municipal road, is a gravel road that is gated at the Pringle Bay and Rooi-Els sides. It is understood that the installation of a gate on this road was an attempt by the community to prevent poachers from easily accessing the sea from this route and to limit access generally in order to better protect bird life in the area.

Residents of the smallholdings make use of vehicles on this road, but access by other vehicles is discouraged. However birders, hikers and cyclists can use the road via a pedestrian access. The Rooi-Els gate has been upgraded and operates remotely, but the gate at the Pringle Bay side requires manual operation.

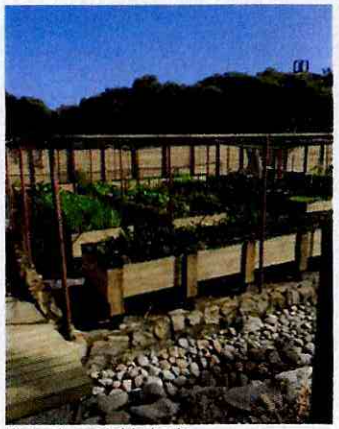
Portion 141 of Farm 559 was originally purchased in 1964 and shortly thereafter the main house was built. A stable for 14 horses with saddle rooms and amenities was added in 1987. A copy of the approved building plan for the stables is contained in ***Annexure 6***. The property was bought by the current owner in 2005. The family reside permanently on the property and enjoy a low key rural lifestyle. They have a vegetable patch, small fruit orchard and keep chickens, ducks, and sheep. The existing stable is surrounded by kikuyu grass and the Elves have built a low stone wall to prevent the grass from encroaching into the fynbos. A gum tree stand is also situated on site. ***Figure 5*** contains photographs of some of the features on the smallholding and it is evident that this is more than just a coastal holiday home. The Elves

Red area depicts where the new dam was built.

The disused stable.

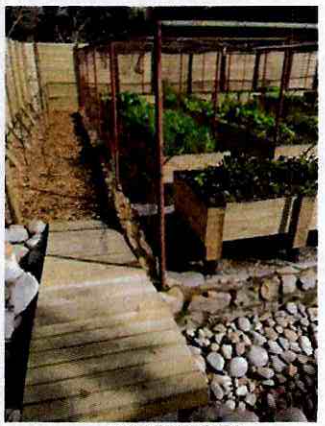
View overlooking the Dam

View of the access road looking towards Porter Drive



Raised vegetable beds.

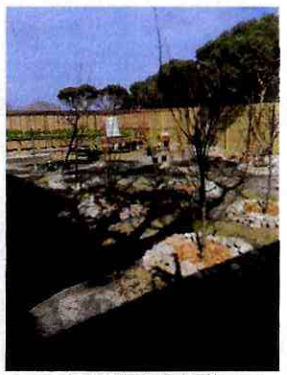
Pear tree espalier.



Vegetable patch.

Fruit trees and chicken coup.

Compost area



Lower fruit orchard

Figure 5: Photographs of Features of Interest on the Small Holding

have made a permanent commitment to establish a sustainable eco-friendly lifestyle on the property.

Figure 6 is a survey prepared by land surveyors, Van Dyk & Associates, and indicates the structures on site, cadastral information, Porter Drive, relevant dimensions, and the proposed addition to the stable structure.

The surrounding area has a rural character due to the large sizes of the smallholdings, relatively few dwellings and location between sea and mountain. This character will not be adversely affected to any significant extent by the proposal. The micro-distillery will be accommodated within the former stables, with a minor extension to this structure on the south western (ocean) side. Production activities will occur inside the building, and because of the limited scale of the distillery, the intensity of operations will be limited.

4.3 Existing Zoning

Figure 7 is an extract of the municipal zoning map as downloaded from the municipal website.

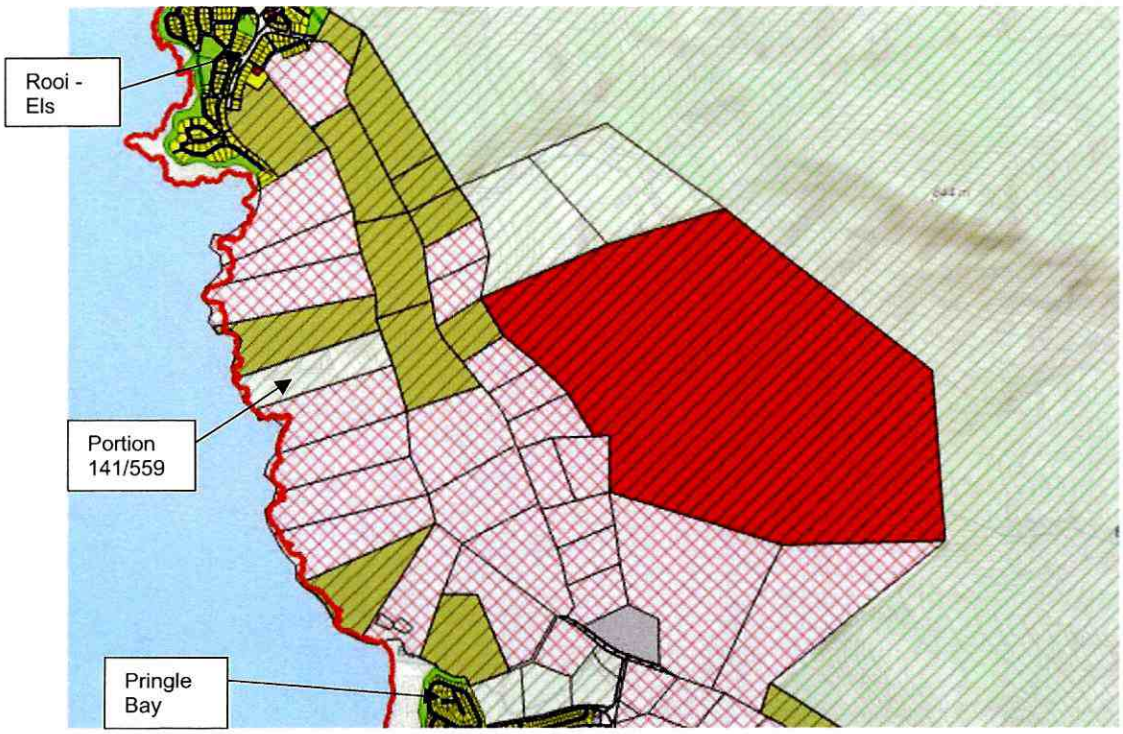


Figure 7: Extract of the Municipal Zoning Map

The zonings of Undetermined (red cross hatch) and *Rural Zone 2: Conservation Usage* (olive green with diagonal hatch) predominate between the ocean and the mountainside, with *Agricultural Zone 1: Agriculture* (green diagonal hatch) predominating as one moves eastwards. The subject property is the only smallholding zoned *Agriculture Zone 1* adjacent to the sea in this area. There is a large property to the east zoned *Utility Zone: Utility Services* (red with a diagonal hatch) and a property to the south east zoned *Community Zone 1: Community Services* (coloured grey).

While the Agricultural and Rural zones are generally understood, the Undetermined zone needs some explanation. The Undetermined zone permits only existing uses and is a mechanism that enables the Municipality to defer a decision regarding other land uses until

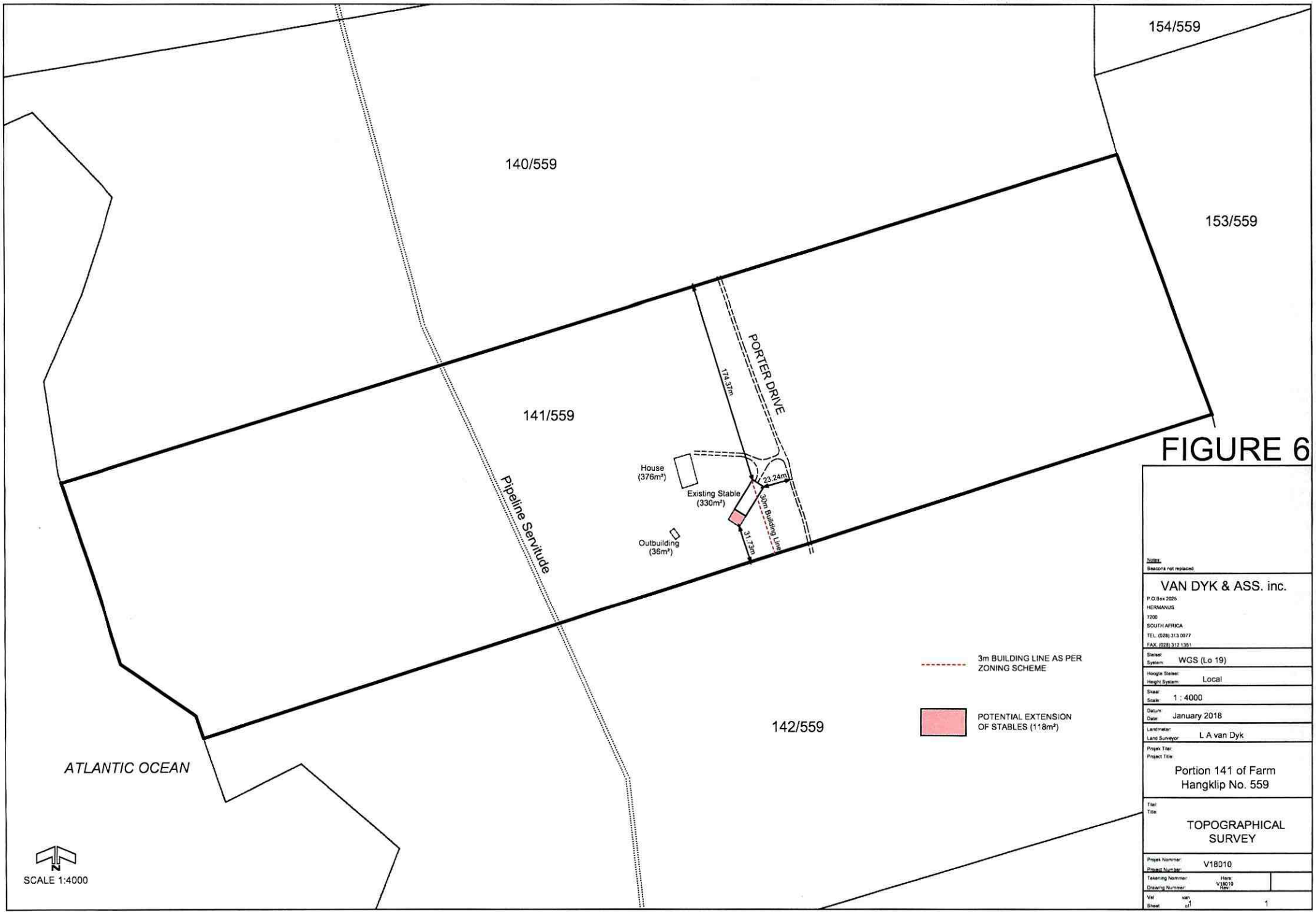


FIGURE 6

Notes:
Beacons not replaced

VAN DYK & ASS. inc.
P.O.Box 2025
HERMANUS
7200
SOUTH AFRICA
TEL. (028) 313 0077
FAX. (028) 312 1351

Stelsel: WGS (Lo 19)
System:

Hoogte Stelsel: Local
Height System:

Skaal: 1 : 4000
Scale:

Datum: January 2018
Date:

Landmeter: L A van Dyk
Land Surveyor:

Projek Titel:
Project Title:
Portion 141 of Farm Hangklip No. 559

Titel:
Title:
TOPOGRAPHICAL SURVEY

Projek Nommer: V18010
Project Number:

Tekening Nommer: V18010
Drawing Nummer: Rev:

Vel: van
Sheet: of 1 1

an application for rezoning is submitted and motivated. It is noteworthy that the subject property is zoned Agricultural as opposed to Rural 2 or Undetermined. This clearly distinguishes the property from its neighbours in terms of potential development since the Agricultural Zone has more opportunities with a range of permitted and consent uses.

Table 1 below lists the Primary and Consent Uses permitted in the three zones that are found in the area, namely Undetermined, Agricultural 1 and Rural Zone 2: Conservation Usage.

Table 1: Primary and Consent Uses

	Primary Uses	Consent Uses
Undetermined	Limited to only lawful uses existing at the operative date of the land use scheme	None
Agricultural Zone 1: Agriculture	Agriculture, creche, dwelling house, guest rooms & home occupation	Additional dwelling units, agricultural industry, animal care centre, aquaculture, day care centre, farm shop/stall, fertiliser plant, guest house, hotel, institution, intensive animal farming, intensive horticulture, lodge, mining, places of assembly, entertainment and instruction, plant nursery, riding stables, service trade, tourist accommodation, tourist facilities, transmission apparatus, utility services, wellness centre and 4 x 4
Rural Zone 2: Conservation Usage	Conservation Use, dwelling house, guest rooms & home occupation	Agriculture, aquaculture, day care centre, harvesting of natural resources, intensive animal farming, intensive horticulture, places of assembly, entertainment & instruction, plant nursery, recreational facilities, 2nd dwelling unit, tourist accommodation, tourist facilities, transmission apparatus & utility services

It is evident that the Agricultural zone of the subject property makes provision for certain activities of a commercial nature. This is particularly the case with consent uses whereby the Municipality can grant consent for a range of enterprises if they are considered to be appropriate to the site and context. The proposed micro-distillery and farm shop/stall are such appropriate enterprises.

4.4 Kogelberg Biosphere and Nature Reserve

The subject property is located within the Kogelberg Biosphere Reserve. According to information released by the Biosphere Reserve on its website, biosphere reserves are "'new concept reserves: no fences to keep 'people' out and 'nature' in". It is the commitment of local communities, farmers, conservation agencies and local government that protects the magnificent landscapes and unique biodiversity". The designated area of the Kogelberg Biosphere Reserve is shown in ***Figure 8***.

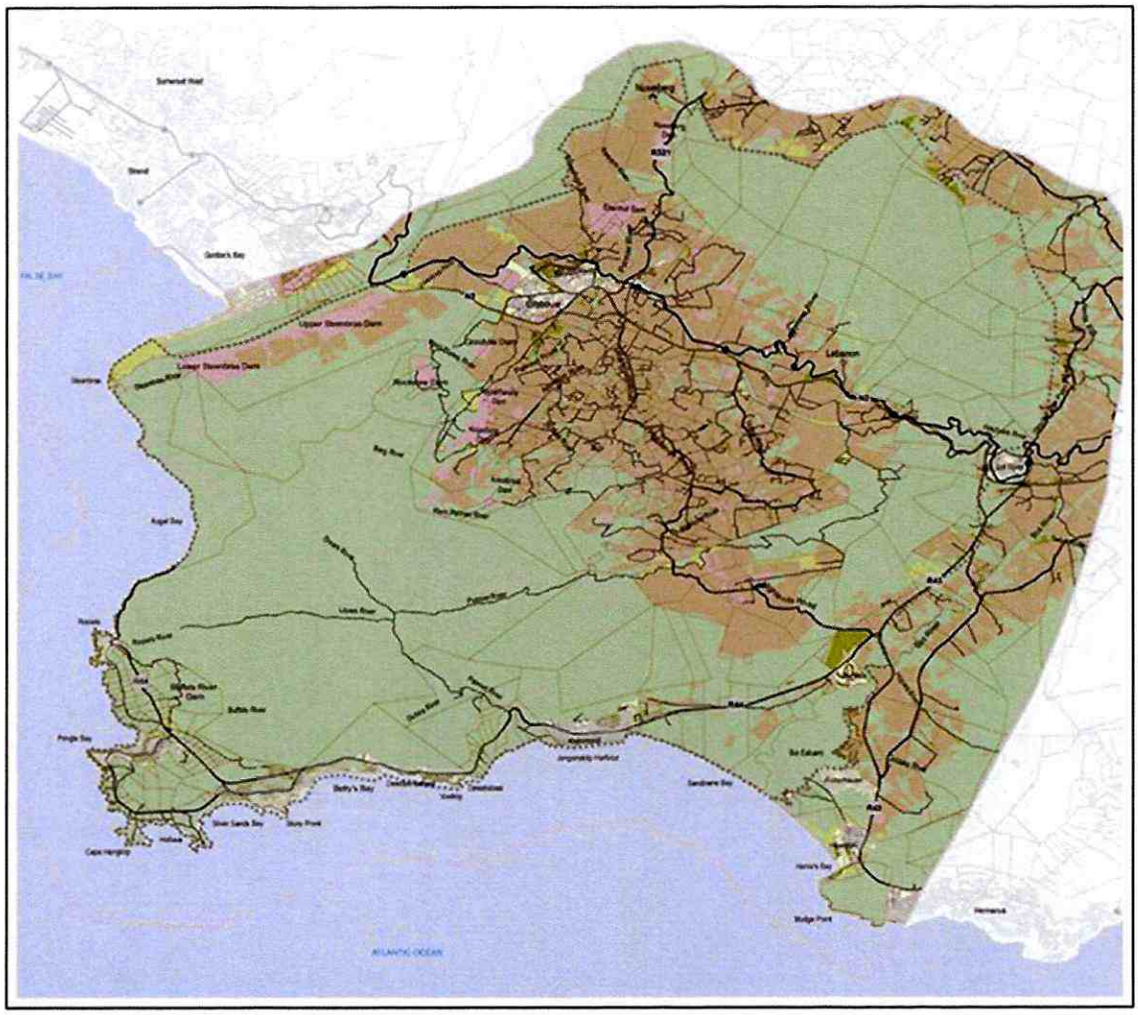


Figure 8: Kogelberg Biosphere Reserve

It is significant that the biosphere reserve incorporates a number of towns including Rooi-Els, Pringle Bay and even Kleinmond within its designated area. The Kogelberg Biosphere Reserve is different to a conventional nature reserve where nature conservation predominates and human activities are minimised. By contrast the biosphere reserve includes within its area a significant permanent and non-permanent population, together with a wide range of economic activities including deciduous fruit farming, wine production, flower production, fruit processing, commercial pine plantations, tourism and even urban development.

The Kogelberg Biosphere Reserve is managed by a private non-profit company, that is steered by a board of directors, and all stakeholders in the region can become members and have an input into the activities of the company.

Economic development is not prohibited within the biosphere reserve, but there is an emphasis on sustainable development and respecting the environmental characteristics and ecosystems of the area. The proposed micro-distillery and associated activities are consistent with the biosphere principles because, amongst other factors, the proposal is of a small scale, recycles an existing building, makes use of renewable resources and operates in accordance with sustainable production processes.

The Kogelberg Nature Reserve, which has world heritage status, also needs to be mentioned. ***Figure 9*** depicts the extent of the three portions (coloured grey) which collectively constitute the Kogelberg Nature Reserve. The subject property is outside the nature reserve and the proposed development will have no impact on the reserve.

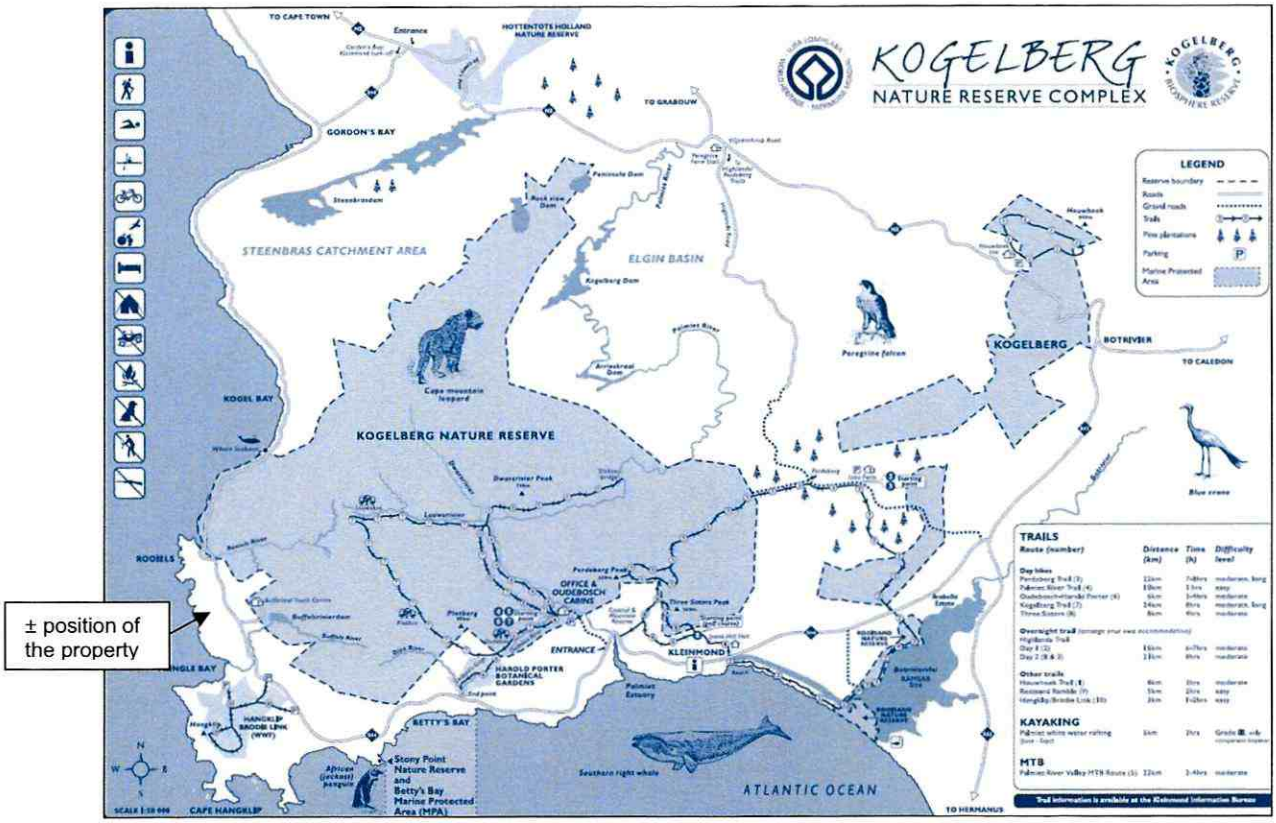


Figure 9: Kogelberg Nature Reserve (Source: CapeNature)

The Kogelberg Nature Reserve and other formally protected areas constitute the core of the biosphere reserve. This sensitive core remains pristine and essentially wild, with a high level of biological diversity. Around the core is a buffer where agriculture and other activities occur. The biosphere concept accommodates both conservation and development, ensuring that sensitive areas and biological diversity are adequately protected, but at the same time allowing human settlement and economic development, particularly in the buffer and transitional areas.

While the subject property is situated inside the Kogelberg Biosphere Reserve, it lies outside the Kogelberg Nature Reserve, and is not part of the core area. The micro-distillery and associated activities will be accommodated within an existing disused stable structure. The production process will not generate harmful impacts on the Reserve, and no alien plant species will be introduced onto the property which could potentially spread to the Reserve.

The operators of the micro-distillery hope to create a synergy between the biosphere reserve and distillery by including a short educational lesson about the reserve when guests visit the distillery to raise awareness about this unique world heritage site. The biosphere concept accepts that development, under controlled conditions and of an acceptable nature, can be accommodated. No negative impacts on either the nature reserve or the broader biosphere reserve are foreseen.

4.5 Existing Title Deed Conditions

Of further relevance to the town planning context and status of the property are the title deed conditions. Before 1984 most properties located in the districts and small villages were not covered by formal zoning schemes. Instead township conditions of establishment were imposed by the Administrator, the provincial authority responsible for township establishment. These conditions usually included specifications relating to use, building lines, coverage etc and included as reciprocal title deed conditions on the registration of all erven falling within the township established.

In some cases, subdivision of land did not involve a prior township establishment process. Sometimes conditions of subdivision were imposed by the local authorities and included as title deed conditions, while sometimes this did not occur. Sometimes land developers included conditions in the title deed that are private conditions, and not conditions imposed by the authorities.

After 1984 zoning schemes became applicable to all properties in the Western Cape and these zoning schemes included provisions to regulate the development of land in terms of use, height, building lines, coverage etc. This created a situation where some properties are affected by zoning regulations relating to use, building lines, height and coverage, and also by different conditions in the title deed dealing with use, building lines, height and coverage. In such a situation both sets of conditions apply, until one or other is amended. Such amendments are very common because contemporary zoning schemes usually have contemporary application, while older title deed conditions often do not.

Portion 141 of Farm No 559 is held under Deed of Transfer T8920/2005. This Deed contains a number of restrictive conditions including Condition "C" which lists 13 limitations and requirements pertaining to the property. Condition "C" in its entirety is reproduced overleaf, while a copy of the SG Diagram and Title Deed are contained in ***Annexures 4*** and ***5*** respectively. Of particular relevance to this application are condition C4, which relates to the distance of buildings from a road, and condition C13 which relates to uses.

The existing disused stable building, which will accommodate the micro-distillery and associated activities, is situated ±23.2m from the road edge (refer to ***Figure* 6**), while the proposed micro-distillery and farm shop/stall are affected by the title deed restrictions against a "shop" and "business premises".

A conveyancer's certificate is included in ***Annexure 7*** prepared by conveyancer, Nikki Malan, of DHM Attorneys, after extensive research which confirms that Condition "C" in its entirety was imposed for the sole benefit of the original land owner (developer), being Hangklip Beach Estates Limited (now Hangklip Beach Properties CC). Although the name of the company has been changed to Hangklip Beach Properties CC, it remains the same company. In this report the company is referred to as Hangklip Beach Company in order to simplify the narrative. The term Hangklip Beach Company will hereafter, where the context is appropriate, apply to both Hangklip Beach Estates Limited and Hangklip Beach Properties CC.

The authorised representative of Hangklip Beach Company, Mrs Elizabeth Wallers, has given written permission to remove Condition C in its entirety save for a portion of C(13) namely that "No public garages or filling stations shall be erected on the land". Copies of the relevant resolution, consent and notice are contained in ***Annexure 8***.

Copy of Title Deed Condition C

C. **SUBJECT FURTHER** to the conditions contained in Deed of Transfer No. T23786/1964 imposed by Hangklip Beach Estates Limited for is sole benefit as owner of the remaining extent of the Farm "Hangklip" measuring as such 1466,0427 Hectares and held by it under Certificate of Consolidated Title No. T3720 dated 17 April 1937, provided always however that if in the said Company's opinion it is expedient the Company may suspend or relax restrictions contained in any of such conditions and then subject to such conditions as the Company may impose:-

1. The owner of this Lot shall without compensation be obliged to allow electricity and water mains to be conveyed across this Lot if deemed necessary by Hangklip Beach Estates Limited and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the Lot at any reasonable time in order to construct, maintain, alter, remove or inspect any manhole, channel, conduct, or other works pertaining thereto.

2. All buildings and other constructional works commenced shall be completed within a reasonable time and if not so completed shall be demolished.

3. No wood and iron buildings or works of any description shall be erected without the consent in writing of the Hangklip Beach Estates Limited and if required the consent of the Local Authority.

4. No building shall be erected within 25,19 metres of any road or within 6,30 metres of any other boundary of the land.

5. All buildings and other constructional works including fences and garden or other gates shall be of good design and sound construction.

6. No noxious trade or activity shall be carried on on the said land.

7. The purchaser shall not have the right to make or cause to be made upon the said land for any purpose other than for use in his own buildings and/or bricks, tiles or earthernware pipes or other articles of such nature nor shall he have the right to dig or quarry any earth, gravel, lime or stone thereon other than for use in his buildings and/or works on the said land.

8. No debris, scrap, or other unsightly material shall be deposited on the said land.

9. .....

10. Access to public roads shall be limited to such points on the said boundary as may be approved by the Provincial or Divisional Council through its responsible Officers or by any other competent authority. It shall be the duty of the purchaser to obtain approval of points of access.

11. No sewage shall be disposed of otherwise than by means of a properly constructed septic tank. No pit or bucket latrine will be permitted.

12. The said land may be used for agriculture and the breeding or keeping of domestic animals, poultry and/or bees provided that no goats or pigs may be kept.

13 No shop, public garages or filling stations, business premises, canteens, bioscopes, factory, or industrial buildings shall be erected on the land nor shall any such business or public entertainment be conducted on the land.

Based on Hangklip Beach Company's consent, the client's conveyancer, Ettiene Genis Attorneys, applied to the Registrar of Deeds in terms of section 68 of the Deeds Registries Act, 47 of 1937. This section relates to the registration, lapsing or cancellation of a personal servitude. Provision is made for cancellation of the registration of a personal servitude in pursuance of an agreement between the owner of the land encumbered and the holder of the servitude. If the property is mortgaged there is a requirement for consent from the mortgagee.

In the case of Portion 141 of Farm No 559 the bond amount has been fully paid and the bond cancelled, and so no bondholder's consent is required. However, the examiner at the Deed's Office rejected the application because he said the Municipality must also give its consent. The examiner believed the provisions of SPLUMA apply.

Section 47 of SPLUMA refers to restrictive conditions and provides that a restrictive condition may be removed, amended or suspended with the approval of a Municipal Planning Tribunal "in the prescribed manner". The definition of a restrictive condition in SPLUMA refers to any condition registered against the title deed restricting use, developent or subdivision of the land concerned. In contrast,the Western Cape Land Use Planning Act, 3 of 2014 (LUPA) definition of restrictive condition excludes servitudes creating real or personal rights.

According to Schedule 1 of SPLUMA, provincial legislation may regulate the removal of restrictive conditions, which may include the determination of procedures pertaining to public involvement, participation, notification, advertising and circulation procedures. The relevant

provincial legislation in the Western Cape is LUPA, but as a result of the different definitions of "restrictive condition", Section 39 of LUPA does not deal with the removal of a restrictive condition in the nature of the title condition under discussion which are "servitudes creating real or personal rights". It is evident that LUPA envisages the removal or amendment of such conditions would be handled by agreement between the owner of the land encumbered and the holder of the servitude.

SPLUMA does stipulate that the authority for the removal, suspension and amendment of restrictive title conditions lies with the Municipal Planning Tribunal, and Section 35 of the Planning By-Law deals with the requirements for the removal, suspension or amendment of restrictive title conditions.

Like the definition in SPLUMA, the definition of "restrictive condition" in the Planning By-Law does not exclude personal servitudes, which it could have done based on the definition in LUPA, which is the provincial legislation passed in terms of Schedule 1 to SPLUMA. There is a resultant uncertainty in the Western Cape about how to remove or amend title conditions which are "servitudes creating real or personal rights". To move past this uncertainty it is considered necessary to apply to the Municipality to amend and delete the relevant restrictive conditions in terms of Section 16(2)(f) of the Planning By-Law and to follow the procedures set out in sections 35 and 36 of the By-Law.

5. NATIONAL ENVIRONMENTAL MANAGEMENT ACT (NEMA) APPLICABILITY

In November 2017, Mr Johan West, an Environmental Assessment Practitioner (EAP), of Green Africa Group, submitted the *Checklist for the Determination of the Applicability of the NEMA EIA Amendment Regulations of 2014* regarding the proposed micro-distillery on behalf of the current land owner.

In January 2018, the Department of Environmental Affairs and Development Planning (DEA & DP) confirmed that, "*...the proposed conversion of existing stables and extension thereof will not result in the triggering of any listed activities in terms of the NEMA EIA Regulations, 2014 (as amended), as the development footprint within 32 m of identified wetlands does not fall within the core area of the Kogelberg Biosphere Reserve and is below the applicable threshold. Environmental authorisation is therefore <u>not</u> required from this Department prior to the development thereof.*"

In addition, the Department noted that, inter alia:

- The site is transformed and the area to be extended into currently contains a garden and lawn, comprising kikuyu grass.
- The property is zoned Agriculture and situated landward of the draft coastal management line.
- An existing access road will be utilised. There is no intention, at this stage, to upgrade this road.
- There are no watercourses within the proposed development site, however, according to available resources, wetlands have been mapped to the south and north of the site.
- The site is located outside the core area of the Kogelberg Biosphere Reserve.
- The portion of the property proposed for development is categorised as an Ecological Support Area.

According to the South African National Biodiversity Institute website, "*Ecological Support Areas are not essential for meeting biodiversity targets but play an important role in supporting the ecological functioning of Critical Biodiversity Areas and/or in delivering ecosystem services.*"

A copy of the letter received from DEA & DP is contained in ***Annexure 9***. A copy of the Determination of Applicability application prepared by Green Africa Group is available on request.

Earlier in 2020 the land owner built a small dam on the subject property for irrigation and fire fighting purposes. It also serves a rehabilitation purpose as it was constructed over that portion of land which had previously been used as a paddock for horses. The paddock had a large concrete structure that may have been used as a watering hole. However, over time it had become dilapidated, broken into pieces and was then smothered with Kikuyu grass. The dam is 30m by 20m which means it is 600m^2 in extent, and is 1 m deep. The land owner was subsequently made aware that environmental authorisation in terms of NEMA was required.

Application has been submitted in terms of Section 24G of NEMA which relates to a person commencing with a listed or specified activity without the necessary permission. The listed activity in this instance is Activity No 12 of Listing Notice 1 of 2014 which relates to the construction of a dam with a physical footprint of 100m^2 or more. In August 2020 Mr West of Green Africa Group submitted the section 24G application to the DEA&DP and the application is being processed by that Department.

Not only is the dam a source of irrigation water supply and a water supply for fire prevention but it is aesthetically pleasing. The EAP concluded that, "*...the dam is an improvement with more benefits than disadvantages for the owner, environment or community*." The dam in the short time of its existence has become a breeding ground for waterfowl. The water body has attracted frogs, geese, kingfishers, swallows and pheasants. The exposed west side of the wall has been rehabilitated with Carpobrotus edulis (sour fig) and a gulley alongside the dam (the overflow) has created a wet area. A copy of the Section 24G application is available on request.

6. THE PROPOSAL

6.1 General Description of the Proposed Distillery and Farm Shop

The picturesque location offers an ideal setting for a bespoke distillery, which will appeal to a small niche market, and is to be known as *Pringle Rock Distillery* (PRD). The distillery will be accommodated in the repurposed stables which will be clad in natural rock, with restored original teak window frames from the Old Cape Town Railway station.

It must be emphasized that the proposed distillery will not be an industrial factory type building that will mass manufacture alcohol. PRD intends for their product to be 100% natural. Distilling is both an art and a science that requires precision and good fractional distillation. It is this science that will give the wonderful silky, smooth mouthfeel that one looks for in a great whiskey.

Today many alcohol producers mass produce and offer quantity over quality. Their mouthfeel is often achieved by adding artificial additives like vegetable glycerine and invert sugars. The same can be said for the colour achieved in producing whiskey. Instead of barrel aging, many manufacturers achieve instant colour by using woodchip in glass or plastic vessels or adding concentrated caramel colouring. Large scale commercial production is produced in continuous column stills that are run 24 hours a day, seven days a week, but the craft distilling process is very different as is explained in this report.

The farm shop component is a small ancillary activity that will occur inside the distillery building. A number of shelves will be installed in the tasting room with local items for sale and will include items served at the tasting, such as chocolate, preserves, nuts, biltong etc and

brand related apparel such as t-shirts and peak caps. The produce will be offered for sale to visitors of the distillery and will not be a general commercial store.

In addition to producing small batches of high-quality whiskey and gin in handcrafted copper potstills, an authentic experience with tastings and private tours of the distillery will be offered to guests.

The tours and tastings at the distillery will be by appointment only. It is intended that guests will be collected from No 16 Central Road (Erf 378) in Pringle Bay and transported by a mini bus or "safari" type vehicle to the distillery using Porter Drive. When the tour is complete, the guests will be returned to No 16 Central Road. This will ensure the privacy of the other smallholdings that use Porter Drive for vehicular access. The controlled manner by which visitors will access the distillery will also help to mitigate potential disturbance of local birds and other fauna. Each group will comprise about 12 people and take 2 to 3 hours. ***Figure 10*** is an aerial photograph of Erf 378 Pringle Bay which is identified with a red outline.

Figure 10: No 16 Central Road Pringle Bay

The proponents of the distillery are in the process of purchasing No 16 Central Road, which currently accommodates a warehouse and office. An agreement has been reached and the necessary administrative procedures are being followed to conclude the transaction.

Parking for about 12 vehicles can be accommodated in the warehouse, while another 6 vehicles can be parked outside the warehouse on the property. This parking will be available for the private vehicles of persons who participate in the tours to Pringle Rock. Visitors can easily be accommodated at No 16 and since this forms part of the commercial precinct at Pringle Bay, there will be no negative impact. The attraction of visitors could even provide some positive impact on the local Pringle Bay economy as people spend time and money at other enterprises in the village before and after their tour to Pringle Rock Distillery.

Figure 11 depicts the initial layout plan for the proposed distillery. The area outlined in red indicates a proposed extension, but the internal layout may be subject to change, with the tasting room increasing in size and the boxing room being omitted. The stills in the bonded storage area may also be decreased in size. Contingent on the approval of this application, a Site Development Plan, depicting both the extension to the existing structure and internal layout will be submitted to the Municipality for approval.

Figure 12 is a photograph indicating (with an arrow) the side of the disused stable that will be extended to accommodate extensions to the distillery.

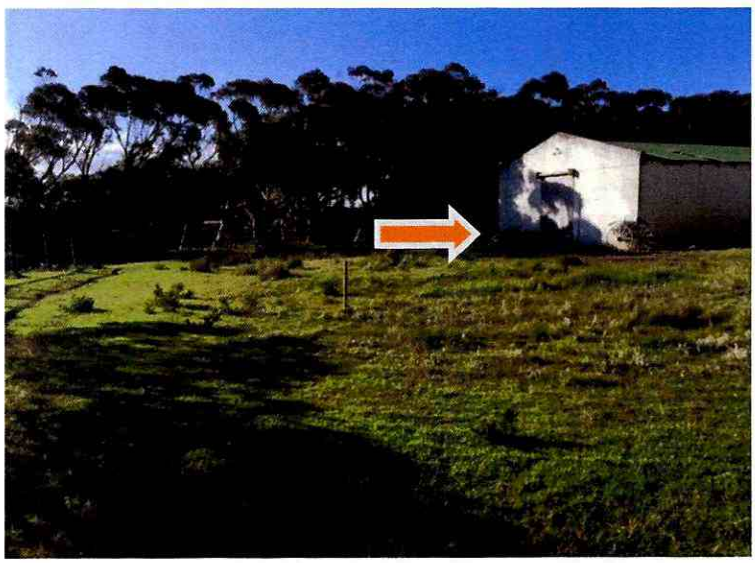


Figure 12: Side of Existing Stable that will be Extended

The tasting room will have a typical "whiskey" feel with aged wood, leather, organic and natural materials. The tour will open with a brief history/education of the area, the neighbouring villages, and the surrounding Kogelberg Biosphere. The tour will include taking the visitors into the "Still House"/Distillery where the copper pot stills are kept and the full whiskey/gin making process will be explained. Visitors will be able to view the bonded storage area where the barrels are kept. Thereafter they will experience a tasting of 4 or 5 of PRD's brands. Bottles of whiskey/gin can then be purchased on the way out.

The outfitting of the tasting room also has its unique history. Old wooden door frames will be restored. To re-create the coastal style, PRD has sourced antique teak window frames that were initially used in the Old Cape Town Station from the mid 1800's. These frames will be used in the distillery tasting room. The view through these framed windows will be of the aging oak barrels. There will also be large picture windows looking out towards the mountains. The raw spirit will be aged in American and French Oak barrels. PRD also intends to purchase casks from a local cooper whose family has owned the cooperage for several generations. The repurposed stable will retain its rustic aesthetic and will be visually unobtrusive. It is intended to erect a discrete sign on the front of the converted stable.

PRD intends to apply for both an "on site" and "off site" consumption license. A previous application for the license was granted on condition that the land use approvals were granted. The consumption license approvals have now lapsed. Once the current land use application has been finalised the process to obtain consumption licenses will be resumed. To qualify for an "on site" license, snacks need to be served. PRD intends to serve a variety of olives, breads, cheeses, preserves, and chocolates, all locally sourced, thereby supporting and

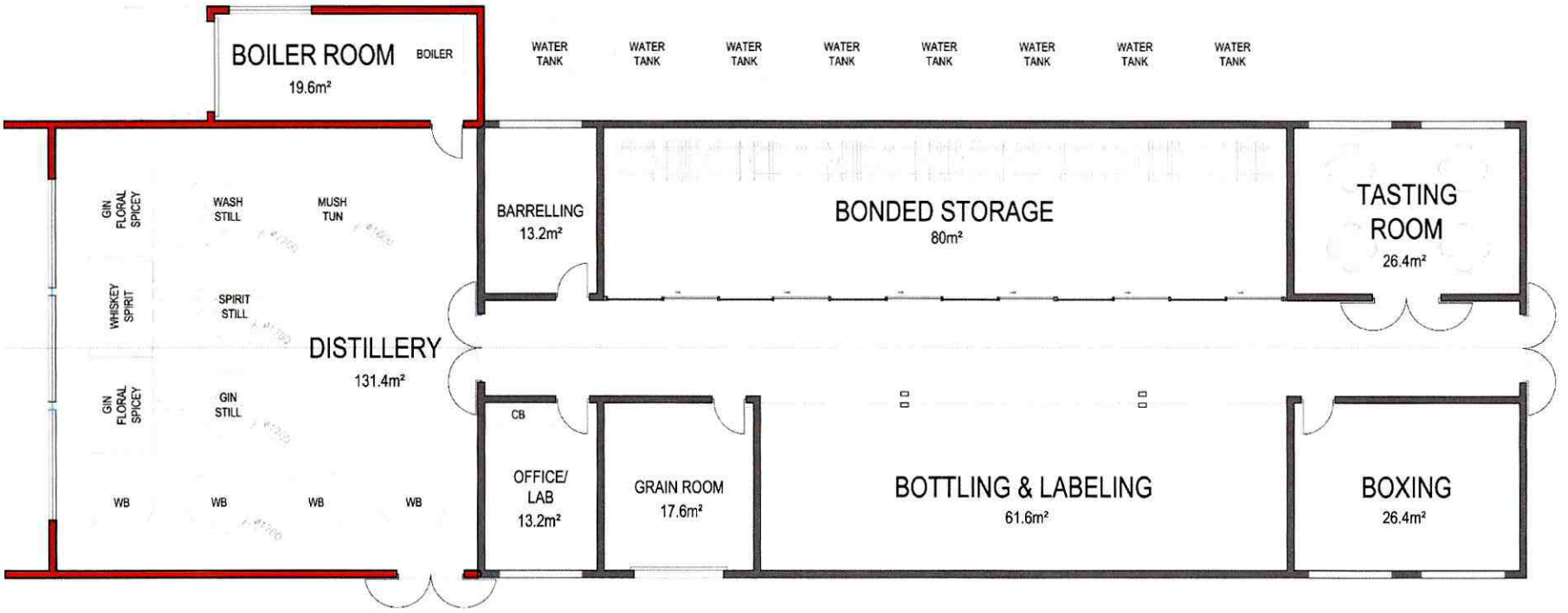


Figure 11: Conceptual Distillery Layout Plan

strengthening the local, rural economy. The "off site" license is needed, as guests will be offered the opportunity to purchase bottles of whiskey and/or gin on completion of the tour.

It is currently foreseen that alcohol production will occur 4 days a week, with the tours being conducted over the weekend. Hours of operation will be between 10:00 and 18:00. Once the distillery is fully operational, the times may change subject to actual demand.

6.2 Ethos of the Landowners

To assist with the evaluation of this application, it is useful to understand the ethos of the proponents who will establish and operate the micro-distillery. The property is both their home, and contingent on the approval of this application, their livelihood as well. The owners have a strong love of the land and its flora and fauna and will operate the micro-distillery to have no negative impacts.

Shortly after purchasing the property in 2004, the Elves noticed that the grass was rapidly encroaching into the natural fynbos. To prevent the grass from further invading the natural fynbos, they built low (knee height) natural stone walls. In September 2018 the family joined the Pringle Bay Hack group which seeks to eliminate alien vegetation in the area. The Elves are in discussion with the local hack groups to form a synergy whereby the hacked alien vegetation will be collected and woodchipped to fuel the water heater for the stills. PRD will purchase a woodchipper for that purpose. The removal and recycling of the cut aliens has the beneficial side effect of helping to remove the problem of what to do with the eradicated alien vegetation and the potential fire hazards this dry alien plant material poses. Since the Elves have lived in this area, they have experienced two fires. Leigh Elves belongs to the Rooiels Firefighters (REDI). As previously discussed, the Elves have built a small dam which will be an essential supply of water in the case of future fires in the surrounding area.

The Elves also germinate indigenous proteas on the smallholding. The Elves collect seeds (February) and germinate protea seed and disperse the seed in March/April. There are many more protea bushes around their smallholding because of this. In winter, the family works to eliminate alien vegetation on the subject property. However, the indigenisation and removal of aliens is a never-ending process as there are always alien seedlings which must be removed. Although some of the locals would like the Elves to remove their glade of gum trees, these trees provide refuge for bird life and the flowers provide bees with nectar in summer when the proteas are not in flower. Although the gum trees are not indigenous, they still offer benefit.

The landowners have an appreciation of, and are sensitive to, the surrounding environment, are active members of their community and have no intention to cause harm to this environment by the establishment and operation of the micro-distillery.

6.3 Overview of the Distillation Process

To avoid possible misunderstanding about the production process, this section provides an overview of the distillation process that will take place at PRD.

The ingredients to be used in the process consist of grain, yeast and water. The critical steps in the distillation process include:

- **Mashing** which is the mixing of grain with water.
- **Fermenting** which is the addition of yeast to the liquid to produce a weak alcohol.
- **Distillation** which is heating the liquid to a steam and the condensing it to a concentrated liquid, and

- **Ageing** after the concentrated liquid has been put into oak barrels for a minimum of three years.

There are 6 steps to the whiskey making process to be followed at PRD as described in ***Table 2***. The same spirit that is produced in the whisky process, will be produced for gin. This spirit will be piped into the ginning still where it will be distilled a third time. This still will contain a ginning basket that will hold botanicals such as citrus, flora, spice, herbs etc. PRD will use some of the local fynbos, which is cultivated on the subject property, in this process. The gin will be bottled immediately. All bottling will take place on the premises. Bottles will be packed into cardboard boxes and transported from the farm in a small delivery vehicle. The ginning process can take up to two weeks.

Table 2: The Whiskey Distillation Process

Step	Action	Description
1	Preparation	The barley grain is grown in Caledon. PRD will use a combination of barley and malted barley. The malted barley is soaked, spread out to dry for a couple of days and allowed to sprout. It is dried and heated to make malted barley. Each spirit run requires 300kg (12 x 25kg bags) of grain. PRD intends to purchase 4 spirit runs worth at a time, collecting 1200kg in a Hyundai H100 bakkie.
2	Mashing	The grain and malted barley are added to warm water, which converts into a liquid known as "mash". This is done in a "mash tun". Twelve 25kg bags of grain will be emptied by hand into the mash tun. A water heater (in a separate room next to the distillery) that is powered by wood from alien vegetation will heat 1500 litres of water to a maximum of 98 degrees Celsius. The heated water flows through stainless steel pipes into the distillery and the hot pipes heat the equipment. This is called a closed-circuit hot water system and is safe with no fire hazard. (This water will be pumped from an open well on the property. The water pump is electric and is noise free). The liquid wash is drained from the mash tun and piped to the fermentation tank (wash back). The "waste" that is left in the mash tun consists of grain husks and fibre, rich in flavour, vitamins and other nutrients suitable for human or animal consumption. This by-product has commercial value but a relative short shelf life (2-3 days). It is in a semi-dry state (approximately 20% moisture). This waste will be used to feed sheep, chickens, ducks and other animals on the property. This waste product can also be used by bakeries to make rusks/health bars. It is also a great composting material. Any excess that is not used on the property will be sold or donated to other farmers and removed off-site in containers with a bakkie. This process takes less than one day.
3	Fermenting	The liquid wash is piped from the mash tun to the fermentation tank (wash back). Yeast is added and approximately a week later the wash will be distilled. During the fermentation process small amounts of CO2 is released. This is piped outside the working area. The wash (alcohol by volume is between six and nine percent) is now piped to the stripping still.
4	Distilling	The wash is piped into the stripping still. PRD use the same heating process as above to heat the still. The heat produces vapour in the still which condenses and comes out as liquid alcohol of ABV 28 to 30%. This alcohol (low wines) is piped into a holding tank (spirit tank) and is about one third of the original volume. The two thirds of the liquid wash left is waste – it consists of dead yeast, grain sediment and more than 80% is water. The liquid is very high in nutrients (especially vitamin B) making it suitable as supplement feed for animals. It can be further processed for human consumption but because the volume is so small it is not feasible. PRD will aerate this liquid and use it for animal feed and for irrigating the vegetable garden. It has a usable shelf life of four to six weeks. The low wines (28 -30% ABV) are then piped into the spirit still. This is the second distillation. The same process occurs as applies in the stripping still. The first bit of spirit (1,5 litres) that comes through the

Step	Action	Description
		condenser is called the "heads". This distilled condensate is rich in methanol and ethanol with less than 10% water. This waste will be used in the distillery as cleaning solvent, sanitiser and for equipment sterilization. After the "heads" have been extracted, then the "hearts" are extracted. This is the spirit used to fill the barrels. This should fill a 250-litre barrel. The last bit to come out of the condenser is the "tails". This is low in alcohol content and will be added to the next stripping process. This process takes less than one day.
5	Aging	The "hearts" (about 250L) are piped into a holding tank and in turn piped into wooden barrels. Here the whiskey ages for at least 3 years in bonded storage.
6	Bottling	The barrelled whiskey is transferred into glass bottles and labelled.

6.4 Specifics about the Distillery

The distillery has been designed to produce one barrel of spirit (250L) per batch or spirit run, and the distillery cannot produce more than one batch per day. As the distillery is essentially a family operation it will not run seven days a week. There is also the need for cleaning, bottling, labelling, fermenting, and mashing that cannot all be processed in one day.

6.4.1 Distillery Operation

The operation of the Distillery will involve the following:

- One spirit run/batch from 300kg of grain barley will produce 250 litres of spirit for barrelling.
- Initially, one bakkie load is envisioned per week. Even at full production (which will take about eight years to reach), only three bakkie loads are envisioned per week.
- One bakkie load is envisioned as collection of the grain barley will be on an "as needed" basis as production might be seasonal – grain supply and weather will influence production.
- Eventually, at full production, about 1000 bottles of whisky and gin will be produced per month.
- The best and most eco-friendly system for the heating system for the stills is a hot water heater that runs off wood chips. This does not produce pressured steam that is dangerous, but hot water that flows through the heating coils. As discussed above, the wood chips will come from the aliens hacked in the local environment.

It is important to appreciate that while the subject property is zoned Agriculture Zone 1 and therefore can be used for cultivation, the land owners do not wish to engage in commercial cultivation for the grains, due to the limited soil potential and substantial fynbos loss.

6.4.2 Projected Employment

Leigh and Monique Elves are both qualified (Distillique) master distillers.

In terms of employment, PRD will employ the following staff:

- A driver to collect the barley, as well as to perform other general tasks.
- An administrative assistant who will do accounts, sales, and bookings.
- A groundsman/caretaker, and
- Seasonally, PRD may employ part time tour guides and assistants to work in the tasting room when necessary.

All advertising, label design and marketing will be outsourced. Of the employees, only the groundsman/caretaker will live on site.

6.4.3 Utility Services

6.4.3.1 Electrical Power

The subject property is not provided with electrical power from Eskom and power is generated by on site solar energy. This is an important fact as it limits the potential growth of the micro-distillery. This the landowners accept as it is in keeping with their ethos of a boutique micro-distillery. Currently, the landowners have a 5 kw solar system which results in surplus power, but will need to be doubled (i.e. to 10 Kw) to provide enough power for the distillery. This increase will be achieved by adding more solar panels and batteries. Electric power will mainly be used for pumps and lighting. All the pumps are smaller than a standard swimming pool pump. Production will be reduced during inclement weather.

6.4.3.2 Water

Approximately 3000 litres of water are required for one spirit run. No municipal supplied water is required for the distillery and only ground and surface water will be utilised. The water used in the distillation process is required for cooling in a closed-circuit cooling system. The water will be piped into the distillery and then piped out again. The water remains in the pipe and does not decrease in quantity or come into contact with anything else.

According to the Breede - Gouritz Catchment Management Agency's letter dated 17 September 2018, the "*...proposed water use includes the abstraction of water from an on-site well to be used in a boutique distillery*. Furthermore, it is stated that, "*...the property may qualify to abstract a maximum volume of groundwater of 400m^3/ha/a for irrigation, industrial and/or commercial purposes. This therefore equates to 400m^3 x 21.9052 ha = 8762.08m^3/a*". This is sufficient for the purposes of running of a micro-distillery. A copy of this letter is contained in ***Annexure 10***.

6.4.3.3 Sewerage

The subject property is not connected to the municipal sewerage system. A septic tank is used for sewage disposal. It is anticipated that the current tank will accommodate the additional amount of sewage that will be generated by staff and guests once the distillery is operational. The tank will be emptied more frequently if needed.

6.4.3.4 Waste Disposal

A Waste Management Plan (WMP) has been prepared by the Green Africa Group for the proposed distillery. A copy of the WMP is contained in ***Annexure 11***. The WMP, "*...plays a key role in achieving sustainable and waste management*." The WMP "*...prescribes measures for the collection, temporary storage and safe disposal of the waste streams associated with the project and includes provisions for the recovery, reuse and recycling of waste*."

The following has been extracted from the WMP.

a) *Waste Management Principles*

An integrated approach to waste management on site is needed. Reducing volumes of waste is a priority. If reduction is not feasible, the maximum amount of waste is to be

recycled. Waste that cannot be recycled is to be disposed of in the most environmentally responsible manner possible.

b) Waste Types at the Distiller

The following types of waste will be generated at the distillery.

Solid Waste: This consists of grain husks and fibre, rich in flavour, vitamins, and other nutrients and suitable for human or animal consumption. This by-product has commercial value but a relatively short shelf life (i.e. 2-3 days). It is in a semi-dry state (about 20% moisture) and easily collected in bins for transport. Not more than 300kg of solid waste will be produced per day.

The solid waste will first be used on the property, thereafter any waste not used on the farm will be removed to the locations listed below in the bakkie when the barley is collected

- to local piggeries, chicken, or sheep farmers for use as animal feed, and
- to local small bakeries/home bakeries for producing health rusks.

These arrangements will help to supplement the income derived from the distillery.

Packaging Waste: During the normal course of business, packaging material from received goods will be discarded or returned to suppliers. The non-returnable packaging waste consists of small amounts of plastic bags and cardboard boxes. These will be separated before disposal and arrangements made for re-cycling. Not more than 20 kg of plastic, cardboard boxes and other packaging waste will be produced per week.

Liquid Waste: This waste consists of three components: dead yeast, water (more than 80%) and grain sediment. It is very high in nutrients (especially in the Vitamin B-group) making it especially suitable as supplement feed for animals. It can be used as animal fodder or can be further processed for human consumption. However, the relatively small quantities produced (i.e. 100 litre per week) make it unfeasible for human consumption. Arrangements will be made to dispose of this waste with local piggeries, chicken farmers or compost producers once a week or once every two weeks while collecting barley. The relatively small quantities of greywater produced (i.e. 1000 litres per week) will be held in a separate holding tank for irrigation purposes.

Distilled Condensate Waste: The following waste products are produced during distilling:

- Condensed Highly Volatile Alcohols
- Small amounts (i.e. 10 litre per week) of distilled condensate waste is produced and is rich in methanol and ethanol with less than 10% water. This product is an excellent cleaning solvent to be used directly in the distillery during cleaning and for equipment sterilization purposes.

Low Volatility Organic Compounds: Limited amounts of this waste are produced weekly (i.e.10 litre) and will be used in the next spirit run. No disposal is necessary.

Wastewater: Wastewater is from the following activities

- Reverse Osmosis (Filtering of Water): About 8% of water used for the dilution and blending of spirits will become wastewater dumped by the reverse osmosis water filter. This water does not contain any organic waste and is normally only rich in dissolved minerals. This small amount (i.e. less than 100 Litre per week) will be disposed of in the normal sewage line to the septic tank.

- Cleaning Water: This is water used to clean the equipment and floors of the distillery and about 200 litre per week will be used and disposed of in the normal sewage line to the septic tank.

- Other Wastewater: Toilets, urinals and wash basin water will be disposed of in the normal sewage line to the septic tank.

6.4.4 Vehicular Access and On-Site Parking

Vehicular access will be via Porter Drive. Access will be from the Pringle Bay side.

No minimum on-site parking requirement is specified in the zoning scheme for a distillery or agricultural industry. In the absence of a specified requirement, it is believed that the following provision is reasonable and will be sufficient for both the residential dwelling and distillery.

- Owners : 2 bays
- Staff (3) : 3 bays for the employees discussed above,
- Deliveries / services : 1 bay
- Tours/ visitors : 2 bays for the vans bringing the visitors from Pringle Bay.

This amount of bays can be accommodated on site. Contingent on the approval of this application, the parking layout will be shown on the Site Development Plan (SDP), together with the final dimensions for the extension of the former stables structure.

7. POLICY FRAMEWORK

There are a number of town planning policies that have been adopted by the Provincial and Municipal authorities to guide development. These Planning Instruments vary in scale and scope from the Provincial Spatial Development Framework (PSDF) to local area specific plans, such as the Overstrand Municipality's Growth Management Strategy, Spatial Development Framework (SDF) and Land Use Scheme (Zoning Scheme). Each is dealt with in this section.

It must be noted that the overarching planning instruments (i.e. PSDF, Growth Management Strategy and SDF) are of limited applicability due to the limited scale and extent of the proposal. From this assessment it is concluded that the proposal is in general accordance with these planning instruments. The subject property is designated for agricultural usage, and the proposal can, with Municipality's consent, take place without the need to rezone the property.

7.1 Provincial Spatial Development Framework

The Western Cape PSDF 2014 was approved as a Structure Plan in terms of Section 4(6) of the Land Use Planning Ordinance (No 15/1985). With the commencement of the Land Use Planning Act (LUPA) in July 2015 this structure plan is regarded as the Provincial Spatial Development Framework in force in terms of section 4(1) of LUPA. ***Figure 13*** provides a summary of provincial spatial policies.

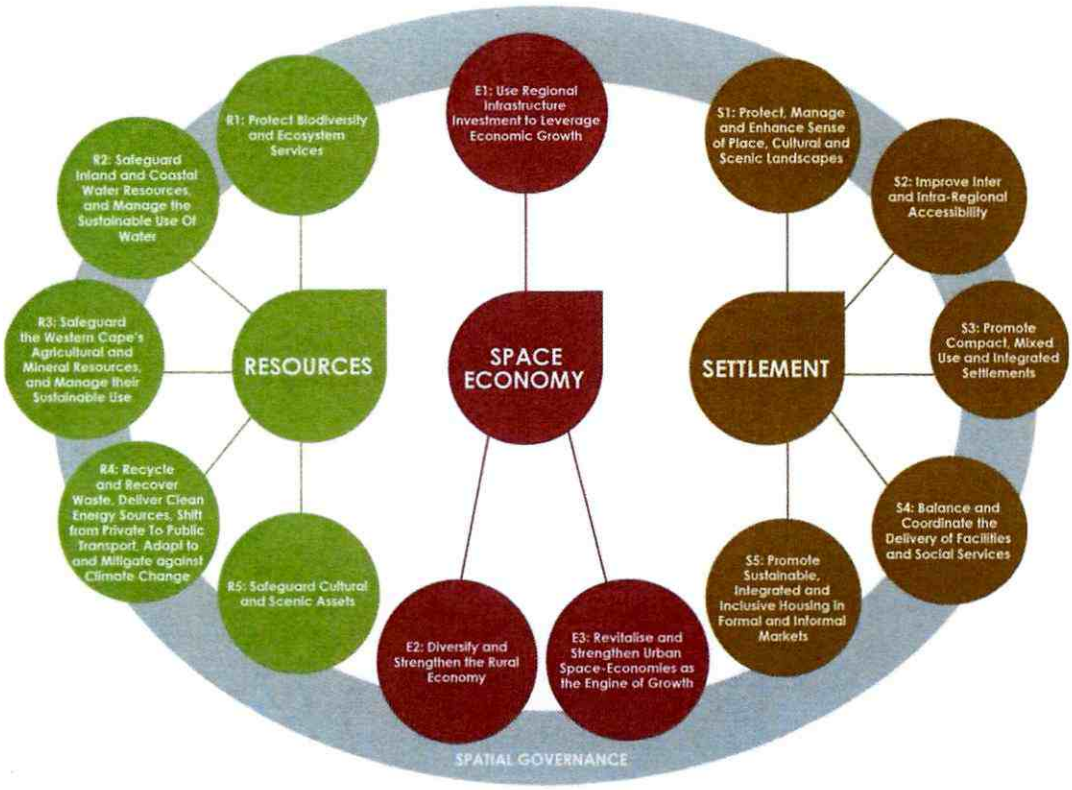


Figure 13: Provincial Spatial Policies

The PSDF "*sets out to put in place a coherent framework for the Province's urban and rural areas that:*

i. gives spatial expression to the National and Provincial development agendas;
ii. serves as basis for co-ordinating, integrating and aligning 'on the ground' delivery of National and Provincial departmental programmes;
iii. supports municipalities to fulfil their municipal planning mandate in line with the National and Provincial agendas; and
iv. communicates government's spatial development intentions to the private sector and civil society."

It must be emphasised that the PSDF is a planning instrument that applies to the Western Cape as a whole and its applicability to a single site within the Overstrand municipal area is limited. The PSDF addresses macro planning issues such as redressing the injustices of the past, and suggests interventions to promote more equitable distribution of resources, recognition of the natural, historical and cultural patterns of the Western Cape, strategies to accommodate projected population growth and creation of an enabling economic environment. Of the 14 policies contained in the PSDF, three are of particular relevance to the PRD application, namely Policies R1, E2, and S1.

7.1.1 Policy R1: Protect Biodiversity and Ecosystem Services

The Western Cape has implemented a system of Critical Biodiversity Areas (CBA) mapping which delineates the Province's biodiversity network. This is used to inform spatial planning and land use management decisions in the Province. Measures should be adopted to develop strategies and policies for securing priority areas outside the protected area network that are

critical for the achievement of the Province's conservation targets. These include measures such as incentivising private landowners to contribute to the Western Cape's biodiversity network, municipal zoning schemes that incorporate CBA overlay zones and development bonuses. Delineation of urban edges in municipal spatial development frameworks is required to divert urban growth pressures away from critical biodiversity areas.

With regard to the proposal, DEA & DP, concluded that no Environmental Authorisation is required to permit the establishment and operation of the micro-distillery. The distillery has a very limited development footprint and low impact operation, and the remainder of the property will be managed to support indigenous flora and fauna. In this way the property will fulfil its role as providing ecological support for the biosphere reserve. Moreover the emphasis on sustainability and the local environment that will be explained to visitors, will help to raise awareness about the biosphere reserve and its importance. Accordingly, the proposal is consistent with PSDF Policy R1.

7.1.2 Policy S1: Protect, Manage and Enhance Sense of Place, Cultural and Scenic Landscapes

This policy aims to prevent settlement encroachment into agricultural areas, scenic landscapes, and biodiversity priority areas, especially between settlements, and along coastal edges and river corridors. It promotes "smart growth" ensuring the efficient use of land and infrastructure by containing urban sprawl and prioritising infill, intensification, and redevelopment within settlements. Conservation strategies, detailed place-specific guidelines and explicit development parameters must supplement urban edges to ensure the effective management of settlement and landscape quality and form.

With regard to the proposal, the development will not constitute urban sprawl, but will make use of an existing building (with a minor extension) to undertake an activity that is consistent with the rural character of the site. The character of the buildings and operations within the buildings will enhance the sense of place. Accordingly, the proposal is consistent with PSDF Policy S1.

7.1.3 Policy E2: Diversify and Strengthen the Rural Economy

This Policy aims to incorporate rural considerations into municipal Integrated Development Plans (IDPs) and SDFs and relates to development outside of the urban edge, farm worker settlement and strengthening rural livelihoods. The Overstrand Municipality has delineated the urban edge around Pringle Bay and Rooi-Els based on the existing village footprints, while the area between the two settlements (including the subject property) is outside the urban edge.

The Policy clearly states that with regard to development outside of the urban edge, "*compatible and sustainable rural activities (i.e. activities that are appropriate in a rural context, generate positive socio-economic returns, and do not compromise the environment or ability of the municipality to deliver on its mandate) and of an appropriate scale and form can be accommodated outside the urban edge (except in bona fide wilderness areas).*"

There are many examples in the Overberg District of wineries, breweries and distilleries that operate outside the urban edge and play an important role in the local economy. In addition they add to the character and attraction of the area. The proposal is in complete compliance with PSDF Policy E2.

7.2 Overstrand Municipal Growth Management Strategy

The Overstrand Municipal Growth Management Strategy is to, "*...promote the longer term sustainability of the municipal area and its sub-region.*" The strategy states that "*...the intention of this growth management policy is not to grant or restrict existing zoning rights. It will however provide clear guidelines to be used by the Overstrand officials and political decision makers in executing their land use management functions.*"

The strategy includes a number of growth management objectives, including:

- Ensure optimal land use planning and the efficient use of infrastructure, services, facilities, and land, and
- To protect, manage and enhance the natural and built environment and landscapes.

The Strategy aims to "*...achieve a targeted increase in the average gross base density of the Overstrand urban area"* and contains several policies and plans to achieve this. These do not impact on the proposal and the Growth Management Policy has no significance for this application.

7.3 Overstrand Municipal Spatial Development Framework

The Overstrand Municipality Spatial Development Framework (OMSDF) of May 2020 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.*"

The OMSDF provides a Municipal Spatial Concept and individual settlement spatial proposals. Due to the scale, nature, and location of the proposal, which essentially re-purposes a disused stable to accommodate a micro-distillery, the relevance and applicability of this planning instrument is limited.

The Development Framework for the Overstrand Municipality comprises several strategic spatial policy directives as illustrated in ***Figure 14***. The directive of most significance to the distillery proposal is the Municipality's policy for "An Overstrand that enables a prosperous and diverse economy".

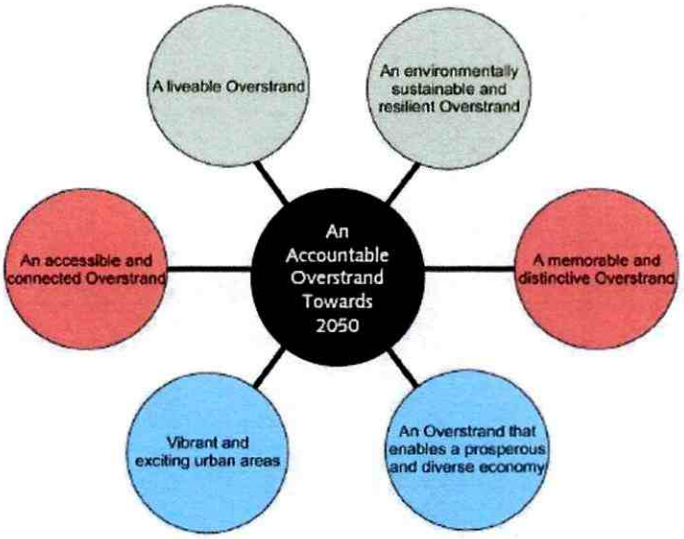


Figure 14: Spatial Policy Directives

According to the OMSDF, "*in order to be a prosperous area, the Overstrand should value its rural and natural environments, tourist attractions and heritage resources and profit from these economic pillars. It should furthermore stimulate economic growth and improve stability by diversifying its economy by means of introducing new sectors and expanding existing sectors with growth potential.*" The OMSDF recognizes that, "*a diversity of agricultural, tourism, commercial and industrial activities occur in strategic locations throughout the Overstrand's rural and urban settlements, providing a range of local employment opportunities.*"

A number of Objectives are listed to "*...enable a prosperous and diverse economy.*" Of particular relevance are:

- ECO 6: Overstrand attracts and retains highly skilled labour and entrepreneurs.
- ECO 8: Support the expansion and retention of the Overstrand's existing local business and generating new local economic/business opportunities.

The principle of *Land Use Diversification* is contained in the Development Framework. According to the OMSDF, land use diversification means "*the diversification of rural and industrial based development opportunities based on locational and comparative resource advantages must be promoted in selected areas to stimulate growth and employment of the rural population.*"

Figure 15 overleaf depicts the Overstrand Municipality Spatial Management Concept. It is evident that:

- The subject property is situated between two settlements identified as Local Nodes, namely Pringle Bay and Rooi-Els.
- The area between Pringle Bay and Rooi-Els is identified as part of an Environmental Management Overlay zone,
- The property is close to an arterial road.

The proposal is in general accordance with the spirit and intent of the Development Framework as it will, albeit in a small way, assist with land use diversification and stimulate appropriate economic activity.

7.4 Overstrand Municipality Land Use Scheme

The Overstrand Municipality Land Use Scheme forms part of Planning By-Law 2020.

The subject property is zoned "*Agriculture Zone 1: Agriculture*" and is also situated in an Environmental Management Overlay Zone, specifically the "*Coastal Protection Zone*". Each aspect of the zoning scheme is dealt with separately.

7.4.1 Agricultural Zone 1: Agriculture

The Overstrand Municipality Land Use Scheme (2020), defines agricultural industry as "*an enterprise for the processing of agricultural related products on or close to the land unit where these agricultural products, whether land or marine based (such as aquaculture), are grown, harvested and raised where such proximity is necessary due to the nature, perishability and fragility of such agricultural products or promotion of tourism* related *activities inter alia, dairies, wineries,* ***distilleries****, olive processing facilities, breweries and other facilities required for the processing of agricultural products where produce packed is not produced on the land unit but does not include service trade.*" (Planning Partners' emphasis).

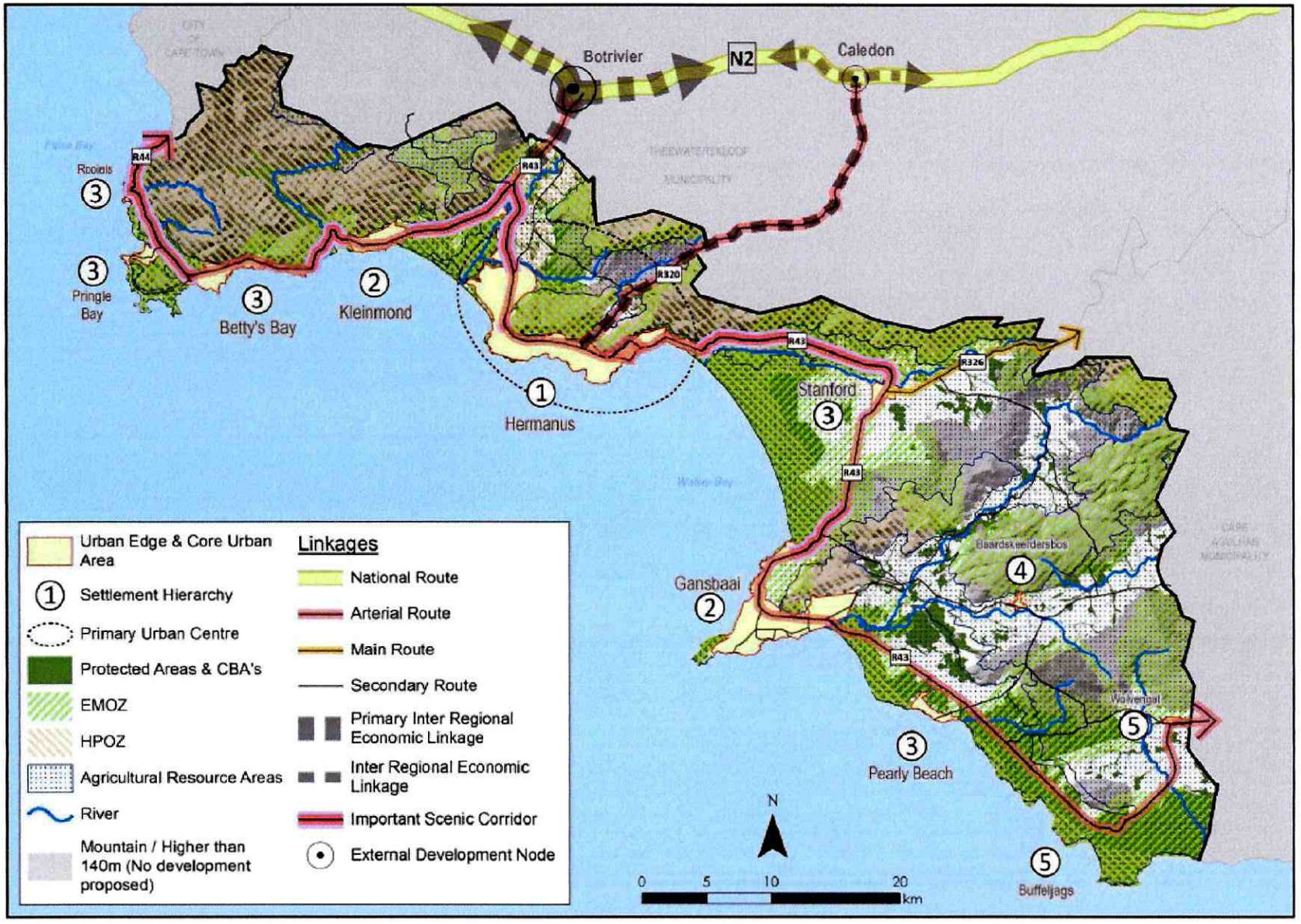


Figure 15: Overstrand Municipal Spatial Management Concept

An agricultural Industry is only permitted with consent in this zone. The Scheme defines consent as "*...special permission granted by the Municipality after due consideration of all relevant facts and after following the prescribed legal process in terms of which a specific type of land use or activity is permitted, in addition to the primary uses applicable to the property concerned.*"

Application for consent for an *agricultural industry* is applied for in this application. Section 16.10.2 of the Land Use Scheme deals with general development parameters of an agricultural industry and is reproduced below.

> The Municipality may approve an agricultural industry if it is satisfied that the proposed use or activity is desirable, provided that:
>
> a) the area affected by the agricultural industry must be clearly identified on a land survey diagram or other plan prepared by a suitably qualified person to the Municipality's satisfaction and endorsed by the Municipality; and
>
> b) the following development parameters apply:
>
> (i) a site development plan must be submitted to the Municipality's satisfaction in terms of 16.3 for all new development or extensions within an area determined in terms of (a) above; and
>
> (ii) parking and access shall be provided on the identified portion in terms of Chapter 17, provided that the Municipality may require additional parking and loading requirements in response to the operational requirements of a particular agricultural industry.

Contingent of the approval of this application, the requisite site development plan (SDP) will be submitted for approval. ***Figure 16*** satisfies Section 16.10.2(a).

Application for consent for a *farm shop/stall* is also included in this application. A "farm shop/stall" is defined in the Land Use Scheme as "*a building, located on a farm, where a farmer sells produce and other goods to the general public*". Section 16.10.7 of the Land Use Scheme deals with general development parameters of a farm shop/stall and is reproduced below.

> **Farm shop/stall**
>
> 16.10.7 The Municipality may approve a farm shop, provided that:
>
> a) the maximum floor area of the farm shop/stall shall not exceed 300 m²;
>
> b) the maximum height does not exceed a single storey, measured from the base level to the top of the structure;
>
> c) sufficient parking is provided to the satisfaction of the Municipality; and
>
> d) the access requirements of the relevant road authority must be complied with.

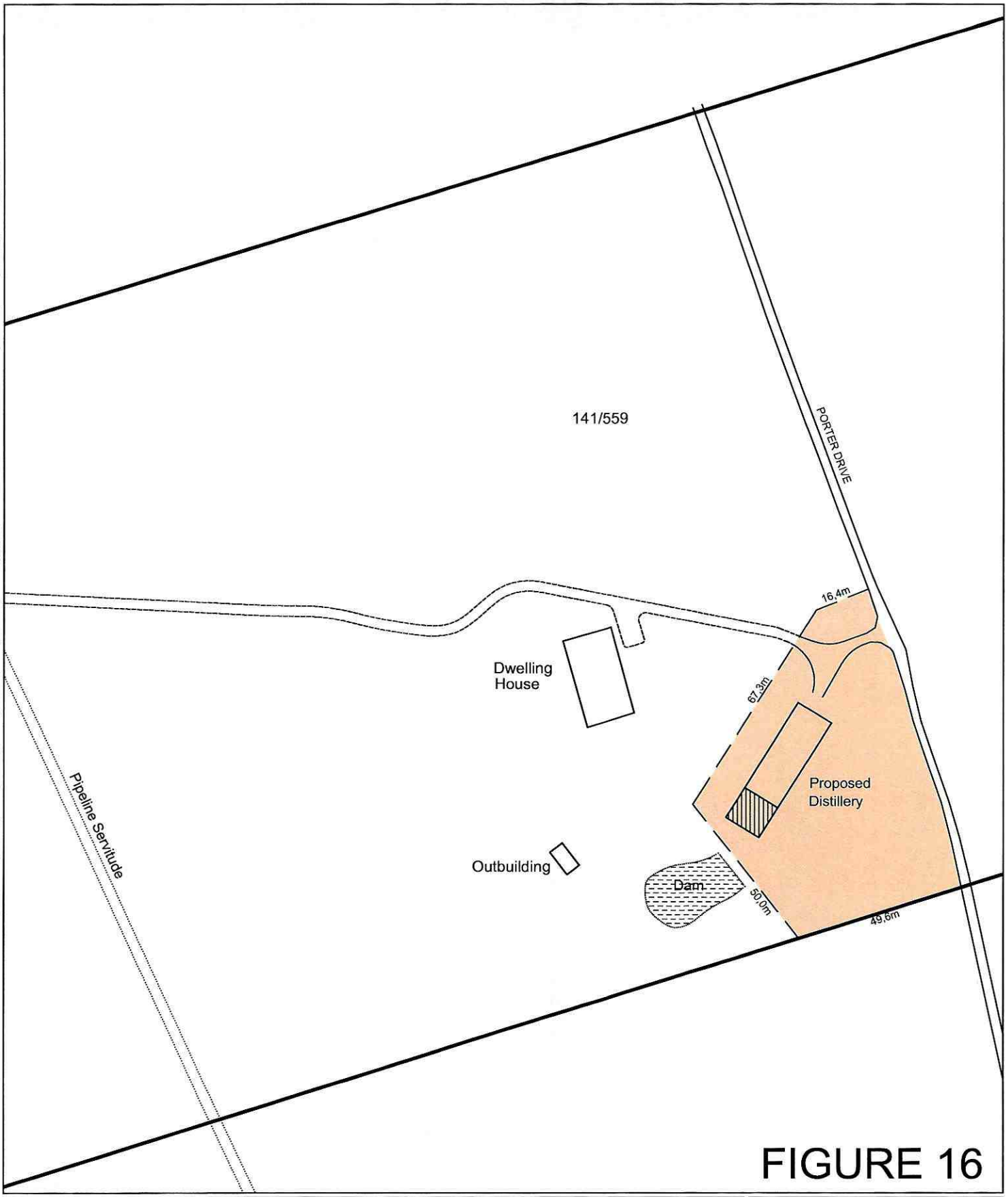


FIGURE 16

CADASTRAL BOUNDARY

AREA OF CONSENT USE FOR DISTILLERY (± 4670m²)

PROPOSED EXTENSION

EXISTING BUILDINGS

PORTION 141 OF THE FARM " HANGKLIP" No. 559

CONSENT USE PLAN

N

SCALE 1:1500

The shop component of Pringle Rock Distillery will comply with all the Land Use Scheme requirements. However, it is not a shop in the normal sense of the word where the general public will buy a wide range of consumables and household goods. There will not be a separate shop but rather the goods for sale will comprise items such as preserves and local produce grown on the property, and mementos of the distillery. These will be displayed on shelves incorporated into the tasting room and will be available for sale to visitors of the distillery which is by pre-organised tours only.

Table 3 compares the development parameters prescribed for Agriculture Zone 1 with the proposal. It is evident that consent uses and one regulation departure are required.

Table 3: Comparison of the Proposal with Provisions of the Agriculture Zone 1: Agriculture

Land Use Scheme		Development Parameter	Proposed development	Compliance with the Scheme
Chapter 5, Section 5.1.1 (a) & (b)	Use of Property	Primary Use: Includes dwelling house Consent Use: Includes agricultural industry and farm shop/stall	Proposed distillery and associated uses, including shop for produce and mementos. Existing dwelling and outbuildings	**Consent required for agricultural industry (distillery) and farm shop/stall**
Chapter 5, Section 5.1.2 (a)	Floor Space	Total floor space on land unit may not exceed 5000m²	Existing dwelling 376m² Existing outbuilding 36m² Existing stable 330m² Proposed extension 118m² **Total 860m²**	**Compliant.** No departure required
Chapter 5, Section 5.1.2(b)	Building Lines	For land units greater than 10 ha: Street & common building lines = 30m	Street = 23.4m from road edge Eastern common = 31.73m Western common: 174.37m	**Non compliant.** Regulation departure required to permit a street building line of 23m in lieu of 30m
Chapter 5, Section 5.1.2 (c)	Height	Max height from base level to top of structure = 8m & to top of agricultural building = 12m	3m to wall plate. 4.8m to top of roof. Refer to approved building plan in ***Annexure 6***	**Compliant.** No departure required.
Chapter 17	Parking	None stated for Distillery or Agricultural Industry	Owners : 2 bays Staff (3) : 3 bays Deliveries/ services : 1 bay Tours/ visitors : 2 bays **Total = 8 bays**	Not applicable

7.4.2 Coastal Protection Zone

The Land Use Scheme (OMLUS) includes five Environmental Management Overlay zones (EMOZ), namely:

- Coastal Protection EMOZ.
- Mountain Catchment EMOZ.
- Protected Area Buffer EMOZ.
- Riverine EMOZ, and
- Urban Conservation EMOZ

Figure 17 is an extract of the Coastal Protection EMOZ plan, and the light green depicts areas affected by this overlay zone, including the subject property.

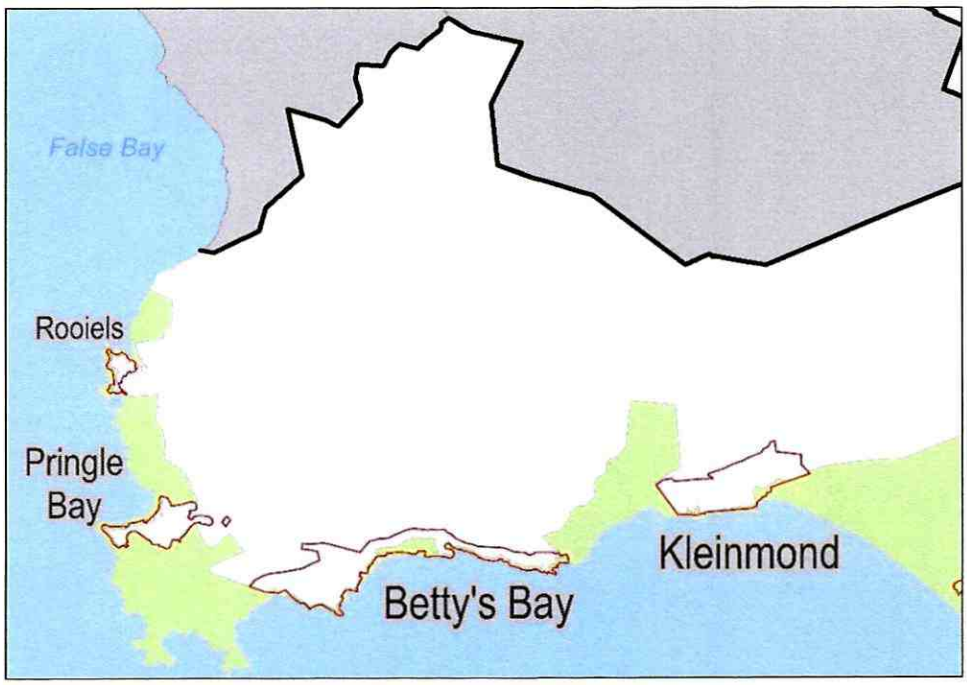


Figure 17: Extract of the Coastal Protection EMOZ

According to the OMLUS, an Overlay zone means "*...a category of zoning applicable to a particular land unit or area, which:*

(i) stipulates development parameters for a land unit or area, in addition to the underlaying zoning or base zone requirements;

(ii) *may include further development parameters in a particular area or zone which may be more or less restrictive than for land units which are not covered by the overlay zoning.*"

The regulations applicable to the various overlay zones are contained in the Overstrand Municipality EMOZ regulations 2020. In these Regulations Schedules A, B and C deal with Prohibited Activities, Activities which are only permitted with Council's consent and General regulations respectively.

The proposed micro-distillery and farm shop/stall do not constitute any of the prohibited activities (as per Schedule "A") in the Coastal Protection EMOZ, but includes activities only permitted with Council consent, i.e. "commercial" and "construction or placement of any permanent object , building, shelter, pathway or structure", as in Schedule "B". The requisite consent is applied for in terms of this application.

8. DELETION AND AMENDMENT OF CONDITIONS OF TITLE

In order to facilitate the proposed development it was initially considered necessary to delete one condition of title being clause C(4) which relates to the street building line, and to amend another condition being clause C(13) which relates to land use. These clauses were imposed by and for the benefit of the original land owner (developer), being Hangklip Beach Estates Limited (Hangklip Beach Company).

Hangklip Beach Company was approached for its consent to make these deletions / amendments. During this process Hangklip Beach Company decided that there was no reason to retain the other conditions save for a portion of clause C(13), namely that "No public garages or filling stations shall be erected on the land". Since Hangklip Beach Company no longer wishes to enforce the other conditions, and the owners of the property have no intention to erect or operate a public garage or filling station, an agreement was reached between the parties. The relevant documentation is contained in ***Annexure 8***.

8.1 Conditions to be Deleted

Application is made to the Municipality to delete the following restrictive title conditions contained in Deed of Transfer T8920/2005:

C1, C2, C3, C4, C5, C6, C7, C8, C10, C11, C12.

Note that condition C(9) was previously deleted.

8.2 Condition to be Amended

Application is made to the Municipality to amend Condition C(13) which relates to land use and currently reads as follows:

- *"No shop, garages or filling stations, business premises, canteens, bioscopes, factory, or industrial buildings shall be erected on the land nor shall any business or public entertainment be conducted on the land."*

Application is made to amend Condition C(13) to read as follows:

- *"No public garages or filling stations shall be erected on the land."*

The application in respect of title deed conditions is made in terms Section 16(2)(f) read with Section 35 of the Planning By-Law 2020. The application is also made in terms of Section 47(1) of the Spatial Planning and Land Use Management Act, 2013.

Section 35(4) of the Planning By-Law 2020 describes criteria that the Municipality must have regard to when considering the removal, suspension or amendment of a restrictive condition. Before providing motivation in terms of these criteria, an overview of the history of Condition "C" is provided as background to explain how, why and by whom this condition was imposed.

8.3. History of Condition "C"

DHM Attorneys Inc, were instructed to investigate whether any title conditions should be removed to permit the proposal. The result of this investigation is contained in their letter dated 26 October 2020 contained in ***Annexure 12***. Pertinent extracts are reproduced here.

On 21 December 1960 Hangklip Beach Company registered a Certificate of Registered Title (No. T20205/1960) to create Portion 133 of the Farm Hangklip No. 559. This was a large

property comprising 587.1128 morgen in extent (±502.9 hectares). Portion 133 was subdivided into a number of smallholdings as shown on Survey Diagram No. 2974/1960. An extract of this Diagram is depicted in ***Figure 18*** overleaf.

In April 1964 Hangklip Beach Company sold two of the smallholdings, namely Portions 141/133 and 142/133, to Mr. Archibald Collier Mayne and they were subsequently transferred to Mr. Mayne on 18 November 1964. Condition 'C' as it is now described in the current title deed was created in Annexure "A" to the Power of Attorney to pass transfer to Mr Mayne. The conditions contained in Annexure "A" were a combination of title conditions previously registered in other forms and new title conditions. Both properties were held by the same title deed and sold simultaneously.

Portions 141/133 and 142/133 were later sold together and transferred to QJ Ninaber on 14 May 1982. Portion 142/133 was then sold on its own and transferred to S Schreiber on 22 April 1983, and a year later Portion 141/133 was transferred to SBE Watson on 16 May 1984.

Upon inspection of the title deeds of neighbouring properties, it seems that the other subdivided portions of Portion 133 were registered with different title conditions. The title conditions created upon the subdivision of Portion 133 were therefore <u>not uniformly created,</u> even though there are some conditions that are the same. Moreover Condition "C" is registered in favour of a specific, identifiable entity, namely Hangklip Beach Company which was the transferor in the transaction and the owner of the Remainder.

It is significant to note that Condition "C" was imposed by Hangklip Beach Company for its "<u>sole benefit</u>", in its favour. The right was not reserved in favour of successors in title or in favour of other owners in the sub-divided Portion 133.

If the condition had been reserved for successors in title, or if the words "sole benefit" were omitted from condition "C", then it could have been concluded that a praedial servitude was created by this title condition. This did not occur and DHM Attorneys concluded that a praedial obligation was not intended.

Significant conclusions from DHM Attorney's investigation are:

- Portion 142 has exactly the same title condition "C" as portion 141, but this is because they were sold together when the condition was created.

- Even though portion 146 and portion 153 are also subject to conditions like condition "C", the preamble reads differently in these deeds (omitting the reference to "sole benefit") and the wording of the restrictions, although they have the same theme, are not exactly the same.

- Condition "C" is not reciprocal, it is a personal servitude, enforceable by Hangklip Beach Company against the owner(s) of Portion 141 (a portion of Portion 133).

- Should Hangklip Beach Company consent to the cancellation of this title condition or to its relaxation or suspension, this could be done.

Hangklip Beach Company has been approached and its consent has been granted to cancel Condition "C" save for a portion of clause C(13) relating to public garages and filling stations. Copies of documents relating to the removal of title deed conditions and consent granted by Hangklip Beach Company are contained in ***Annexure 8***.

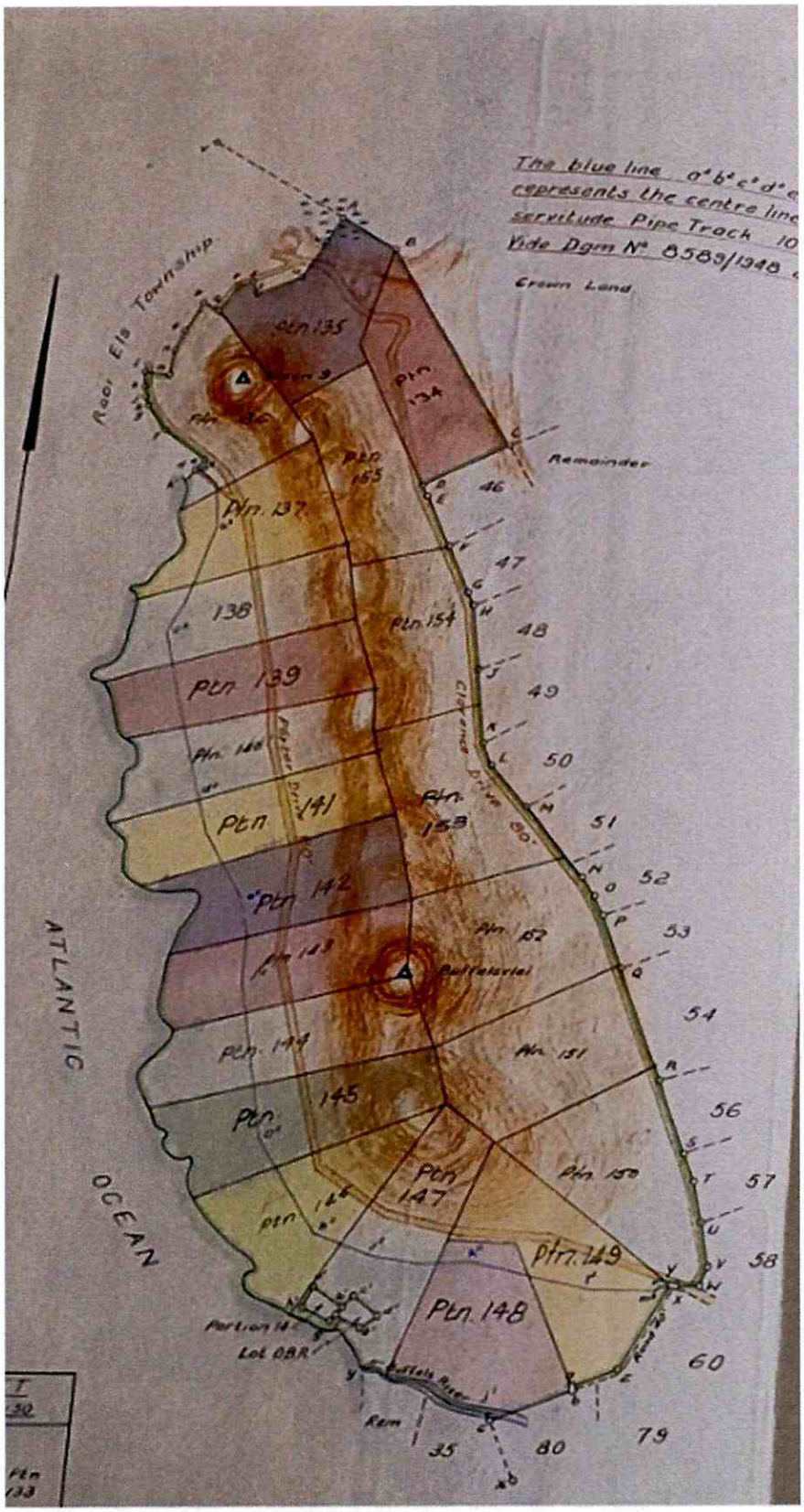


Figure 18: Extract of SG Diagram No 2974/1960

8.4 Motivation for Deletion and Amendment of Restrictive Conditions

Condition C contains restrictions relating to buildings and use of the land. These restrictions were imposed by Hangklip Beach Company for its sole benefit, prior to development of the property. At that time local government regulations and town planning controls were not well established in the rural areas. It is evident that the conditions were inserted by Hangklip Beach Company in order to protect its commercial interests as a developer. There are now very comprehensive environmental, planning and building regulations that govern the matters listed in the title deed conditions. Hangklip Beach Company has confirmed that it no longer wishes to enforce Condition C save for a portion of clause C13. For this reason, and also because the authorities have sufficient legal mechanisms to control buildings and the use of land, the conditions are no longer relevant and are not required. This is supported by the following statements in relation to the individual clauses of Condition C.

Deletion of Condition C and Associated Clauses

Clause No	Subject Matter	General Motivation for Deletion
1	Gives Hangklip Beach Estates Ltd. (HB) the right to convey electricity and water mains	HB does not intend to convey electricity and water mains across the Lot. HBEL does not intend to enforce this clause.
2	Relates to completion time for building works	National and Municipal laws now deal with building works. HB does not intend to enforce this clause.
3	Relates to wood and iron buildings	National and Municipal laws now deal with building works. HB does not intend to enforce this clause.
4	Relates to building restrictions from any road or boundary.	Municipal laws now deal with building lines. HB does not intend to enforce this clause.
5	Relates to design and sound construction	National and Municipal laws now deal with building works, including design and construction. HB does not intend to enforce this clause.
6	Relates to noxious trade or activity	National, Provincial and Municipal laws now deal with noxious activities. HB does not intend to enforce this clause.
7	Relates to brickmaking, quarrying and other activities	National, Provincial and Municipal laws now deal with the activities. HB does not intend to enforce this clause.
8	Relates to debris, scrap and unsightly material	National and Municipal laws now deal with such matters. HB does not intend to enforce this clause.
9	Clause previously deleted	Not applicable
10	Relates to access to public roads	Provincial and Municipal laws now deal with such access. HB does not intend to enforce this clause.
11	Relates to sewage disposal	National and Municipal laws now deal with such matters. HB does not intend to enforce this clause.
12	Relates to the use of land for agriculture	National and Municipal laws now deal with such matters. HB does not intend to enforce this clause.
13	Restricts a range of uses including public garages or filling stations.	National and Municipal laws now deal with such matters. HB wishes only to restrict public garages or filling stations.

Section 35(4) of the Planning By-Law 2020 lists six criteria which need to be considered in relation to an application to remove or amend restrictive conditions of title. These are reproduced below and a response in relation to the proposed distillery is provided.

8.4.1 *The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of the dominant tenement.*

The clauses in Condition C do not now have a direct quantifiable financial value for Hangklip Beach Company. These restrictions were presumably imposed when the company was active in the area as a developer, at a time when land use and building control regulations were not well established in rural areas. The clauses were presumably inserted to prevent a land use and built form which Hangklip Beach Company may have felt would adversely affect its commercial interests. This is no longer the case because the company is no longer active as a developer in the area and there are adequate national, provincial and municipal laws to govern land use, buildings and environmental impact.

The limitation of land use does have financial implications as it prevents the land owners from accommodating the proposed distillery and associated shop. This is in effect a restraint of trade prohibition against future types of development. When this condition was imposed there was no zoning scheme in operation, and it is presumed that Hangklip Beach Company wanted to exercise some control over use. Now that there is a zoning scheme, such control is unnecessary. Furthermore, the restriction serves to frustrate the Municipality's Development Framework which seeks to promote economic activities in the rural area.

The clauses of Condition "C" are in effect "catch all" restrictions that allow Hangklip Beach Company to control the form, extent and scale of development. It is an attempt to entrench its rights (which could have potential monetary value). However, 56 years have passed and the company no longer has any effective involvement in this area. It does nothing to maintain the infrastructure or environment and plays no part in monitoring development. Furthermore it has stated that it no longer wishes to enforce Condition (C) save for a portion of Clause C(13), namely that "No public garages or filling stations shall be erected on the land".

The proposed distillery, which constitutes business premises, is a very specific type of activity. The term "business premises" is generic and is normally understood to include a multitude of commercial uses. The proposal is not for a general business but for a boutique micro-distillery which is an appropriate activity in this rural area, in the same way that wineries and boutique breweries are accepted as part of the rural landscape.

8.4.2 *The personal benefits which accrue to the holder of rights in terms of the restrictive condition.*

There are no longer any personal benefits that accrue to Hangklip Beach Company as a consequence of Condition (C).

8.4.3 *The personal benefits which will accrue to the person seeking the removal of the restrictive condition, if it is removed.*

The removal of the restrictive conditions will permit the establishment and operation of the proposed micro-distillery. There are no reasons for the retention of C(4) as the structure was built decades ago in accordance with an approved building plan. It is

unknown why the title deed restriction was not enforced at the time of construction. There are no valid reasons to demolish a portion of the structure to ensure its compliance with C(4) now, which would highly unfair and prejudicial to the current landowner.

The removal / amendment of C(13) will be beneficial to the owners of the subject property because this will no longer prevent the establishment and operation of the proposed enterprise, and will facilitate an income stream for the owners of the distillery. Nonetheless, as motivated in this application, the proposed micro-distillery will not have a significant negative impact on neighbours, the communities of Pringle Bay or Rooi-Els or the Municipality. Furthermore, it will have a beneficial effect in that it will assist in strengthening the rural economy in a small, but appreciable way.

The proposed distillery is not in breach of the other clauses, but their removal will be beneficial to the owners of the property because this will simplify development control procedures. It will also be in the interest of good administration because the matters dealt with by these clauses are covered by national, provincial and municipal legislation.

8.4.4 The social benefit of the restrictive condition remaining in place in its existing form.

The term "social benefit" is understood to refer to the broader society, and not the rights of owners who may be entitled to enforce a restrictive condition. This is similar to the "public interest" consideration in SPLUMA.

C(4) and C(13) relate to building placement and land use. There is no social benefit of retaining C(4) as the structure has existed for decades, and if there had been any negative social benefit of the building's non-compliance with this clause, it would have manifested itself by now. The building is set back over 23m from the road and therefore has no negative implications for the rural sense of place or road safety.

There is no social benefit of retaining C(13) because this will prevent establishment of a legitimate and desirable small-scale enterprise that fits in well with the rural character of the area. If the condition is retained the benefits to the local economy and employment will not materialise.

There is no social benefit in retaining the other clauses of Condition C because these matters are covered by national, provincial and municipal laws that are administered by competent authorities in accordance with the Constitution. It is not necessary to have title deed conditions that overlap with these laws, and in fact such overlap does not constitute good or efficient administration.

It must be emphasized that Condition C is in the title deed for the sole benefit of Hangklip Beach Company and there is no social benefit for the retention of this condition and its sub clauses.

8.4.5 The social benefit of the removal or amendment of the restrictive condition.

The social benefit of removing of C(4) is marginal because the structure was built many decades ago and it has had no negative impact on the wider community. However, removal of this condition will remove the anomaly of non-compliance of the existing building.

The amendment of C(13) will have a beneficial social impact as it will assist, albeit, in a small way, to strengthen the rural economy.

Condition "C" was inserted in the title deed for the sole benefit of the Hangklip Beach Company, and not for the benefit of the general public or community. Such private restrictions are no longer appropriate or in the public interest considering there are now town planning mechanisms such as zoning schemes and spatial development frameworks for the management of land use and development.

8.4.6 *Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.*

The rights of Hangklip Beach Company will not be materially affected by the removal of Condition C. The company will experience no costs nor disadvantage and will be able to continue with its operations as normal.

All the properties that previously constituted Portion 133 are now constrained by the provisions of the Overstrand Municipality Land Use Scheme. This planning instrument deals *inter alia* with building placement and land use. It is more appropriate for these types of development parameters to be controlled by the zoning scheme than in title deeds. This will ensure that all properties are regulated in a transparent and legal manner, and not by means of restrictions imposed decades ago in favour a specific, private entity.

9. CONSENT USES

Application is submitted in terms of Section 16(2)(o) of the Planning By-Law 2020 to obtain Consent for the establishment of an "*agricultural industry*" and a "*farm shop/stall*" on Portion 141 of the Farm "Hangklip" No 559 Caledon, as provided for in Section 5.1.1(b) of the Land Use Scheme (2020).

Application is also submitted for Consent to permit "Commercial" activity and "Construction or placement of any permanent object, building, shelter, pathway or structure", as required by the Environmental Overlay Zone Regulations.

Motivation for the Consent is as follows:

a) The property is zoned Agricultural Zone 1 and an agricultural industry and farm shop/stall are permitted in this zone by consent. The definition of Agricultural Industry includes a distillery and the Land Use Scheme therefore makes provision for distilleries in such a zone.

b) The proposed agricultural industry is not a regular industry which is characterised by larger scale, commercial operations with greater power, water, and waste disposal requirements. This is an agricultural industry, run as a small family concern specialising in a high quality crafted product, making use of sustainable local resources such as solar energy, water from the well, wood from cut alien vegetation and flavouring from fynbos grown on the property. The enterprise will promote tourist-related activities.

c) The proposed farm shop/stall is a small-scale ancillary use to the distillery. It will sell produce from the farm and mementos related to the distillery. The number and range of products will be limited, and the target market will be visitors on tour to the distillery. This is therefore not a retail node or magnet and will not attract customers in the way a conventional shop would do.

d) An agricultural industry and farm shop/stall are not automatic use rights in the Agricultural Zone 1 in terms of the Land Use Scheme, but it has been established that such uses, including a distillery, could in principle be granted if the scale and operation is appropriate for the site and context. This report has demonstrated that the proposed micro-distillery and ancillary sale of goods is appropriate for the site and context.

e) The accommodation of the micro-distillery in the disused stables represents a "recycling" or repurposing of the structure to accommodate a more productive and appropriate use, while still respecting the rural character of the area.

f) The micro distillery can be accommodated with minimal improvement to existing utility services and will not impose a burden on the Municipality. The small amount of waste will be disposed of in a sustainable manner and will not require municipal waste removal services.

g) Porter Drive is classified as a municipal street or road, which means that all are legally entitled to use it without restriction. Nonetheless, the proponents of the distillery will respect the access control measures that they themselves have been instrumental to put in place. Tour groups will be shuttled to and from the distillery and raw material supplies will only require several deliveries per month with a bakkie. This means that the distillery and ancillary uses will have little impact in terms of traffic generation, road operations and road safety.

h) The micro-distillery will strengthen, albeit in a small way, the rural economy. In these economically stressed times resulting from recession and the Covid 19 pandemic, individuals need to do all they can to stimulate the economy. All legitimate and desirable commercial activities should be supported and encouraged by the Municipality. In this case the land is a suitably zoned land unit and there are no reasons to refuse the application. A desirable and appropriate enterprise is proposed which will add to the economic sustainability of the area.

i) The small scale of the micro-distillery and farm shop is appropriate for this relatively secluded area. The enterprise does not require a large staff complement nor land area. It is designed to produce relatively small quantities of premium products and the business model does not require ever increasing volumes to increase profitability. The sustainability of the micro-distillery is linked to the quality of the spirits produced and not the quantity.

j) Based on the extensive information provided in this motivation report about the subject property and proposal it is clear this is a desirable and appropriate enterprise to be established on the property, and that granting of Consent is reasonable and desirable.

10. REGULATION DEPARTURE

Application is submitted in terms of Section 16(2)(b) of the Planning By-Law 2020 to obtain a regulation departure from Section 5.1.2(b)(i) of the Land Use Scheme (2020) to reduce the street building from 30m to 23.2m.

Motivation for the reduction of the Porter Drive building line from 30m to 23.2m is as follows:

a) The regulation departure does not apply uniformly to the Porter Drive street boundary but only to a specific portion of the disused stable structure as indicated in the plan overleaf.

b) Only a relatively small portion of the existing structure is within the street building line. The remainder of the structure is positioned more than 30m from Porter Drive. Note that the planned extension to the structure is on the ocean side of the structure and unaffected by the street (or common) building line.

c) As the footprint of the structure is not built parallel to Porter Drive the impact of the reduced building line is negligible.

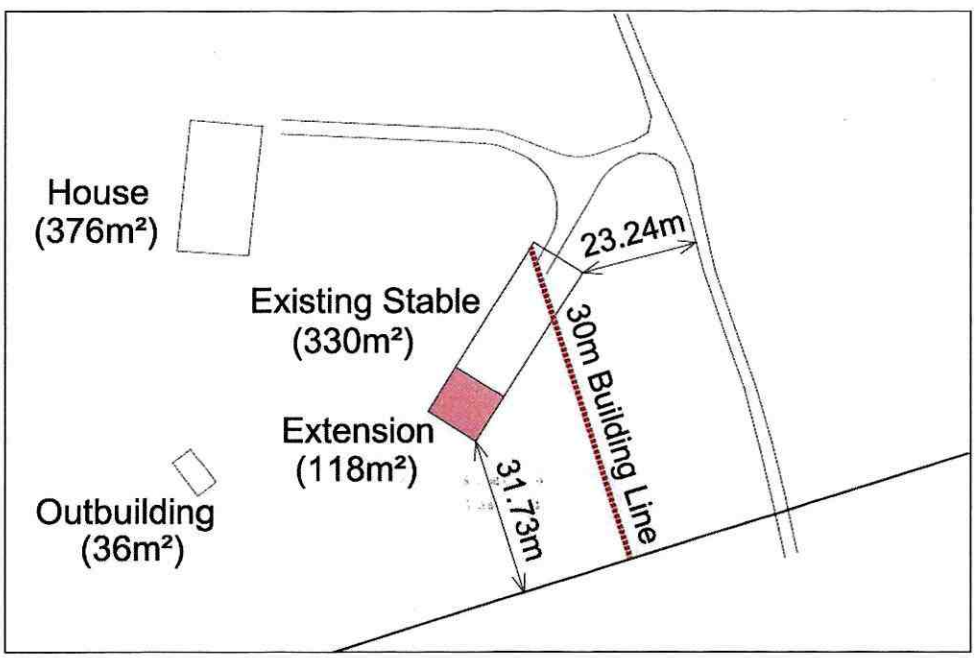
d) The structure was built in accordance with an approved building plan (refer to ***Annexure 6***) and therefore presumably in accordance with the then applicable planning regime. It would be grossly unfair to the current owner if this departure is not approved for an existing structure that was built by a previous owner.

e) The distance the structure has been setback from the road edge is more than sufficient to ensure the safety of road users (both vehicles and pedestrians) and continuity of a rural sense of place.

f) There is no valid reason to require the landowner to demolish the triangular portion of the building that is situated within the building line.

g) The proposed amendments will have no significant impact on the public, adjoining neighbours or the Overstrand Municipality.

Figure 19: Plan Showing the Required Departure



11. GENERAL MOTIVATION FOR THE APPLICATION IN TERMS OF THE BY-LAW ON MUNICIPAL LAND USE PLANNING

Section 66(1) of the Planning By-Law 2020 stipulates general criteria for the consideration of applications. The criteria are listed below, and compliance of the proposal is explained.

(a) The application submitted in terms of this By-Law

The proposal complies with the requirements and is submitted in terms of the By-Law.

(b) The procedure followed in processing the application

This is a new application submitted in terms of the Planning By-Law 2020 and land use scheme. The Municipality will follow the prescribed procedures and the applicant will co-operate as needed.

(c) The desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding the desirability of proposed land uses

The provincial guidelines are reflected in the PSDF. This is a high-level strategic plan that applies to the province as a whole and has limited implications for the application. However, the application is consistent with the relevant policies of the PSDF. Additional policies are found in Municipal planning instruments such as the Overstrand Growth Management Strategy, Overstrand Municipal Spatial Development Framework and the Overstrand Municipality Land Use Scheme. The proposal is in general accordance with the overarching policies, objectives, and strategies of the authorities, such as encouraging economic growth and ensuring the surrounding natural environment is not negatively impacted. The establishment and operation of a micro-distillery is considered to be desirable for the reasons explained in this report.

(d) The comments in response to the notice of the application, including comments received from organs of state and internal departments

The Department of Environmental Affairs and Development Planning have confirmed that the proposal does not require Environmental Authorisation in terms of NEMA. The Breede - Gouritz Catchment Management Agency has confirmed the landowner is entitled to abstract the required amount of groundwater. The application must still be advertised by the Municipality, whereafter any additional comments from organs of state and internal departments will be addressed.

(e) The response by the applicant to the comments referred to in in paragraph (d)

At this stage, no response from the applicant is required.

(f) Investigations carried out in terms of other laws that are relevant to the consideration of the application

Extensive legal, waste management, and planning investigations have been undertaken. No other investigations are required at this stage.

(g) A registered planner's written assessment, or a planner eligible for registration.

The application is still to be assessed by the municipal planner.

(h) The Integrated Development Plan and Municipal Spatial Development Framework

The proposal has been assessed in terms of the Municipal Spatial Development Framework and it is concluded that the proposal is consistent with this framework. Due to

the small scale of the proposal, and the fact that the SDF follows on from the IDP, it was not considered necessary to assess the proposal in terms of the IDP.

(i) Where applicable Local Spatial Development Frameworks adopted by the Municipality

The proposal has been assessed in terms of the Overstrand Growth Management Strategy and Overstrand SDF and is consistent with these plans. The proposal assists in a small way in ensuring sustainable, appropriate economic activity commensurate with its surroundings, and strengthens the rural economy including tourism. The proposal will be an asset to the area.

(j) The applicable policies of the Municipality that guide decision-making

The policies that are known to guide the Municipality on decision-making have been considered and the proposal is consistent with these.

(k) The Provincial Spatial Development Framework

The PSDF has been considered and the proposal is consistent with this Framework.

(l) Where applicable, the regional spatial development framework

This is not applicable.

(m) The policies, principles, planning and development norms and criteria set by national and provincial government

Compliance with these principles are explained in the next section.

(n) The matters referred to in Section 42 of the Spatial Planning and Land Use Management Act

Section 42 of SPLUMA refers *inter alia* to development principles. The proposal is consistent with the development principles of SPLUMA as demonstrated in the next section. The proposal is designed to protect and promote the sustainable use of agricultural land. It considers the public interest, relevant facts and circumstances and impact of engineering services.

(o) The principles referred to in Chapter VI of the Land Use Planning Act

The proposal is consistent with the development principles of LUPA as demonstrated in the next section.

(p) Relevant provisions of the land use scheme

The proposal has been compared with the provisions of the Agriculture 1 zone, as well as the Coastal Protection EMOZ, and is in general accordance with these provisions. However, Consents from Council are required as well as a street building line departure. The application is motivated and submitted in accordance with the requirements of the land use scheme.

12. MOTIVATION IN TERMS OF THE WESTERN CAPE LAND USE PLANNING ACT AND THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT

Section 7 of SPLUMA and Section 59 of LUPA establish five principles that are be implemented by all organs of state and other authorities regulating the use and development of land. Each principle is summarised and applied to this application in the following section. It is concluded that the proposal complies with these principles and deserves support.

It must be noted that due to the limited scale, nature, location and extent of proposal, the Development Principles are of limited applicability and relevance. The subject property is not being subdivided or rezoned, and the proposed micro-distillery will be accommodated within an existing, but currently unused, building.

12.1 Spatial Justice

The legacy of apartheid spatial and administrative planning is to be redressed so that the previously disenfranchised have improved access to, and use of, land. Land use control mechanisms and planning tools are to be designed to include disadvantaged communities, and municipal management systems must include provisions that are applicable to those areas created by, or resulting from, the previous exclusionary political system. Provision for secure tenure and the incremental upgrading of informal areas must be included in land use management procedures. The potential devaluation of land or property cannot prevent a Municipal Planning Tribunal from achieving this principle when evaluating an application.

12.1.1 Applicability to this Application

The applicability of the spatial justice principle is limited as the proposal relates to the establishment and operation of a micro-distillery on privately-owned land and within an existing but disused structure. This application does not relate to the provision of housing.

12.2 Spatial Sustainability

Land development is to be predicated on sound financial, institutional, and administrative practices. Prime and unique farmland is to be protected, while the provisions of environment management instruments are to be implemented consistently. Land markets are to be fair and equitable, including giving consideration to current and future cost for all parties for the provision infrastructure and social services. Development is to be promoted in areas which limit urban sprawl, and result in communities that are sustainable and viable.

12.2.1 Applicability to this Application

An existing structure on the property, with a minor extension, will be used for the micro-distillery. The agricultural potential is limited and the former use of the building as horse stables combined with the kikuyu planted for grazing previously had a significant environmental impact on the natural environment. Re-use of the building with a productive enterprise that is well managed and appropriate for the site is consistent with the principle of Spatial Sustainability. No Environmental Authorisation is required to permit the activity and the proposal does not result in, nor promote urban sprawl.

12.3 Efficiency

The optimal utilisation of existing resources and infrastructure is promoted and decision making procedures are to be designed to minimise negative financial, social, economic and

environmental impacts. The application procedures are to be efficient and streamlined and prescribed timeframes are to be adhered to by all parties to the development application.

12.3.1 Applicability to this Application

The proposal involves the recycling or repurposing of an existing structure to accommodate the micro-distillery. The use of water from the well, solar energy, wood from alien vegetation, fynbos botanicals grown on site, and sustainable waste management all contribute to a proposal that will make efficient use of existing resources.

12.4 Spatial Resilience

Spatial plans, policies and systems are to be flexible to ensure that the livelihoods of those communities most likely to suffer the impact of economic and environmental shocks remain sustainable.

12.4.1 Applicability to this Application

The consent use mechanism provides a degree of flexibility and allows the Municipality to exercise discretion in administering the Land Use Scheme. Refusal of this application will negatively impact on the livelihood of a number of people. No significant negative environmental impact is anticipated due to the small scale of the enterprise and the nature of its operations.

12.5 Good Administration

An integrated approach by all tiers of government is to be applied to land use management. When planning instruments are prepared or amended, government departments must provide their inputs, comply with the prescribed requirements, and include transparent public participation processes. All government departments must comply with the requirements of any law relating to land development and land use timeously. All land development and land use policies, legislation and procedures must be clearly set out to inform and empower the public.

12.5.1 Applicability to this Application

The application is submitted in terms of the Municipal Planning By Law 2020, and it is hoped that a timeous and sensible decision will be made that allows this project to proceed.

13. SECTION 42 OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT

Section 42 of SPLUMA provides guidance when an application is to be decided upon by a Municipal Planning Tribunal. Each of these criteria are reproduced and applied to this application below.

(a) Be guided by the Development Principles set out in Chapter 2

The Development Principles as set out in Chapter 2 have been considered in relation to the application and it is concluded that the proposal is consistent with these Principles.

(b) Make a decision which is consistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land, National and Provincial government policies and the municipal spatial development framework

National and provincial policies and the MSDF support appropriate and sustainable economic activity. This proposal relates to the conversion of an existing, but disused stable building for a small distilling enterprise that is appropriate and sustainable on the property.

(c) *To take into account:*

(i) *The public interest*

The proposal will help strengthen and diversify the local rural economy. The proposal will help to create awareness about the ecology and biodiversity of the area. Consequently, it is in the public interest.

(ii) *Constitutional transformational imperatives and the related duties of the State*

Due to the scale and type of activity, this criterion is not relevant in this instance.

(iii) *The facts and circumstances relevant to the application*

This application has detailed the relevant attributes of the site and surrounding area, explained, and illustrated the proposal, and provided motivation supporting the application in terms of the applicable regulatory framework.

(iv) *The respective rights and obligations of all those affected*

The only rights and obligations that could be affected relate to the title deed conditions registered in favour of Hangklip Beach Company). This report explains that the company has agreed to the removal of title deed conditions but for the retention of one restriction on use which is not relevant to the application.

(v) *The state and impact of engineering services, social infrastructure and open space requirements*

The conversion of the disused stable, with a minor extension to accommodate the micro-distillery will have no significant impact on engineering services or social infrastructure. All services will be provided by the proponent making use of local resources such as sun, water, and alien wood. No Municipal engineering services apart from the road will be used.

(vi) *Any factors that may be prescribed, including timeframes for making decisions*

The application is to be assessed and decided upon in terms of the relevant provisions of the Planning By-Law 2020.

14. CONCLUSION

The proposed Pringle Rock Distillery is a land use that will achieve a good "fit" with the site and general surrounding. It represents an imaginative recycling of a disused stable building while still retaining the underlying agricultural character. The small scale of the proposed distillery and nature of distillation process means there will be little or no negative impacts for neighbours, local communities, or the Overstrand Municipality. By contrast a range of positive impacts can be anticipated such as employment, economic growth, and sustainable use of local resources.

The owners of the proposed micro-distillery are active members of their community and believe in "good neighbourliness". They are willing to undertake all necessary steps to ensure that the micro-distillery does not have any negative impacts.

The proposal is a desirable and appropriate use for the site, and it is requested that this application be processed as expeditiously as possible to a successful conclusion.

FEBRUARY 2021
PLANNING PARTNERS (PTY) LTD