



"People at the centre of Development"

LAND USE PLANNING ASSESSMENT REPORT

(In terms of Sections 56, 65 & 66 of the Langeberg Land Use Planning Bylaw PN 264/2015, 30 July 2015)

APPLICATION: CONSENT USES (TOURIST FACILITY AND FUNCTIONS VENUE) AND AMENDMENT OF CONDITION OF APPROVAL (AMENDED SITE DEVELOPMENT PLAN) ON ERF 5227, MONTAGU (DE BOS RESORT)

Reference number	15/4/8/5&7&10	Application submission date	18-07-2023	Date report finalised	2 ⁹ -4-2024
Due date for comments / Date of last comments or information received					31-10-2023
PART A: AUTHOR DETAILS					
First name(s) & Surname	Jack van Zyl				
Job title	Senior Town Planner				
SACPLAN registration number	A/1170/2000				
PART B: PROPERTY DETAILS					
Property description (in accordance with Title Deed)	Remainder of Erf 5227 (referred to as Erf 5227 in this report)				
Physical address	8 Brown Street	Town	Montagu		
Current zoning	Agricultural zone II / Resort zone	Extent	5.47Ha	Are there existing buildings on the property?	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
Applicable zoning scheme	Langeberg Municipality Integrated Zoning Scheme, 2018				
Current land use	Resort & Agriculture			Title Deed number & date	T58817/2009
Any restrictive title conditions applicable	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	If Yes, list condition number(s)			

Any third party conditions applicable?	Y	N	If Yes, specify	
Any unauthorised land use/building work	Y	N	If Yes, explain	

PART C: APPLICATION DESCRIPTION

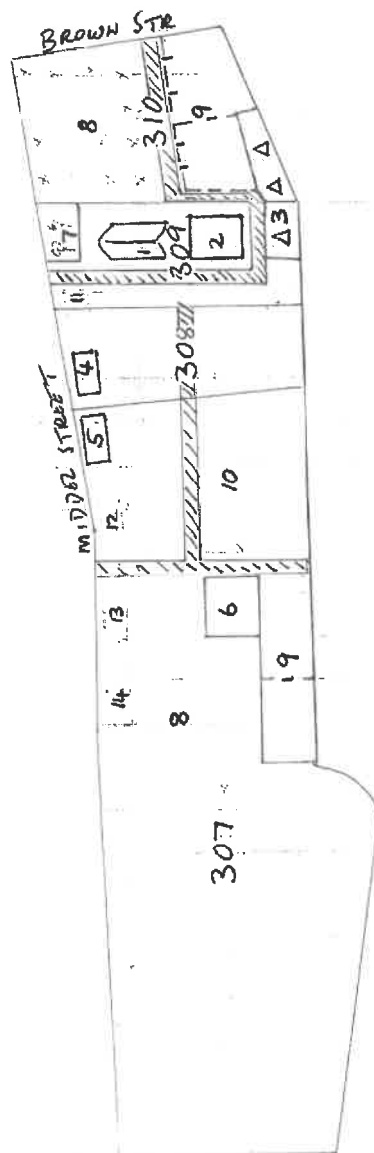
Application in terms of Section 15 of the Langeberg Municipality: Land Use Planning By-law, 2015 for the following:

- a. The amendment of a condition in respect of the existing approval in order to amend the approved site development plan
- b. Consent use for a functions venue
- c. Consent use for tourist facilities.

PART D: BACKGROUND & SUMMARY OF APPLICANTS MOTIVATION

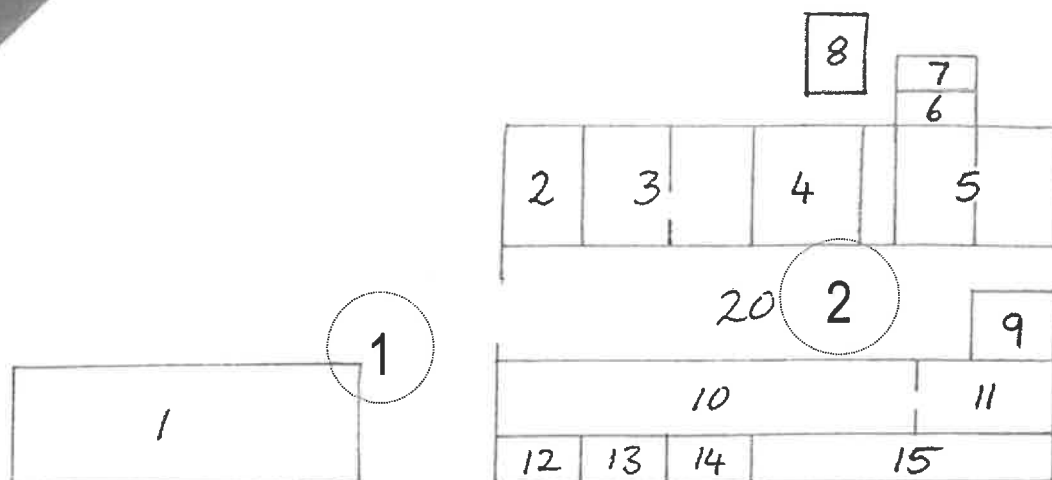
Erf 5227, Montagu is located in Montagu West, between the Keisie River to the south and Middle Street gravel road to the north (location plan attached in Annexure 1).

The property – then still consisting of 4 separate erven 307 to 310 - was rezoned in 1995 from Agricultural zone to Special zone for the development of a resort. The approval was granted on condition that the development of the property be restricted to the extent and uses as indicated in the application. This included a site development plan, a building layout plan showing the intended use of the existing buildings and a brief description of the intended development, as shown below.



- 1 HOMESTEAD
 - 2 ACCOMODATION
 - 3 CAMPING
 - 4 ACCOMODATION
 - 5 ACCOMODATION
 - 6 KRAAL
 - 7 ORCHARD
 - 8 PEACH NUT TREES
 - 9 HORSE PADDocks
 - 10 GRAPE VINES
 - 11 TO 14 ENVISAGED ACCOMODATION
- ||||| - ROAD

SITE DEVELOPMENT PLAN - APPROVED 1995



1. Woonhuis
2. Gemeenskaplike kombuis
3. 2 kamers met badkamer - slaap 6
4. Koelkamer
5. 2 kamers met badkamer - slaap 4
6. Kamp badkamer
7. Kamp kombuis
8. Werkswinkel
9. Kamer met badkamer - slaap 2
10. Skuur - slaap 20
11. Skuur kombuis
12. Stoorkamer
13. Skuur badkamer - dames
14. Skuur badkamer - mans
15. Perdestalle
16. Bungalow - 3 kamers, kombuis, badkamer - slaap 8
17. Bungalow - 3 kamers, kombuis, badkamer - slaap 6
18. Voetslaaners hut - slaap 6
19. Voetslaaners hut - slaap 6
20. Onderdak braaiplek

LAYOUT OF BUILDINGS 1 – 4 ON 1995 SDP

ONTWIKKELINGSVOORSTELLE

*Ons beoog om 'n volwaardige vakansieplaas te ontwikkel.

Op die korttermyn beplan ons die aanbou en opgradering van die eenhede 15, 16, 17 en 18. ←

Refer to
buildings 16,
17, 18 and
19 on layout
plan

Op die mediumtermyn, afhangend van aanvraag, beplan ons die omskepping van die woonhuis vir toerisme-doeleindes en die oprig van 'n nuwe woonhuis, asook die aanbou van verdere eenhede.

Op die perseel is daar 'n kampeerterrein en 'n kwekery. Daar is reeds 2 hektaar pekanneutbome aangeplant en die plan is om alle geskikte grond onder pekanneute te vestig.

Aangeheg vind u 'n skematiese voorstelling van die huidige infrastruktuur asook gebruike.

Ons wil nie die reg verbeur om plaasdiere aan te hou nie, aangesien hulle deel vorm van die toeriste-attraksies van die perseel."

With the adoption of a new zoning scheme for Montagu in 2000, erven 307 - 310 were allocated a zoning of Agricultural zone and Special zone (Resort). The two zonings were not demarcated separately on the zoning map and were considered to be a dual zoning.

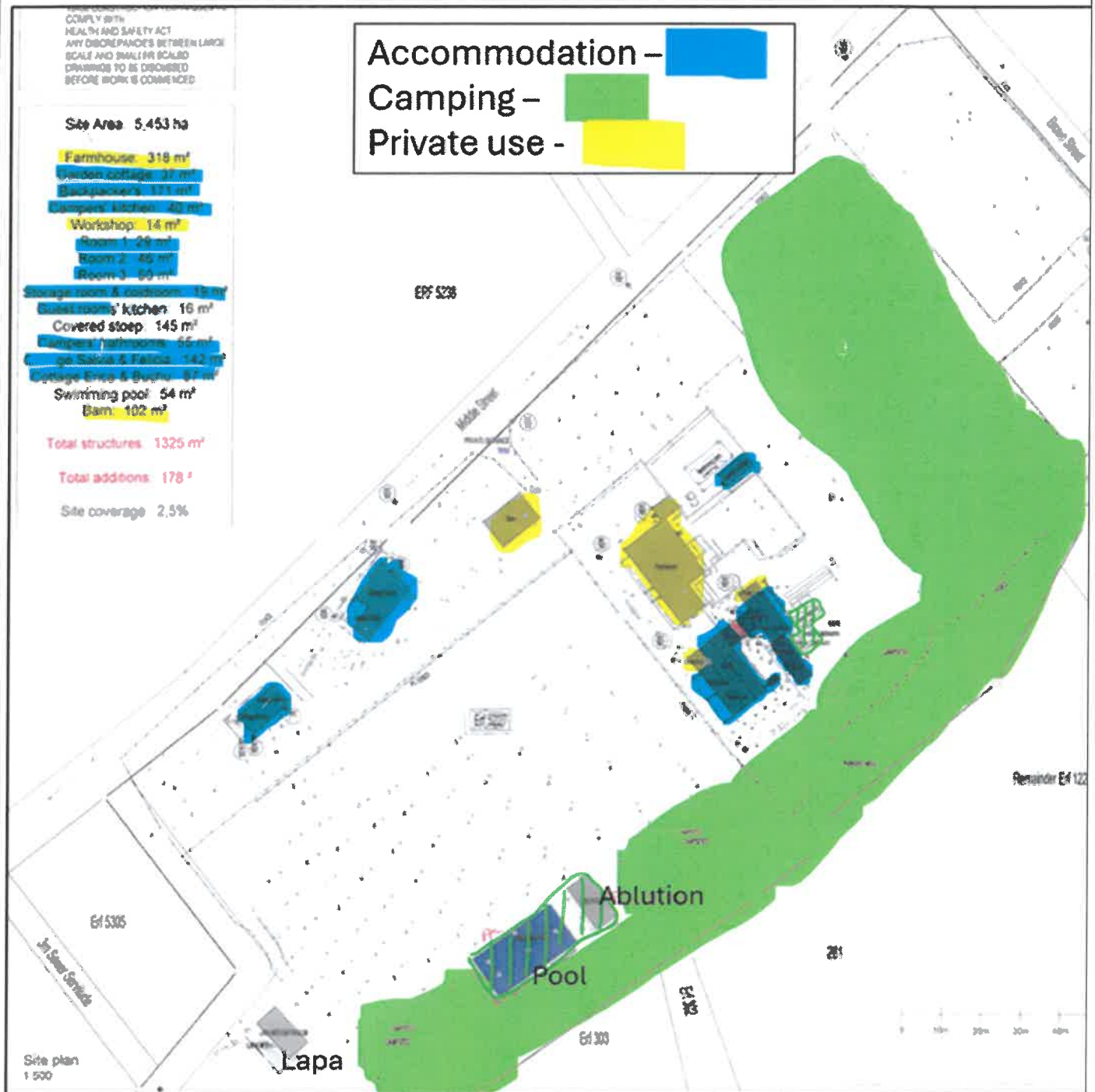
After the 1995 approval, there were various subdivision and consolidation applications and approvals for the property, culminating in the creation of consolidated erf 5227 – zoned Agricultural zone II / Resort zone – and 7 Single residential zone I erven (no's 5228, 5229 and 5301-5305). In terms of a condition of approval of the last subdivision, all 8 properties are members of a home-owners association (HOA), called De Bos Country Estate (DBCE) HOA. (The constitution of the DBCE HOA is attached in Annexure 2)



In addition to the subdivision of the 7 single residential erven in 2008, the 1995-site development plan for Erf 5227 was amended on two occasions, both as part of new building plan submissions for minor alterations and extensions to the existing homestead and holiday accommodation on the property. The amended SDP's were thus approved on 8 June 2017 and 21 November 2018. SDP's attached in Annexure 1.

The 2017 and 2018 amendments were aimed primarily at specific building plans that had been submitted at the time. They therefore excluded the south western portion of erf 5227, beyond erf 5305, presumably because it depicted only the area with buildings and access roads on it. While the 2017 amendment clearly demarcated the existing camping areas, the 2018 SDP only showed their approximate position by means of text inserts without specific delineation. The 2018 SDP (image below) must therefore be read together with the 1995 SDP and 2017 amendment with regards to the development of the whole property. The different identifiable use areas are indicated in colour on the 2018 SDP below. The remainder of the property -except for the lapa and swimming pools as indicated - is taken up by the private gardens of the homestead, agricultural uses (including grazing areas, paddocks, pecan nut trees and a wooden structure used as shelter for horses) and vacant land.

SITE DEVELOPMENT PLAN AMENDMENT – APPROVED 2018



Proposal

In addition to the previously approved uses and uses indicated on the approved SDP, the applicant now wishes to do the following :

- extend the camping area to the south western portion of the property , including upgrading of the existing lapa to a communal braai and ablution facility for campers.
- use the existing barn (current guest dining hall and kitchen) as indoor functions venue
- occasionally use the northern portion for outdoor functions and events
- use the property for tourist facilities in general and specifically for a farm market and recreational activities.

- continue to use the northern portion between Brown Street and the homestead for camping

A copy of the proposed SDP is attached in Annexure 3.

Camping sites

The proposal to extend the camping sites to the south western portion of the property is in line with the zoning but requires the amendment of the SDP. The proposal is to provide 17 low impact camping sites on the banks of the Keisie River (10 sites) and in the area to the west of the existing lapa (7 sites). To service these sites, the applicant intends to upgrade the existing lapa and ablution facilities and add a communal kitchen as well as a boma area ($\pm 1500\text{m}^2$) for communal braai and recreational activities. An 18-bay parking area is proposed to the east of the lapa. The number of guests in this low impact camping area will be restricted to 50.

It is noted that the proposed amended SDP also shows camping sites up to the north-eastern boundary of the property, which differs from the approved 2017 and 2018 SDP's by adding about 13 more campsites.

Functions venue

The proposed use of the property for functions, weddings and expos – both indoor functions and outdoor events - requires approval for a consent use for a "functions venue". The indoor functions venue will be in an existing building (old barn) that is currently being used as communal kitchen, dining, and recreational area for resident guests. The facility will not exceed a floor area of 500m^2 and accommodate a maximum of 120 guests. A 100-bay parking area will be provided immediately to the west of the venue and homestead.

According to the applicant, outdoor events will be held in the central and northern portions of the property occasionally. The applicant did not indicate a specific area in the central portion, but only indicated an area of $\pm 5000\text{m}^2$ in the north eastern corner of the property for this purpose. This area latter is also designated for camping (16 stands).

Tourist facilities

The application includes a request to approve a consent use for tourist facilities. The applicant specifically refers to a farmers market, but also seeks general approval for uses that is included in the definition of "tourist facilities" in the LIZS by-law, such as lecture rooms, restaurant, gift shop, restrooms, and other recreational facilities. No details are provided as to the nature, location, or extend of these uses. The existing swimming pool does not have to be included under the tourist facilities application, as this is considered an ancillary use to the primary use right in both the Montagu 2000 zoning scheme (Holiday resort) and LIZS 2018 (Tourist accommodation). [The swimming pool would have required consent use approval if the intention was to also make it available for the general public.]

Applicant's motivation

The applicant motivates the proposal on the following grounds (full motivation attached in Annexure 4):

- It complies with applicable SPLUMA principles :
 - Proposed uses will support the rural economy and growth and development of the tourism sector
 - Will not have negative impact on social, economic and environmental considerations, because of small footprints, low density and distances from existing development on adjacent properties.
 - Low visual impact / visually unobtrusive development
 - Functions venue will be operated from existing building
 - No EIA listed activities involved
 - Optimal use of land
 - Making use of existing infrastructure
 - Consistent with relevant spatial frameworks, policies and zoning scheme
 - Due to small footprint of proposed uses, non-agricultural land uses will not detract from the rural character of the property.
 - Development complies with the parameters set in the zoning scheme for the zonings involved.

- Application required to obtain consent for expansion of the camping area and to ensure that existing land uses are all carried out lawfully (need):
 - New camping sites in south western portion is intended to provide for a wider range of accommodation options and supplement the resort's income. Sites will be off-the-grid and will not have individual vehicular access. It will be aimed at nature-oriented campers, hikers and mountain bikers.
 - The lapa and camping area for groups are regarded as a historical lawful rights, since the 2005 and 2008 subdivision applications both referred to it as such. The lapa is also indicated on the 2108 SDP.
 - It is assumed that that the use of the barn for functions was considered a primary use right in the former Special Zone (under holiday resort and caravan park). Application is only made to ensure that it may continue to be operated lawfully under the current zoning scheme.
 - Given its particular setting, the property is ideally suited for weddings and other functions, both indoor and outdoor.
 - The farmers market has been held for some years already and is regarded a desirable land use. The application merely serves to ensure that it is being operated lawfully.
- The proposal is desirable, based on the following specific factors :
 - Located within walking distance from amenities in town
 - Favourable physical site characteristics
 - Strategically located on tourism Route 62
 - Site is easily accessible from the Brown Street entrance, while no access will be taken from Middle Street. This will ensure that neighbouring properties on De Bos Estate will not be disturbed by traffic.
 - Adequate provision is made for on-site parking for all uses.
 - Uses fit in with the character of the surrounding area.
 - Overall character of the property will remain rural.
 - Proposed consent uses have been carried out for a number of years already and are considered ancillary and compliant uses in the existing zoning.
 - The natural environment on the site and the manner in which the existing buildings have been built on adjacent erven 5228, 5229 and 5301-5305 contribute towards the privacy on these erven. The low impact camp sites will be located 40m-60m away from these erven, at a lower level, with dense vegetation in between, the form of screen planting and hedges on the southern boundaries of these erven as well as pecan nut trees and other natural trees.
 - Camp sites will not impede the right of other owners in the estate to use the area for recreation (as described in the conduct rules).
 - Proposal will not change the rural character / country feel of the De Bos property, as the planned uses will complement its primary land use and will be concentrated in the north western section of the property, leaving the south western section with only low key camping activity and predominantly agricultural uses.
 - Low impact on municipal services.
 - Will have a positive socio-economic impact through contribution to the tourism industry of the town and region, creation of economic opportunities and provision of social facilities in general.
 - No negative environmental impact expected, as there will be no development under the 1:50 year flood line, existing buildings and – development footprint will be used and measures will be in place to dispose of waste.

PART E: SUMMARY OF PUBLIC PARTICIPATION

Public participation required in terms of Sections 45- 49 of the By-law?

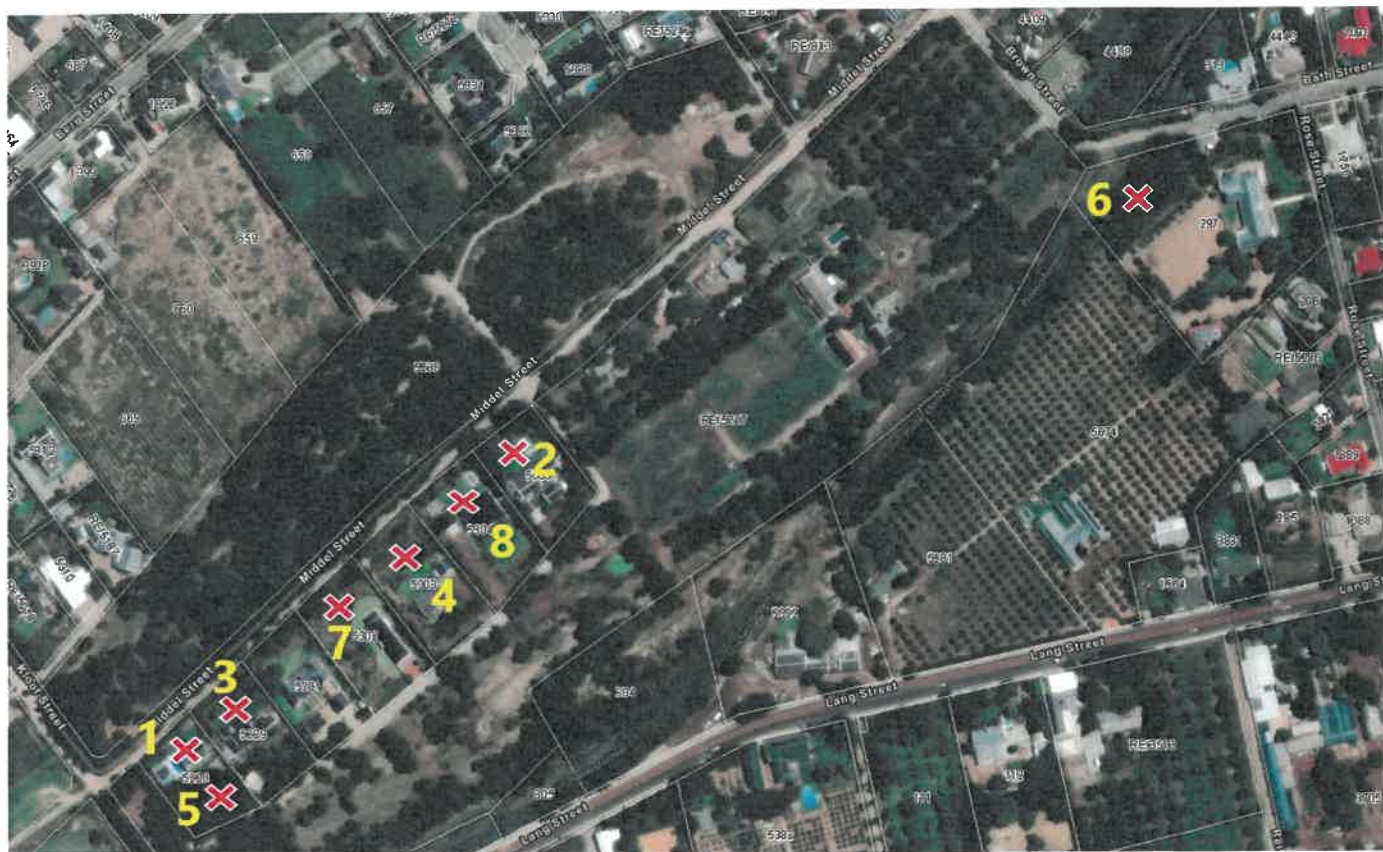
Y

N

Where participation is required, state method of advertising	Press	Notices	Ward Councillor	Other
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PART F: SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION (if applicable)

A total of 8 objections were received against the application, 7 from six of the single residential properties in the De Bos Estate and 1 from erf 279 which borders on De Bos on its westernmost point (see location of each objector's property marked on plan below). Copies of the objections are attached in Annexure 5. {Note: Several of the objections included an attached copy of the DBCE HOA Constitution. This document is attached separately in Annexure 2 and not included with each of the objections in Annexure 5}



The objections are against all elements of the application and based on the following:

- Proposal is in conflict with the Constitution of De Bos Country Estate (DBCE)**
 - The constitution limits the usage of the south-western portion of Erf 5227 to members of the HOA
 - The constitution determines that agricultural nature of the property must be retained.
 - Application cannot be lodged or considered without the consent of the HOA
- Some land uses shown on the SDP are not historical or approved land use rights as claimed in the application.**
 - Historic use of the lapa is questioned. Lapa and camping area next to it have not been used since establishment of the DBCE.
- Expected disturbance, noise, traffic impact, waste pollution and security issues.**
 - New proposed camping sites, recreational facility (lapa, boma, kitchen, scullery and ablutions) and parking is too close to residential properties, some as close as 10m from their boundary.
 - 118 additional parking bays
 - Camping close to residential erf boundaries will result in noise, smoke and garbage nuisances.
 - Events will cause noise disturbance to residential properties in DBCE and wider.

- **Proposed development is not in keeping with the character and development pattern of the surrounding area**

The applicant's response to the objections is attached in Annexure 6. The main points are:

- Use rights of southern portion cannot be restricted by conduct rules. Planning application shows that development is consistent with the zoning and the DBCE Constitution. The constitution does not prevent the owner from allowing public access, provided that the conduct rules still apply to all users.
- The Constitution only requires that building plans must be approved by the HOA before submission to the municipality. This does not apply to a planning application. This is supported by an opinion obtained from the Western Cape Dept of Environmental Affairs and Development Planning.
- The lapa was mentioned in previous applications of 2005 and 2007 as a facility with bathroom and used for group camping purposes / tourist groups.
- Unfair to limit the number of activities or events per year, as it is subject to seasonality, weather and general economic climate. Objectors' assumption that there will be an unacceptable number of events / activities has factual support.
- The intention is not to create a mass commercial tourist attraction, but there may be occasional larger events, for which the required events permits will still have to be obtained and which must abide by the municipal events by-law.
- To reduce possible noise nuisance, a cut-off time for events and functions can be set at 23h00, with no music and noise disturbances allowed between 23h00 and 08h00.
- The servitude road to the houses in DBCE will not be used by guests. Only entrance for camping, accommodation and events/functions will be from Brown Street.
- When they bought into the DBCE, owners were aware that Erf 5227 was zoned for a resort and operating as a business.
- With regard to the total number of parking bays indicated in the application, the intention is not to add parking, but to make use of the existing parking. The large number of parking bays shown (118) is only to indicate that there is enough space for parking in the unlikely case of all facilities / land uses being operated at once.
- Assumption about the type of guests that will use the boma is unacceptable and potentially offensive.
- General rules could be laid down for the use of the boma to consider the neighbours' peace and privacy.
- Screening and landscaping with dense vegetation between the boma site and DBCE properties will help protect privacy.
- Temporary toilets will only be used for events, functions and farmers' markets and will be set up close to the events, not in the southern section of the property.
- Camping sites (including those in the southern section) will be provided with a braai and rubbish bin each.
- Preservation of the rural character does not necessarily mean that the zoning should be agricultural or that only agricultural uses may be carried out. The low density development and agricultural uses on erf 5227, including the keeping of horses as a tourist attraction contributes towards preservation of the rural character.
- Since 1995 the intention was to develop the property as a proper resort. The zoning applies to the whole of Erf 5227. The surrounding smallholdings are mainly used as lifestyle properties, with small scale farming activities, but some offer tourist accommodation and tourist facilities. Existing and intended use of erf 5227 is not foreign to the area.

PART G: SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS (if applicable)

Department / Name	Comments
Civil Engineering Services	Requested a services report, which was duly provided by the applicant (attached in Annexure 7). The report proposes certain upgrades of the existing on-site services. The Department had no objection or further requirements.

Building Control	No objection or further comment,
Traffic Services	No comment received
Electrical Engineering Services	<p>Initial comment:</p> <p><i>Die verslag wat ons ontvang het, is nie baie duidelik in terme van dienste nie. Daar word genoem dat daar nie 'n merkbare verandering op die bestaande dienste sal wees nie. Om enige onduidelikheid uit die weg te ruim, sal dit beter wees as julle kan aandui wat julle behoefte is in terme van elektrisiteit, of die bestaande voldoende is en of julle moontlik addisionele kapasiteit gaan benodig."</i></p> <p>The applicant submitted a report in this regard (attached in Annexure 7), which indicated that the addition of electricity supply to the planned new camping sites and upgraded lapa will require an electricity upgrade from 40A three phase to 80A three phase.</p> <p>Additional comment:</p> <ol style="list-style-type: none"> 1. Met verwysing na die aangehegde verslag is die behoefte vir elektriese dienste dat die aansluiting verdubbel moet word (vanaf 40A 3-fase na 80A 3-fase). 2. Daar is grootmaat dienste beskikbaar vir die addisionele 40A 3-fase. Die koste sal in terme van die tariewe op die stadium van toepassing wanneer die groot maat dienste betaalbaar is. 3. Enige addisionele koste verbonde aan versterking van die netwerk wat nodig mag wees vir die addisionele kapasiteit sal vir die ontwikkelaar se koste wees. Die Elektriese afdeling sal 'n kwotasie voorberei wanneer aansoek gedoen word daarvoor. 4. Enige nuwe installasie / bedrading moet deur 'n gekwalifiseerde elektrisiën gedoen word en 'n afskrif van die COC aan die Munisipaliteit gestuur word. 5. Enige alternatiewe energie stelsels (Solar PV, generators ens) wat aan die Munisipale netwerk gekoppel word, al word daar nie terug gevoer nie maar slegs batterye gelaai, moet volgens die Munisipale Bywette geregistreer word by die Munisipaliteit; meer inligting is beskikbaar op ons webtuiste.
Fire and Disaster Management	No comment received
Ward councillor	No comment received

PART H: MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

Alignment with policy, principles and overhead spatial planning

The proposal is generally consistent with all applicable policies and spatial plans as described more fully under Chapter 5 of the motivation (pp 9 to 18 of the report), which is supported with the following exceptions/reservations:

- Paragraph 5.4 (p14) states that since original resort started in 1995, many ancillary uses were considered permitted land uses
- Paragraph 5.5 deals with the Western Cape Land Use Planning Guidelines for Rural Areas, 2019, but because Erf 5227 is located within the urban edge of Montau, these guidelines do not apply, as explained in the guidelines itself: "In respect of the Rural Areas Guideline the term, 'rural areas', from a development management point of view, refers to all areas outside of the physical outer edge of existing built-up areas and settlements."

- Paragraph 5.8 & 5.9 refers to the previous zoning scheme Montagu 2000 and current LIZS, 2018. The application of the proposal to the previous zoning schemes and adherence to the current scheme is evaluated separately below.

Adherence to the relevant provisions of the zoning scheme

Both the function venue and tourist facilities are listed consent uses under Resort zone, while only tourist facilities is listed under Agricultural zone II. Therefore, application for consent uses is considered to be in line with the zoning scheme.

The primary use right in Resort zone is Tourist accommodation. Per definition in the zoning scheme, this includes camping sites, self catering accommodation, a resort shop (only for guests) and wellness center, amongst others. The proposed low impact camping sites is therefore also in line with the zoning scheme.

An important element of the application, as far as the impact on the objectors is concerned, is the proposed boma area with lapa, bathroom and communal braai facility. The question is whether this is an ancillary use to the primary use (as argued by the applicant), or a separate use that requires specific approval. In this regard, it is noted that the zoning scheme by-law defines tourist accommodation as “a *harmoniously designed and built holiday development, used for holiday or recreational purposes.*” This is interpreted as including certain amenities that may be provided in the development for the benefit of resident guests, such as swimming pools, ablution facilities and communal braai or -recreational areas.

These ancillary uses are not regarded as “recreational facilities” such as specifically listed in the definition of tourist facilities below, because the definition refers to amenities for tourists and visitors, which indicates that such facilities would be accessible to the general public and not just for resident guests.

“*tourist facilities*” means **amenities for tourists or visitors** and—

- (a) includes lecture rooms, restaurants, gift shops, restrooms, farmers’ market and **recreational facilities**; and
- (b) does not include an off-road trail, a hotel, wellness centre; or tourist accommodation.”

In terms of the zoning scheme, the boma, with upgraded lapa and communal braai and recreation facilities is be regarded as an ancillary use under the primary use right of Tourist accommodation. It can therefore be considered without an application for consent use. However, since the proposal is to extend the boma area far beyond the extent of the existing lapa building, this proposal has to be evaluated as part of the SDP amendment.

Effect of existing rights / impact previous approvals

The applicant states that the following uses have been executed historically and should be regarded as lawful uses:

Swimming pool – as ancillary use. This is correct, as argued above.

Farmers market – described as having been held for many years. The fact that it has not been registered as a consent use is described as a discrepancy. This is incorrect, as the market have only been introduced recently by the current owners (of the trust who owns the land). Also, there is no indication in the previous or current zoning schemes that a farmer’s market can be operated under the primary use rights.

Functions venue – described as a land use that has been carried out for many years. Assumed to have been allowed under Montagu Zoning Scheme 2000 as primary right, but that it was not registered as a consent use with the transfer to LIZS 2018, by mistake. This is incorrect, as there is no record of the barn or any outside area being used for functions. This also seems to be a used introduced by the applicant (current owner of the trust). There is no justification for this assumption in the previous zoning scheme and the land use rights under that scheme.

Lapa. The applicant refers to the inclusion / mention of the lapa in previous applications and plans and that it implies an existing lawful right to use the lapa (and surrounding area) as recreational facility for tourist groups and for camping. This is not accepted for the following reasons:

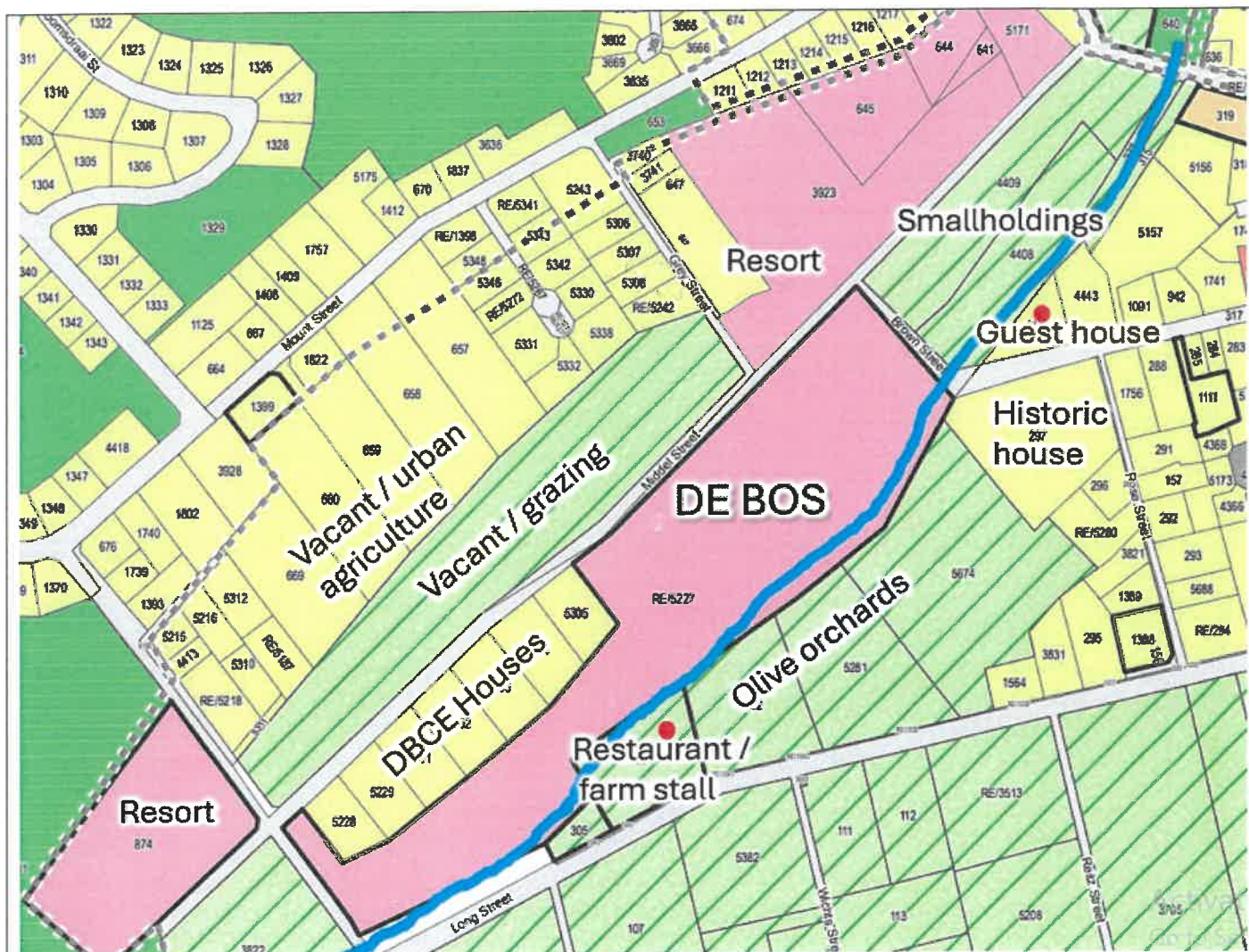
- The applications to which the applicant refers, were not specifically aimed at the use of the lapa for any particular reason, but only referred to it as background information.
- The reference to the lapa as facility for tourist groups was made before the subdivision of erf 5227 and creation of De Bos Country Estate in 2008.
- There is no evidence other than the passing references in previous applications that the lapa has been used for anything other than for storage and shelter for farm animals.

Previous approvals regarding the applicant property were always given with the intent to retain the agricultural character of the property. For that reason, together with the 2008 subdivision approval, the original proposal to subdivide erf 5227 into 12 portions (11 single residential erven and remainder) was turned down and the approval for subdivision into 8 portions (7 single residential and remainder) was approved subject to i) no further subdivision of the remainder and ii) the establishment of a HOA that must ensure that the agricultural character of the development is retained.

The DBCE Constitution was duly evaluated and approved by the Municipality. The rules of the constitution as approved, is regarded as an extension of the development parameters for the development and have the same effect as conditions of approval. The constitution includes two appendices – one with building rules and the other with conduct rules. The “conduct rules” is the only part of the constitution that refers to the use of any particular area of the applicant property. Clause 1 determines that the area between the single residential; erven and the river will “keep its agricultural nature”. Clause 2 permits the owners of the residential erven to use this area for their general enjoyment, within restrictions. Clause 3 specifically refers to the walking, horse riding, cycling and sitting on benches in the area “around the pond and along the river”. The constitution specifically determines that these conduct rules may be amended without municipal consent, which means they cannot be regarded as an extension of the development parameters as stated above. Nevertheless, they give an indication of envisaged use of this area at the time of the approval. It should be taken into account that the development of this area with 17 camping sites (most of which are along the river) and a boma (where the pond is situated) will make it impossible for the members of BCE to use it as envisaged in the conduct rules.

Compatibility with surrounding uses

The surrounding uses consist of a mixture of agricultural/vacant land, a resort, large single residential properties and a business use (restaurant / farm stall) across the river. Erf 4409 (across the street on the corner of Brown and Middel Streets)) has approval for tourist facilities (restaurant) and shop, which has not been executed to date. The uses that are being applied for is deemed to be generally compatible with this existing land use pattern.



Impact on biophysical environment

The proposed consent uses are located within the established developed portions of the property and are not expected to have any negative impact on the biophysical environment.

The proposed boma area, 17 low-impact camping sites and 18 parking bays will be relatively close to the river, with a part of the boma and 14 of the camp sites below the 50 year floodline. As all of these facilities will potentially have access to the river, and also keeping in mind that there will not be ablution facilities within easy walking distance from some of these camp sites, especially if the lapa is not allowed to be extended or used as ablution facility, there is a possibility of pollution and degradation of the river and river banks. This aspect has not been addressed in the application, apart from the statement that conduct rules may be drawn up and that every site will be provided with a refuse bin.

Impact on quality of life – view, light, privacy, visual impact, character

The proposed development of 17 camping sites, parking for 18 vehicles and a boma area with lapa, bathroom and braai facilities may adversely affect the owners of single residential properties in DBCE in terms of their privacy, views and general enjoyment of their properties. The proposed sites are close to the DBCE properties, mostly within view and also within hearing distance. The boma area is immediately across the road from Erf 5305 (Objector 2), approximately 10m away from its boundary. The camping sites are about 10m – 60m from the DBCE property boundaries. The parking area for the boma and camping sites is also between 15m and 40m away from erf 5305.

The visual impact of the camping sites and the boma as well as the related activities – movement of people, social gatherings – and sounds, will undoubtedly change the character of this portion of the property, if not from a broader perspective, then certainly in the experience of the owners in the DBCE.

PART I: ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS (REFER TO ROR GUIDELINE)

N/A

PART J: RECOMMENDATION

That the following decisions regarding the development application for the Remainder of Erf 5227, Montagu be taken in terms of Section 60 of the Langeberg Municipality: Land Use Planning Bylaw, 2015:

- A. That the application for the amendment of a condition of approval to amend the approved site development plan, be rejected as far as it concerns the south-western portion of Erf 5227, specifically the proposed 17 low-impact camping sites, 18 parking bays and boma area with lapa, bathroom (ablution facility) and braai facilities.
- B. That the application for a consent use for a functions venue be approved, subject to the following conditions, subject to the following conditions in terms of Section 66 of the said by-law.
- C. That the application for a consent use for tourist facilities be approved, subject to the following conditions in terms of Section 66 of the said by-law:

CONDITIONS OF APPROVAL

1. The development and use of the property must be in accordance with the Site Development plan marked MON5227-LBM-SDP24, with the exception of the south western portion of the property and proposed uses as described in A above, which area may only be used for agricultural purposes and the owner's private use in line with the primary land use right in Agricultural zone II, as well as for the general use by members of the DBCE HOA, in accordance with the stipulations of the DBCE Constitution and addenda.
2. The consent use for Tourist facilities as approved is limited to a farmers market and does not include the other public facilities included in the definition of tourist facilities in the zoning scheme.
3. The operation of the functions venue is limited to the existing barn and between the existing buildings for indoor functions, while outdoor events must be restricted to the north eastern half of the property, north east of the homestead.
4. The hours of operation for the functions venue is 08h00 to 23h00.
5. The farmers market will be restricted to the north eastern corner of the property, as indicated on the said site development plan.

REASONS FOR DECISION:

The reasons for rejecting the amendment of the SDP are:

1. The proposed development of 17 camping sites, parking for 18 vehicles and a boma area with lapa, bathroom and braai facilities may adversely affect the owners of single residential properties in DBCE in terms of their privacy, views and general enjoyment of their properties.
2. The development of the area between the river and the single residential properties of DBCE with 17 camping sites and a boma will make it impossible for the members of DBCE to use it as envisaged in the conduct rules as given in Annexure B of the DBCE constitution.

The reasons for approving the consent uses are:

3. The proposed land uses is deemed to be compatible with the land use pattern and – character of the surrounding area.

4. The proposed facilities will have an economic benefit to the community and support tourism in the town and region.
5. The proposed uses will be accommodated in existing development and will not have a negative impact on the biophysical environment, heritage or the character of surrounding area.
6. The traffic impact and impact on engineering services is deemed to be acceptable.
7. The proposal conforms to the relevant zoning scheme requirements.

PART K: ANNEXURES

- | | |
|-------------|---|
| Annexure 1: | Location- and site development plans |
| Annexure 2: | Constitution of the De Bos Country Estate Home Owners Association |
| Annexure 3: | Proposed amended Site Development Plan |
| Annexure 4: | Motivation report |
| Annexure 5: | Objections |
| Annexure 6: | Applicant's response to objections |
| Annexure 7: | Services reports |

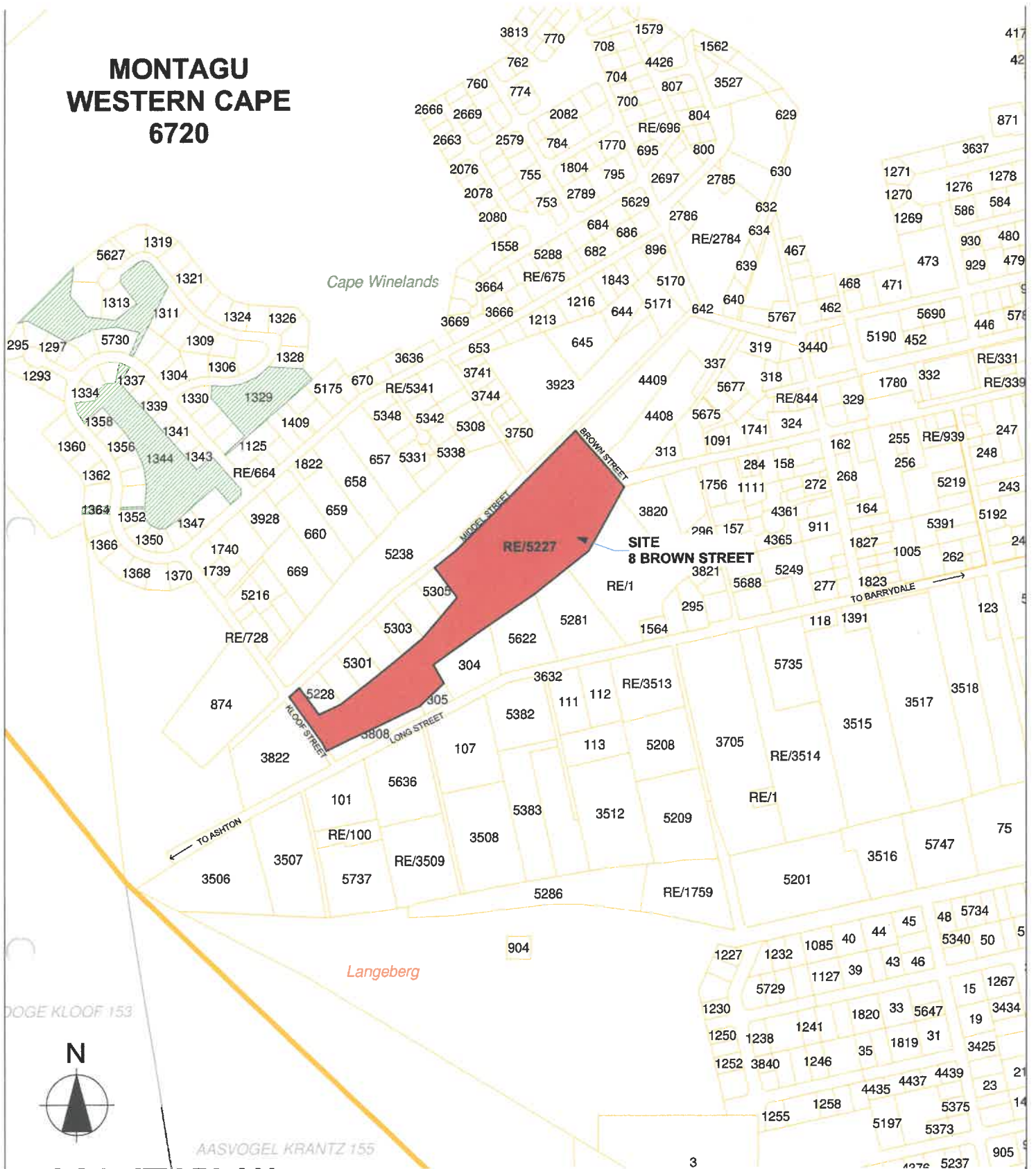
PART L: AUTHOR SIGNATURE

.....
J LE R VAN ZYL
SENIOR TOWN PLANNER
REGISTERED PROFESSIONAL PLANNER – NO. A/1170/2000

.....
DATE

Location- and site development plans

MONTAGU WESTERN CAPE 6720



LOCALITY PLAN

Not to scale

This locality plan should be read with the rest of the application and motivation letter.

SITE DEVELOPMENT PLAN for DE BOS on ERF 5227.
De Bos Backpackers and Camping 8 Brown Street Montagu 6720

Client: Andrew & Tracy Simmans

DRAWING NAME: LOCALITY PLAN
Drawing No.: NH202302 / SDP Rev.

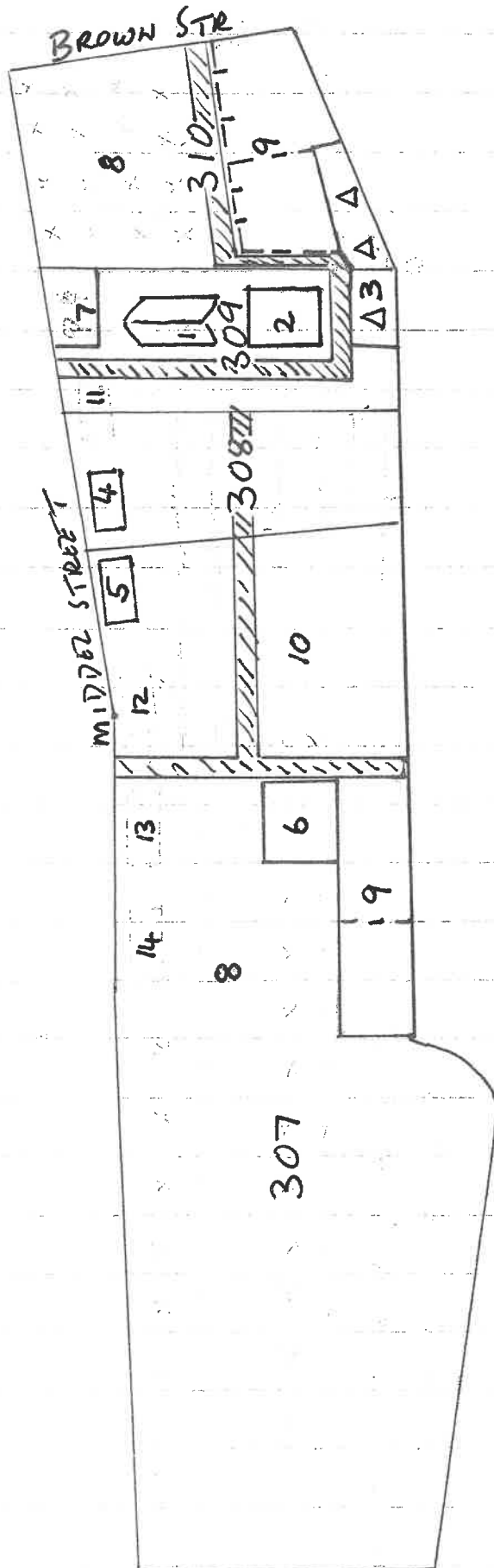
Nadine Hattingh
ARCHITECTURAL SERVICES
Professional Senior Architectural Technologist | PSAT34235845
Cell: 076 416 8863 | Email: hi@nadinehattingh.com

Drawn By: Nadine Hattingh
SACAP reg: PSAT 34235845

Date: 2/23/2023
Scale: As Indicated.
Page: A4

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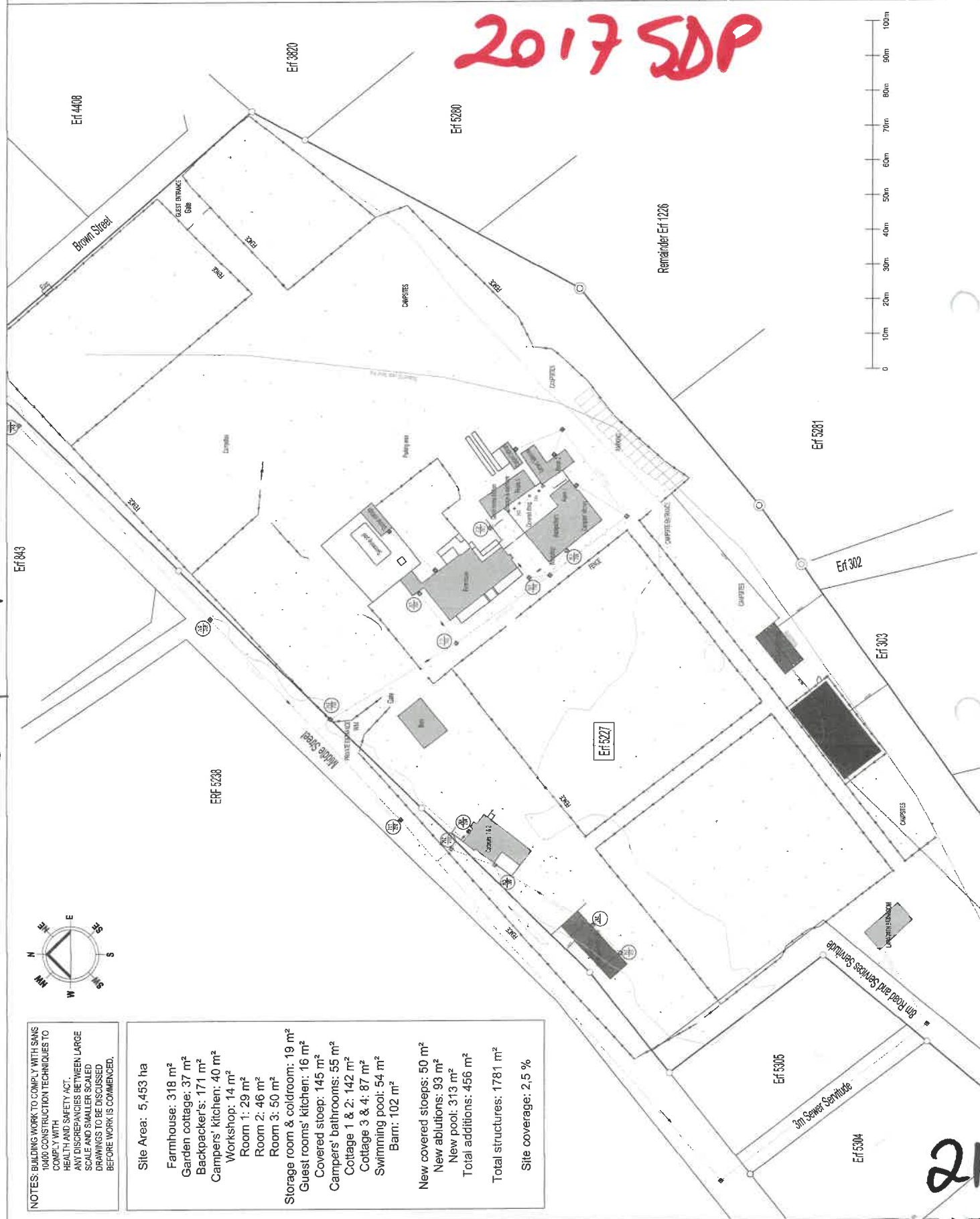
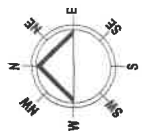
1995 SDP



- 1 HOMESTEAD
 - 2 ACCOMODATION
 - 3 CAMPING
 - 4 ACCOMODATION
 - 5 ACCOMODATION
 - 6 KRAAL
 - 7 ORCHARD
 - 8 PEACH NUT TREES
 - 9 HORSE PADDOCKS
 - 10 GRAPE VINES
 - 11 TO 14 ENVISAGED ACCOMODATION
- ||||| - ROAD

NOTES: BUILDING WORK TO COMPLY WITH SANS 1040 CONSTRUCTION TECHNIQUES TO COMPLY WITH HEALTH AND SAFETY ACT. ANY DISCREPANCIES BETWEEN LARGE SCALE AND SMALLER SCALED DRAWINGS TO BE DISCUSSED BEFORE WORK IS COMMENCED.

- Site Area: 5.453 ha
- Farmhouse: 318 m²
 - Garden cottage: 37 m²
 - Backpacker's: 171 m²
 - Campers' Kitchen: 40 m²
 - Workshop: 14 m²
 - Room 1: 29 m²
 - Room 2: 46 m²
 - Room 3: 50 m²
 - Storage room & coldroom: 19 m²
 - Guest rooms' Kitchen: 16 m²
 - Covered stoep: 145 m²
 - Campers' bathrooms: 55 m²
 - Cottage 1 & 2: 142 m²
 - Cottage 3 & 4: 87 m²
 - Swimming pool: 54 m²
 - Barr: 102 m²
- New covered stoeps: 50 m²
- New ablutions: 93 m²
- New pool: 313 m²
- Total additions: 456 m²
- Total structures: 1781 m²
- Site coverage: 2.5 %



2017 SDP

NOTES:
ALL WORK TO COMPLY WITH SANS 1040
EDITION 3
1. FOUNDATIONS
TO BE TAKEN DOWN TO SOLID GROUND BUT NOT LESS THAN 500MM
BELOW NATURAL GROUND LEVEL. FOUNDATIONS STRICTLY TO
BE IN ACCORDANCE WITH SANS 1040.
2. ROOFING
NEW COVERED STOPS: 25MM FINISHED SCAFFOLD ON 100MM
ON 25MM SCAFFOLD ON 100 CONCRETE REINFORCED COMPACTED
SUBGRADE. 1:122MM T&G FLOORING SEALED WITH WOODCOAT 25
FIXED TO 2200MM P&S SA PINE BEAMS @ 900MM C/C'S WITH
STAINLESS STEEL DECK SCREWS.
3. FLOORING
AS PER SECTIONS.
4. CEILING & INSULATION
AS PER SECTIONS.
5. WALLS
AS PER SECTIONS.
6. WINDOWS & DOORS
AS PER WINDOW & DOOR SCHEDULE.
7. GLAZING
AS PER WINDOW SPEC. INSTALLED BY KITCHEN SPECIALIST. SEPARATE
QUOTATION TO BE OBTAINED BY OWNER.
8. FIREPLACE & CHIMNEY EXISTING TO REMAIN IN ACTUALITY. 1. AND TO
BE REPLACED BY NEW ONE. 2. AND TO BE REPLACED BY NEW ONE. 3. AND TO
BE REPLACED BY NEW ONE. 4. AND TO BE REPLACED BY NEW ONE.
ACCESS DOORS & SIDE LIGHTS TO HAVE SAFETY GLASS. WINDOWS
LOWER THAN 900 FROM FLOOR TO BE SAFETY GLASS.
9. LIGHTING
TO BE DESIGNED AND INSTALLED BY SPECIALIST TO COMPLY WITH
SANS 1040 - ENERGY EFFICIENT IN BUILDINGS. REQUIREMENTS.
SEPARATE QUOTATION TO BE OBTAINED BY OWNER.
10. MECHANICAL
TO BE DESIGNED AND INSTALLED BY SPECIALIST TO COMPLY WITH
SANS 1040 - ENERGY EFFICIENT IN BUILDINGS. REQUIREMENTS.
11. STORMWATER DISPOSAL
TO BE DESIGNED AND INSTALLED BY SPECIALIST TO COMPLY WITH
SANS 1040 - ENERGY EFFICIENT IN BUILDINGS. REQUIREMENTS.
12. ALL MEASUREMENTS AND HEIGHTS TO BE CHECKED ON SITE.
13. STORMWATER DISPOSAL TOWARDS OPEN FIELD. GUTTERS AND
DOWNPIPES TO BE POWDER-COATED COPE PROFILE SEAMLESS
ALUMINIUM FINISH COLOUR TO MATCH ROOF SLEETING ON
NEIGHBOURING HOUSES.
14. PLUMBING & ELECTRICAL WORK
ALL PLUMBING TO BE INSTALLED BY A LICENSED PLUMBER WITH ALL
PLUMBING WORK AND CHANGES TO BE DONE IN ACCORDANCE TO NHB.
ALL ELECTRICAL WORK TO BE DONE IN ACCORDANCE TO NHB.
MATERIALS IN COMPLIANCE WITH SANS 1040 STANDARDS.
15. STAIRCASES
RISERS @ MAX. 200MM & HEADS @ MIN. 2000MM.
16. FENCING
TO BE DESIGNED AND INSTALLED BY SPECIALIST TO COMPLY WITH
SANS 1040 - ENERGY EFFICIENT IN BUILDINGS. REQUIREMENTS.
17. THE DRAWING SHALL NOT BE SCALED TO ASCERTAIN ANY
DIMENSIONS. ANY DISCREPANCIES ON OR BETWEEN DRAWINGS TO BE
DISCUSSED BEFORE WORK IS COMMENCED.
18. THE DRAWING SHALL NOT BE USED FOR ANY PURPOSES OTHER THAN
THAT INTENDED BY THE AUTHOR.
19. THE DRAWING MUST NOT BE REPRODUCED WITHOUT THE EXPRESS
WRITTEN CONSENT FROM THE AUTHOR.

ISSUED FOR QUOTATION PURPOSES



PO Box 600, Bopape, Pretoria - Edele Valley - Montagu - 6720
t: 023 624 3921 - f: 086 575 2894 - c: 082 841 3971
bopape@bopape.co.za - Member ID Professionals - SACAP 10123

Proposed alterations
& additions to
DE BOS GUEST FARM
on
Erf 5227
8 Brown street
Montagu West

OWNER
ENGINEER
SIGNATURE: A SIMMANS
PR.ENG 960423

Drawing Title: **SITE PLAN**

Scale:	1:500 @ A1
Date:	22.04.2017
Project:	1116as
Drawing No:	SP.01
Rev. No.	

Middle Street

Geography line

Sewerage line

PRIVATE ENTRANCE
WM

Gate

Barn

Cottage Selva

2018 SDP
CLOSE-UP
OF
HOMESTEAD

Swimming pool

Garden cottage

Farmhouse

PARKING AREA

FENCE

CAMP SITES

INSTALL
STORMWATER
DRAIN & GRID
STORMWATER
TOWARDS RIVER

CAMP SITES

23

Workshop

Guest room

Family room

Living room

Dining room

Kitchen

Breakfast room

Storage & outdoor

Private room

Camper's bathroom

Camper's bathrooms

Camper's 2 bathroom

Office

Storage

Storage

Storage

Storage

Storage

Storage

Storage

Storage

Storage

Storage

Storage

Storage

Constitution of the De Bos Country Estate Home Owners Association

M THERON Attorney and Conveyancer
11 Kohler Street
MONTAGU
6720

**CONSTITUTION OF THE DE BOS COUNTRY ESTATE
HOME OWNERS' ASSOCIATION**

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7-15

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B

1. **NAME**

The name of the Association is: "De Bos Country Estate Home Owners' Association."

2. **DEFINITIONS**

- 2.1 The headnotes to the paragraphs in this constitution are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 2.2 Words importing the singular shall include the plural and vice versa.
- 2.3 Words importing the masculine shall include the feminine.
- 2.4 Unless the context clearly indicates a contrary intention, the "Association" shall mean the De Bos Country Estate 'Home Owners' Association, established for the development as required by the Langeberg Municipality (previously known as the Breede River/ Winelands Municipality) in terms of Section 29(1) of the Land Use Planning Ordinance No 15/1985 when approving the consolidation of erven 307, 308, Remainder Erf 308, and Erf 310 Montagu to be known as Erf 5227 Montagu, as well as the subdivision of the Erf 5227 Montagu in terms of Section 25 of the said Ordinance ;
- 2.5 "Development Area" means the country estate development established on consolidated Erf 5227 Montagu and includes newly subdivided **Erven 5228, 5229, 5301, 5302, 5303, 5304, 5305 Montagu and also includes the Remainder of Erf 5227 Montagu.**
- 2.6 "The Developer" shall mean **STUART DUNCAN BROWN** and his appointed representative.

2.7 "Member" shall mean a member as defined as defined in terms of clause 4 hereof.

2.8 "Trustee Committee" shall mean the Board of Trustees constituted in terms of Clause 6 hereof.

3. OBJECT

3.1 The main business of the Association is to promote, advance and protect the interests of its members, relative to their ownership of erven in the De Bos Country Estate.

3.2 The main object and purpose of the Association is to provide for the control over and the maintenance of the buildings, services, amenities and common access servitude, if applicable, and to apportion the expenses in relation thereto between the members by the charging of levies to the members.

3.3 The Association shall have perpetual succession, and a legal personality distinct from its members and shall be capable, in its own name, of suing and being sued.

4. MEMBERSHIP

4.1 The current owner of the Remainder of Erf 5227 in De Bos Country Estate (also the developer) and his successors in title, shall be a member of the Association and such membership shall commence immediately upon date of registration of first transfer of any of the the erven forming part of the De Bos Country Estate. All newly registered owners of subdivided Erven 5228, 5229, 5301, 5302, 5303, 5304, 5305 Montagu shall be members of the Association and such membership shall commence simultaneously with the transfer of any of the aforesaid the erven in De Bos Country Estate into the name of the registered owners; provided that when any such owner is more than one person or entity, all the registered owners of that erf shall be deemed, jointly and severally, to be one member of the Association.

- 4.2 When a member ceases to be the registered owner of an erf, he shall immediately cease to be a member of the Association. The registered owner of an erf may not resign as a member of the Association.
- 4.3 The rights and obligations of a member are not transferable and every member shall;
- 4.3.1 to the best of his ability further the aims and objects of the Association and;
- 4.3.2 observe and be bound by, this Constitution and all rules and regulations made by the Association or by the Trustee Committee from time to time.
- 4.4 Each member of the Association shall, *inter se*, be jointly liable to the Association for any expenditure incurred by the Association in connection with the main object or purpose of the Association and for anything done by the Association in accordance with this Constitution with the intention of benefiting its members; provided that the foregoing shall not be construed as creating any liability on the part of the members for any debts, actions or omissions of the Association to an extent greater than the contributions made by such members by way of levies. The members of the Association shall not be liable to any third party for any claim for damages or otherwise (whether in contract or in delict) made or instituted by such third party against the Association.
- 4.5 The Association shall charge monthly levies and special levies to cover respectively all ordinary and extraordinary expenses which are incurred or anticipated, and which shall be borne by the members in equal shares.
- 4.6 No member shall be entitled to transfer an erf, unless a duly authorised representative of the Trustee Committee has in writing consented to the transfer, and the following condition of title is imposed, namely:

The property, or any part thereof, shall not be transferred without the written consent of the De Bos Country Estate Home Owners' Association of which the Purchaser and his successors in title, for so long as they are

6

the registered owners of the property, shall be obliged to be a member and bound by its Constitution, rules and regulations.

4.7 A consent to transfer as contemplated above shall be withheld by the Trustee Committee until the following have been complied with:

4.7.1 Levies and any other amounts due to the Association by the registered owner (and all occupants claiming through him) of the property sought to transferred, have been paid up to date of transfer or that provision has been made to the satisfaction of the Trustee Committee for the payment thereof against registration of transfer.

4.7.2 Any breach of the provisions of this Constitution or of any of the rules or regulations created hereunder has been rectified by the defaulting member to the satisfaction of the Trustees, to the extent that such breach is capable of rectification. By way of a single illustration: A consent to transfer may be withheld until illegal structures have been removed or until the exterior of the buildings on the relevant property have been restored to their proper condition prior to the illegal alteration, decoration or variation thereof.

5. **CESSATION OF MEMBERSHIP**

No Member ceasing to be a Member of the Association for any reason shall, (nor shall any such Member's executors, curators, trustees or liquidators) have any claim upon or interest in the funds or other property of the Association, but this clause shall be without prejudice to the rights of the Association to claim from such Member or his estate any arrears of levies or other sums due from him to the Association at the time of his so ceasing to be a Member.

6. **TRUSTEE COMMITTEE**

6.1 There shall be a Board of Trustees of the Association which shall consist of all 8 (EIGHT) Members, which shall be known as the Trustee Committee, provided that where any member is in arrears with his levies or any payment due to the Association or in breach of this Constitution or the rules or regulations created

hereunder and has failed to rectify⁷ such breach, as aforesaid,
he shall be temporarily suspended as Trustee.

6.2 The Trustee Committee shall within one month after the coming into operation of the Association, meet and shall elect from its own number the Chairman who shall hold his respective office until the Annual General Meeting held next after his said appointment. The Chairman shall not have a casting vote at any proceedings or Trustee Committee meetings.

6.3 Trustees shall be entitled to be repaid all reasonable and *bona fide* expenses incurred by them respectively in or about the performance of their duties as Trustees and/or Chairman, as the case may be, but save as aforesaid, shall not be entitled to any other remuneration fees or salary in respect of the performance of such duties.

7. VACATION OF OFFICE OF A TRUSTEE

A trustee of the Trustee Committee shall cease to hold office as such if:

7.1 by notice in writing to the Board of Trustees that he resigns his office;

7.2 he is or becomes of unsound mind;

7.3 he surrenders his estate as insolvent or his estate is sequestrated;

7.4 he is convicted of an offence which involves dishonesty;

7.5 he absents himself from three consecutive meetings of the Board of Trustees without special leave of absence from the Trustee Committee ;

7.6 by resolution of a general meeting of the Association he is removed from his office;

7.7 he ceases to be a registered owner of an erf or his subscription become delinquent;

- 7.8 Committee Members shall cease to hold office at every Annual General Meeting but shall be eligible for re-election.

8. **FUNCTIONS & POWERS OF THE TRUSTEE COMMITTEE**

- 8.1 Subject to the express provisions of this Constitution, the Trustee Committee shall manage and control the business and affairs of the Association, shall have full powers in the management and direction of such business and affairs and, save as may be expressly provided in this constitution, may exercise all such powers of the Association, and do all such acts on behalf of the Association as may be exercised and done by the Association, and as are not by this Constitution required to be exercised or done by the Association in general meeting, subject nevertheless to any regulations as may be prescribed by the Association in general meeting from time to time, provided that no regulation made by the Association in general meeting shall invalidate any prior act of the Trustee Committee which would have been valid if such regulation had not been made.
- 8.2 The Trustee Committee shall have the right to vary, cancel or modify any of its decisions and resolutions from time to time.
- 8.3 The Trustee Committee may, should it so decide, investigate any suspected or alleged breach by any Member or Trustee, in such reasonable manner as it shall decide from time to time.
- 8.4 The Trustee Committee may make rules and regulations, not inconsistent with this Constitution, or any direction given at any General Meeting:-
- 8.4.1 as to the settlement of disputes, generally;
- 8.4.2 for the furtherance and promotion of any of the objects of the Association;
- 8.4.3 for the better management of the affairs of the Association;
- 8.4.4 for the advancement of the interests of Members;

8.4.5 for the regulation and control of the conduct of members and occupants whether on erven or on the common property;

8.4.6 governing the manner and methods of the use of the common property by or on behalf of the members of the Association or any occupant;

8.4.7 for the conduct of Trustee Committee meetings and general meetings; and

8.4.8 to assist it in administering and governing its activities generally;

and shall be entitled to cancel, vary or modify any of the same from time to time.

8.5 For the purposes of transacting its business as provided herein, the Trustee Committee shall be entitled to open and operate a banking account in the name of the Association at a registered banking institution.

9. OTHER PROFESSIONAL OFFICERS

Save as specifically provided otherwise in this Constitution, the Trustee Committee shall at all times have the right to engage on behalf of the Association, the services of Accountants, Auditors, Attorneys, Advocates, Architects, Engineers, any other professional person or firm and/or any other employee/s whatsoever, for any reasons deemed necessary by the Trustee Committee and on such terms as the Trustee Committee shall decide.

10. PROCEEDINGS OF THE TRUSTEE COMMITTEE

10.1 The Trustee Committee may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, subject to any provisions of these presents.

10.2 Meetings of the Trustee Committee shall be held at least once every six months, provided that if all the Trustees shall in writing have waived the above requirement in respect of a particular period, then no meeting of the Trustee Committee need be held.

10.3 The quorum necessary for the holding of any meeting of the Trustee Committee shall be a THREE QUARTERS majority where there are eight Trustees and a TWO THIRDS majority where there are seven Trustees.

10.4 Minutes of every Trustee Committee meeting shall be taken, although not necessarily verbatim, which minutes shall be reduced to writing without undue delay after the meeting has closed and shall then be certified correct by the Chairman of the meeting.

10.5 All competent resolutions recorded in the minutes of any Trustee Committee meeting shall be valid and of full force and effect as therein recorded, with effect from the passing of such resolutions, and until varied or rescinded, but no resolution or purported resolution of the Trustee Committee shall be of any force or effect, or shall be binding upon the Members or any of the Trustees unless such resolution is competent within the powers of the Trustee Committee.

10.6 Any round robin resolution signed by every member of the Trustee Committee shall be valid and binding as though such resolution had been passed at a Trustee Committee meeting; provided that such resolution is competent within the powers of the Trustee Committee.

11. GENERAL MEETINGS OF THE ASSOCIATION

11.1 The Association shall before the month of May in each calendar year, hold a general meeting as its Annual General Meeting. In addition to any other

general meetings during that year, and shall specify the meeting as such in the notices calling it, in terms of paragraph 12 below.

- 11.2 Such annual general meeting shall be held at such time and place subject to the foregoing provisions, as the Trustee Committee shall decide from time to time.
- 11.3 All general meetings other than annual general meetings shall be called special general meetings.
- 11.4 The Trustee Committee, may, whenever they think fit, convene a special general meeting, and a special general meeting shall also be convened on the written request of any member.

12. NOTICE OF MEETING

- 12.1 The annual general meeting and a meeting called for the passing of a special resolution, shall be called with not less than 21 (twenty-one) days notice in writing, and a special general meeting, other than one called for the passing of a special resolution, shall be called with not less than 14(fourteen) days' notice in writing. In each case, the notice shall be exclusive of the day on which it is given, and shall specify the place, the day and the hour of the meeting and, in the case of special business, in addition to any other requirements contained in these presents, the general nature of that business, and in the case of a special resolution, the terms and effect of the resolution and the reasons for it shall be given in the manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the Trustee Committee to such persons as are under these presents entitled to receive such notices from the Association; provided that a general meeting of the Association shall, notwithstanding that it is called by shorter notice than that specified in these presents, be deemed to have been duly called if it is so agreed:

12.1.1 in the case of a meeting called as the Annual General Meeting, by all the Members entitled to attend and vote thereat; and

12.1.2 in the case of a special general meeting, by all the Members entitled to attend and vote thereat.

13. SERVICE OF NOTICES

- 13.1 A notice shall be in writing and shall be given or served by the Association upon any Member, either personally or by post in a prepaid registered letter, properly addressed to the Member at the address of the Erf owned by him.
- 13.3 Any notice by post shall be deemed to have been served at the time when the letter containing the same was posted, and proof of the giving of the notice by post, shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

14. QUORUM

- 14.1 No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business. The said quorum being 7 (seven) out of the 8 (eight) members where all members are entitled to vote, or 6 (six) out of 7 (seven) members where 1 (one) member is not entitled to vote, 5 (five) out of 6 (six) members where 2 (two) members are not entitled to vote, 4 (four) out of 5 (five) members where 3 (three) members are not entitled to vote, 3 (three) out of 4 (four) members where 4 (four) members are not entitled to vote, 2 (two) out of 3 (three) members where 5 (five) members are not entitled to vote, or a single member where 6 (six) or more members are not entitled to vote.
- 14.2 If within half an hour from the time appointed for the holding of a general meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same place and time, or at such other place as the Chairman of the meeting shall appoint, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for holding

the meeting, the Members present shall constitute a quorum and are entitled to vote.

15. **AGENDA AT MEETINGS**

15.1 The following matters shall, *inter alia*, be dealt with at every Annual General Meeting:

15.1.1 the consideration of any other matters raised at the meeting including any resolutions proposed for adoption by such meeting, and the voting upon any such resolutions;

15.1.2 the consideration of the balance sheet of the Association for the last financial year of the Association preceding the date of such meeting;

15.1.3 the determination of the monthly levies for the current year.

16. **PROXIES**

16.1 A Member, entitled to vote, may be represented at a general meeting by a proxy, who need not be a Member of the Association. The instrument appointing a proxy shall be in writing signed by the Member concerned or his duly authorised agent in writing, but need not be in any particular form, provided that where a Member is more than one person, any one of those persons may sign the instrument appointing a proxy on such Member's behalf, where a Member is a company, the same may be signed by the Chairman of the Board of Directors of the Company or by its secretary, where an association of persons, by the secretary thereof, where a close corporation, by any member and where a trust, by any trustee.

16.2 The instrument appointing a proxy and the Power of Attorney or other authority (if any) under which it is signed, or a certified copy thereof shall be deposited at the office at any time before the time appointed for the commencement of the meeting, or adjourned meeting, at which the person named in the instrument is

proposed to vote. No instrument appointing a proxy shall be valid after the expiration of 12(twelve) months from the date of its execution.

- 16.3 A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy, provided that no intimation in writing of the death or revocation shall have been received by the Trustee Committee at least one hour before the time fixed for the holding of the meeting.

17. VOTING

- 17.1 At every general meeting, every Member in person or by proxy and entitled to vote shall have one vote for each Erf registered in his name subject to the provisions of paragraph 4.1 hereof.
- 17.2 Save as expressly provided for in these presents, no person other than a Member duly registered, whose voting powers have not been suspended as contemplated on paragraph 17.9 below, shall be entitled to be present or to vote on any question, either personally or by proxy, at any general meeting.
- 17.3 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the Chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.
- 17.4 Notwithstanding the provisions of 17.3 aforesaid, voting on the election of a Chairman of a general meeting (if necessary) or on any question of adjournment, shall be decided on a show of hands by a majority of the members present in person or by proxy, and entitled to vote.
- 17.5 Every resolution and every amendment of a resolution proposed for adoption by a general meeting shall be seconded at the meeting and, if not seconded, shall not be voted upon.
- 17.6 An ordinary resolution (that is a resolution other than a special resolution) or the amendment of an ordinary resolution, shall be carried on a simple majority of all

the votes cast thereon, and an abstention shall be counted as a vote for the resolution in question.

- 17.7 Notwithstanding anything contained in this Constitution, any resolution or the amendment of a resolution which would have the effect of adding to or amending or repealing any part of this constitution, shall require the support of all members entitled to vote before the resolution may be passed, which shall be known as a special resolution.
- 17.8 Unless any Member, entitled to vote, present in person or by proxy at a general meeting shall before closure of the meeting have objected to any declaration made by the Chairman of the meeting as to the result of any voting at the meeting, whether by show of hands or by poll, or to the propriety or validity of the procedure at such meeting, such declaration by the Chairman shall be deemed to be a true and correct statement of the voting, and the meeting shall in all respects be deemed to have been properly and validly constituted and conducted, and an entry in the minutes to the effect that any motion has been carried or lost, with or without a record of the number of votes recorded in favour of or against such motion, shall be conclusive evidence of the vote so recorded if such entry conforms with the declaration made by the Chairman of the meeting as to the result of any voting at the meeting.
- 17.9 A member who is in arrear with the payment of his levies or any other amount to the Association, or who is otherwise in breach of this Constitution and/or rules and regulations created hereunder and has failed to rectify such breach shall for so long as such amounts remain in arrear or unpaid or for so long as he remains in breach as aforesaid, not be entitled, to vote at any annual, general or special general, meeting or to vote upon any Round Robin resolution of the Members.
- 17.10 A Round Robin resolution signed by all the members entitled to vote shall be valid and binding upon the members of the Association as though such resolution had been passed as a General Meeting of the members.

18. FINANCIAL YEAR END

The financial Year End of the Association shall be the end of February each year. The members of the Association in general meeting shall be entitled to change such financial year end.

19. ACCOUNTS

19.1 The Association in a general meeting or the Trustee Committee, may from time to time make reasonable conditions and regulations as to the time and manner of the inspection by the Members, of the accounts and books of the Association, or any of them, and subject to such conditions and regulations, the accounts and books of the Association shall be open to the inspection of Members at all reasonable times during normal business hours.

19.2 At each Annual General Meeting the Trustee Committee shall lay before the Association a proper income and expenditure account for the immediately preceding financial year of the association, or in the case of the first account, for the period since the incorporation of the Association, together with a proper balance sheet made up as at the last financial year end of the Association.

20. INDEMNITY

20.1 All members of the Trustee Committee shall be indemnified out of the funds of the Association against any liabilities *bona fide* incurred by them in their respective said capacities and in the case of a Trustee member, in his capacity as Chairman, whether defending any proceedings, civil, criminal or otherwise, in which relief is granted to any such person/s by the Court.

21. **BREACH**

21.1 Any member who fails to make payment to the Association on due date therefor of any monthly levy or other amount payable by such member, or who otherwise breaches or fails in observance of any of the provisions of these presents may, if so determined by a Resolution passed by the trustees present at the meeting of the Trustee Committee:

21.1.1 be ordered to pay such outstanding amounts and or

21.1.3 be ordered to pay such interest as may be determined on the outstanding amount

as in each case shall have been determined at such Trustee Committee meeting.

22. **ELECTRICITY AND WATER, SEWERAGE**

22.1 The Developer will service the new erven according to the Langeberg Municipality's (previously the Breede River /Winelands Municipality) specifications in their Approval of the Subdivision of Erven 5228, 5229, 5301, 5302, 5303, 5304, 5305 Montagu, dated 7 May 2008 including an electrical power supply line as well as sewer pipeline as specified therein

22.2 Each erf shall have a municipal water supply of water for household use and shall be obliged to pay the municipality for such water consumed.

22.3 CBR water is available to each plot and a levy will be payable for the use thereof. A levy will also be required for the upkeep of the road/pathways and servitude areas and a gardener will be appointed at the first meeting of the Trustee Committee to maintain and upkeep of this area. The aforesaid levies will be discussed and decided at the first meeting of the Trustee Committee.

22.4 All water consumed in respect of the common area, namely the right of way

servitude allowing access over the the Remainder of Erf 5227 in favour of the other seven erven, shall be paid for by the De Bos Country Estate Home Owner's Association out of its funds or levies collected. To establish water consumption in respect of the aforesaid servitude, the developer shall at his cost install a separate water metre on date of the first transfer of one of the erven from the developer to the a prospective new owner.

23. RATES AND TAXES

Each owner of an erf shall pay such rates and taxes as are levied in respect of his erf to the relevant local authority, and the rates and taxes levied in respect of the common property, namely the right of way servitude over the Remainder of Erf 5227, shall be paid by the Association out of the funds held by it and levies collected.

24. TITLE DEED CONDITIONS

The following conditions shall be applicable to every residential erf in De Bos Country Estate and, shall be registered against the title deeds of the property and shall be binding on the registered owner of each such residential erf and his successors in title:

- 24.1 "The owner of this erf is a member of the De Bos Country Estate Home Owners' Association established by virtue of a condition imposed in terms of Section 29 of Ordinance No. 15 of 1985 by this Council when approving the subdivision of Erf 5227 Montagu and shall be entitled to the rights and subject to the obligations and restrictions set out in the constitution of the Association".
- 24.2 This erf shall not be transferred without the written consent of the De Bos Country Estate Home Owners' Association of which the registered owner and his successors in title, for so long as they are the registered owners of the property, shall be obliged to be a member and bound by its Constitution, rules and regulations.
- 24.3 No further subdivision of any of the properties in the De Bos Country Estate will be allowed.

- 24.4 The following common access servitude will be registered in the title deeds of all properties forming part of the De Bos Country Estate, namely:

Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 Montagu will be entitled to a Road- and Services servitude, 8 metres wide, along the north western boundary of the Remainder of Erf 5227 Montagu, as indicated on Diagram SG No. 4211/2009.

25. **BUILDING RULES**

- 25.1 All building plans and finishes of prospective homes on the Remainder of Erf 5227 and Erven 5228, 5229, 5301, 5302, 5303, 5304, 5305 Montagu forming part of the De Bos Country Estate, must comply with the Design Guidelines for the De Bos Country Estate, as approved by the Langeberg Municipality (previously known as the Breede River / Winelands Municipality, and the said Design Guidelines for the De Bos Country Estate will be deemed to form part of this constitution of the De Bos Country Estate Home Owners' Association, attached hereto marked as "Annexure A".
- 25.2 No owner of any of the erven referred to in clause 25.1 shall be entitled to commence building on his property unless he/she, prior to lodgement of his/her building plans with the local municipality for approval, obtains written approval of the building plans from the Trust Committee of the De Bos Country Estate Home Owner's Association or its authorised representative. When obtaining the approval of the building plans at the local municipality, the owner must lodge the aforesaid approval of the Home Owner's Association together with the owner's building plans at the local municipality.
- 25.3 No owner of any erf shall be entitled to alter or vary the exterior and/ or façade (including the texture or colour thereof) of his building, dwelling or improvements as already constructed, without the prior written approval of the Trustee Committee. Thereafter the owner must also obtain the Langeberg Municipality's approval of the aforesaid alteration, who will first consult with the Montagu Aesthetics Committee.
- 25.4 The owners of Erven 5228, 5229 and 5301 Montagu may not erect any buildings below the 1:50 year flood line, as determined by the Langeberg

Municipality, and the said floodline must be indicated on the building plans of Erven 5228, 5229 and 5301 Montagu.

26. OBLIGATION UPON MEMBERS TO MAINTAIN EXTERIOR PORTIONS OF THEIR PROPERTIES & COMMUNIAL ACCESS ROAD

Every member shall be obliged to maintain in good order and repair and in a clean and tidy condition:

26.1 the exterior of all buildings on his erf;

26.2 all private gardens and patios and all visible exterior portions of his erf.

26.3 The De Bos Country Estate will be responsible from the funds levied for the upkeep and maintenance of the common access servitude, namely the a Road- and Services servitude in favour of Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 Montagu over the Remainder of Erf 5227 Montagu, as indicated on Diagram SG No. 4211/2009.

27. COMING INTO OPERATION OF THE ASSOCIATION

The Association shall come into operation upon the registration of the first transfer of an erf in De Bos Country Estate.

28. APPOINTMENT OF MANAGING AGENTS

The Association shall be entitled to appoint a managing agent or firm of managing agents to administer the finances of the estate including *inter alia* the issue of levy clearance certificates and the reading of electricity and water meters etc, and to carry out any secretarial duties for the Association such as the arranging of meetings and the keeping of minutes etc.

The Chairman shall be entitled to appoint the first managing agent for the period from the date of the commencement of the Association to the first Annual General Meeting. Thereafter a Managing Agent, if required, by the members shall be appointed at each

Annual General Meeting for the ensuing year upon such terms and conditions as the Trustee Committee may decide, subject to any direction given by the members at the Annual General Meeting.

29. FURTHER SUBDIVISION PROHIBITED

No further subdivision of the Remainder of Erf 5227 or any of Erven 5228, 5229, 5301, 5302, 5303, 5304, 5305 Montagu will allowed by the local municipality, which condition will be registered in the respective title deeds of the aforesaid erven.

30. CONDUCT RULES

The initial conduct rules of De Bos Country Estate are attached hereto marked Annexure "B." These conduct rules are subject to amendment, repeal, or withdrawal in whole or in part by the Trustee Committee as provided for in paragraph 8 above.

31. ALTERATION OR AMENDMENT OF CONSTITUTION

Except for the conduct rules referred to in clause 30 above, this Constitution may not be altered or amended in any way without the consent of the Langeberg Municipality (previously known as the Breede River / Winelands Municipality) or its successors.

Annexure "A"

**Design guidelines
for
De Bos Country Estate
“Country Lifestyle in a Country Town”**

The guidelines set out below are not intended to restrict development into a single style or to create a stereotype lifestyle. The guidelines are purely there to ensure that home owners and prospective home owners have the guarantee that development will not change the country feel of the Estate and that development is carried out in such a way that the character thereof is maintained.

The development within the estate falls under the development guidelines for the Van Riebeeck-/Long-/Bath Street Conservation area as laid out in the Montagu Zoning Scheme Regulations. The prescribed building style and character is broadly described hereafter and needs to be taken into consideration in all building plans (also see clause 25.2 and 25.4 of the Constitution of Home Owner's Association in this regard).

Specific guidelines for the De Bos Country Estate development are listed below and also give a broad description of limitations and requirements.

The Montagu Aesthetics Committee and the Home Owners Association have the final say to the more detailed points that might arise if not defined closely enough in the guidelines at hand.

1. All dwellings should be of a Cape Cottage or Karoo Farm house style.
2. The dwellings are to be single story only. A loft may be created in the roof space with wooden sash windows or mock sash in the roof, but no doors are allowed in the roof leading to any patios or verandas. The maximum size of the aforesaid roof windows are 1 500mm in length and 1 000mm in width. The maximum height prescribed for pitched roofs are 6 500mm, and the maximum height up to the wall plate is 3 000mm
3. Exterior walls are to be plastered with a smooth or cottage style plaster and painted either white, off white, beige or light sand colors.
4. The roof of the house should have a 35 - 45 degree pitch and the garage may have a flat or pitched roof in keeping with the design of the house.
5. The roof materials must be in keeping with the character of the house and must be either corrugated iron or a thatch roof, and in the case of corrugated iron roofing be painted either in 'heritage green, 'dove gray' or 'charcoal'.
6. All windows are to be wooden sash or wooden mock sash windows and must match the character of the house. All exterior doors are to be wooden doors and also must match the character of the house.

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B.

7. Burglar bars and security doors must be inside and of a suitable material and character.
 8. Garages must be in character with the house and may have wooden- or metal doors. In the instance of metal garage doors, the colour must match the roof or the walls. In the case of a thatch roof, metal garage doors must be either black or white.
 9. The outside boundary along Middle street, should be a diamond mesh fence no higher than 1.8m fixed to wooden poles and lined with a hedge. A uniform low boundary fence on the river side of the property will be erected, this will be a pole fence in a typical equestrian style, not painted.
 10. Property owners are however encouraged to allow for an open feel to the development and requested to only erect fencing between properties or on the river side boundary if absolutely necessary, once again diamond mesh and hedge or just a hedge is recommended. The visibility of washing lines must also be considered.
 11. The wind breaks between the properties may not be cut down. Controlled trimming to encourage growth or fullness may be done.
 12. The respective drive way gates at each of the entrances to Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 Montagu should be in keeping with the character of the house and country feeling. A plastered brick pillar is permissible for the anchoring of the gates and they should be painted white. The owners of the aforesaid erven will at their own cost be responsible for the installation and maintenance of his own gate.
 13. Any deviation from these design guidelines must, prior to commencement of building, first be approved by the Trustee Committee of the De Bos Country Estate Home Owner's Association at a special general meeting or annual general meeting as specified in clauses 8.2, 8.3, 11, 12, 13, 14, 15, 16 and 17 of the Constitution of the said Home Owner's Association. Thereafter the owner must also obtain the Langeberg Municipality's approval of the aforesaid deviation, who will first consult with the Montagu Aesthetics Committee. If any of the owners of erven in the De Bos Country Estate fails to comply with these guidelines and once such property is sold, the said Trustee Committee may in terms of clause 4.7.2 of the Constitution, withhold their consent to transfer until such deviation has been rectified by the owner.
-

**Conduct Rules
for
De Bos Country Estate
"Country Lifestyle in a Country Town"**

1. The area between Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 in the De Bos Country Estate and the river, situated on the Remainder of Erf 5227 Montagu, is not for common usage and remains part of De Bos Guest Farm and it will also keep its agricultural nature. The aforesaid owners of Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 will have no grazing rights for their horses or for any other animals on the Remainder of Erf 5227 Montagu.
2. Usage of the area between the residential erven and the river by the said owners of Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 is restricted to walking, riding horses, cycling, sitting on the benches and general enjoyment of the peaceful nature around the pond and along the river. Picnics or any other use of the area would require consent from the owner of the Remainder of Erf 5227 Montagu.
3. General consideration for the other members in the estate should be practiced when using the area referred to in clause 2 above and no screaming or shouting will be allowed. Like wise, members should also allow for usage of this area within reason (children riding bikes, running or riding horses, talking and laughing), this creating a healthy family environment.
4. The keeping of pets on the property should be of such nature that the neighbors are not disturbed. A limit of two dogs and the barking of the dogs should be strictly controlled. The plots are zoned residential so the keeping of fowl and other farm animals is limited.
5. A general consideration and respect for the spirit in which the estate was created will be maintained. Amendments and additions to this document can be made at the first meeting of the Trustee Committee as specified in clause 8 of the Constitution of the De Bos Country Estate Home Owner's Association.

Annexure 3

Proposed amended Site Development Plan

Motivation report

**AMENDMENT OF A CONDITION IN RESPECT OF
THE EXISTING APPROVAL & CONSENT USE:
ERF 5227 MONTAGU, LANGEBERG MUNICIPALITY**



Ref: 2315 Date: JULY 2023

PLANSERV (PTY) LTD (Reg. No. 2013/191660/07)

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1. APPLICATION

PlanServ (Pty) Ltd has been appointed by Mrs. T.B. Simmans, sole member of AGAMA MOUNTAIN PRODUCTS CC, the registered owner of Erf 5227 Montagu, to submit an application for the following to the Langeberg Municipality:

- 1) Amendment of a condition in respect of the existing approval in terms of Section 15(2)(h) of the Langeberg Municipality: Land Use Planning Bylaw, 2015, which condition limits the extent of the resort development to the site development plan submitted with the rezoning application (as amended per building plan approvals dated 08/06/2017 and 21/11/2018), in order to amend the approved site development plan;
- 2) Consent use contemplated in the zoning scheme in terms of Section 15(2)(o) of the Langeberg Municipality: Land Use Planning Bylaw, 2015, for a function venue;
- 3) Consent use contemplated in the zoning scheme in terms of Section 15(2)(o) of the Langeberg Municipality: Land Use Planning Bylaw, 2015, for tourist facilities.

Please find attached - Annexure A: Application Form

1.1 BACKGROUND TO THE APPLICATION

In 1995, the land owner at that stage submitted an application for rezoning of Erven 307-310 Montagu to then Montagu Municipality to develop a holiday resort. In the same year, approval was granted for rezoning from Agricultural Zone to Special Zone in terms of a Council Decision (Item 276/95). The keeping of animals intended to be a tourist attraction was allowed. The land owner's intention was also to plant nut trees on the property. The development was restricted to the extent and use as specified in the application. A plan indicating the existing buildings, including the Lapa, was submitted to the municipality.

TPS Consulting Town and Regional Planners submitted an application for subdivision and consolidation of Erven 307, 308 and 309 Montagu in September 2004. The De Bos Resort already existed at that stage. Existing land uses on Erven 308 and 309 included small-scale agriculture (nut tree orchards and the keeping of horses and donkeys), a farmhouse, garden flat, guest cottages, backpackers' dormitory, campsite / caravan park, ablutions, camping kitchen and a swimming pool. Erf 307 already consisted of guest cottages and a Lapa with its own ablutions, used for group camping purposes, as mentioned in the application by TPS Consulting Town and Regional Planners. Since the aforementioned land uses existed prior to submission of the 2005 application and the municipality did not raise any questions regarding these land uses, it is assumed that these land uses were permitted in terms of the applicable legislation at that stage. The land uses were indicated on a plan that accompanied the land use planning application in 2004. The application for subdivision and consolidation of Erven 307, 308 and 309 Montagu was approved on 30 June 2005. The erven were given a split zoning, namely Agricultural Zone and Special Zone.

Umsiza Planning submitted an application for rezoning, subdivision and consent use in 2007 to create eleven (11) single residential erven, the remainder (zoned Agricultural Zone and Special Zone) and also to obtain consent use to accommodate the existing guest cottages on two of the proposed single residential erven. However, only seven (7) single residential erven were approved together with the remainder (now Erf 5227). The existing land uses mentioned in this application, approved in 2008, corresponds with the land uses referred to in the 2004 application. Reference is also made to the existing Lapa, including ablution facilities primarily used for tourist groups in this application. The Lapa was indicated on the rezoning and subdivision plan submitted with the application. It is therefore accepted that the Lapa is



considered a lawful land use right forming part of the existing holiday development. One of the conditions of approval was to establish a Home Owners Association and to lay down architectural and management guidelines for the development, which are elaborated on in Section 4 of the report.

In terms of the development parameters of tourist accommodation, a site development plan must be submitted to the municipality for its approval, clearly indicating the position of all structures, stands, services and internal roads. A site development plan was approved in 2017 as part of a building plan submission for an ablution block. In 2018, a site development plan was approved as part of another building plan submission for internal alterations to the main dwelling. The Lapa with a bathroom is indicated on both plans.

According to the zoning certificate issued by the Langeberg Municipality on 11 November 2022, Erf 5227 Montagu currently has a split zoning, namely Resort Zone and Agriculture Zone II. No reference is made to approved consent uses but the existing Lapa, ablution facilities and swimming pool are considered lawful tourist facilities and historic use rights, mentioned in both the 2005 and 2007 applications and approved on both the 2017 and 2018 site development plans. These facilities form part of the original holiday development. The two zonings contained in the split zoning are not specifically demarcated on a site development plan or any spatial plans of the municipality. In fact, the whole of Erf 5227 Montagu is shown as Special Zone on the existing Zoning Map and as Resort Zone on the draft Integrated Zoning Scheme Map of the Langeberg Spatial Development Framework, dated August 2017.

Please find attached - Annexure B: Council Decision (Item 276/95)

- **Annexure C: Plan showing existing buildings (2004 application)**
- **Annexure D: Approval Letter (2005)**
- **Annexure E: Subdivision plan showing existing buildings (2007 application)**
- **Annexure F: Approval Letter (2008)**
- **Annexure G: Copy of approved Site Development Plan (2017)**
- **Annexure H: Copy of approved Site Development Plan (2018)**
- **Annexure I: Zoning Certificate (2022)**

2. GENERAL INFORMATION

2.1 PROPERTY INFORMATION

Description:	Erf 5227 Montagu, Langeberg Municipality, Montagu Division, Western Cape Province
GPS Coordinates:	33°47'19.93"S; 20° 6'45.24"E
Title Deed Number:	T58817/2009
Ownership:	AGAMA MOUNTAIN PRODUCTS CC (Registration Number: 2001/075082/23)
Property Extent:	7,1829 ha according to the title deed (original size prior to subdivision of Erven 5228, 5229, 5301-5305 Montagu) 5,47 ha according to the Chief Surveyor General Cadastral Spatial Data Viewer



- Title Conditions:** There are no restrictive conditions, as confirmed in the conveyancer's certificate.
- Servitudes:** Subject to a road- and services servitude - line BCDEFG (8 metres wide) and line HJ (10 metres wide) on the SG diagram - in favor of Erven 5228, 5229, 5301-5305 Montagu. The servitude is not affected by the proposal.
- Current zoning:** Split zoning - Resort Zone and Agricultural Zone II
- Bondholder:** The property is not encumbered by a bond.

Please find attached - Annexure J: Title Deed

- **Annexure K: Power of Attorney**
- **Annexure L: Closed Corporation Registration Form**
- **Annexure M: Conveyancer's Certificate**
- **Annexure N: Surveyor General Diagram**
- **Annexure O: Confirmation of no bond**

2.2 LOCALITY

The application site, known as De Bos Backpackers and Camping, is located in the suburb of Montagu West. The property is located between Middle Street and the Keisie River, and adjoins Kloof Street to the south-west. The Montagu Caravan Park is located across Middle Street from Erf 5227 Montagu.

Please find attached - Annexure P: Locality Plan

2.3 SURROUNDING AREA

The adjacent properties are zoned Single Residential Zone I, Resort Zone and Agricultural Zone II in terms of the Langeberg Municipality: Integrated Zoning Scheme By-law, 2018. The surrounding smallholdings are mainly used as lifestyle properties with small scale agricultural activities but some of these smallholdings offers tourist accommodation and tourist facilities. Low density residential land uses are found on the Single Residential Zone I erven. Montagu Caravan Park (zoned Resort Zone) is located adjacent to the application site.

2.4 ZONING & LAND USE

The application site has a split zoning for Agricultural Zone II and Resort Zone in terms of the Langeberg Municipality: Integrated Zoning Scheme By-law, 2018. The smallholding is primarily used as a guest farm (resort) and a dwelling house (place of residence of the land owner). The De Bos Backpackers and Camping resort provides tourist accommodation which includes guest cottages (5 units sleeping a total of 23 guests), backpackers accommodation (sleeping a total of 30 guests) as well as a number of camping sites and tourist facilities. The smallholding is also used for some extensive agricultural activities in the form of nut tree orchards, a poultry pen as well as grazing and stabling areas for horses and donkeys.



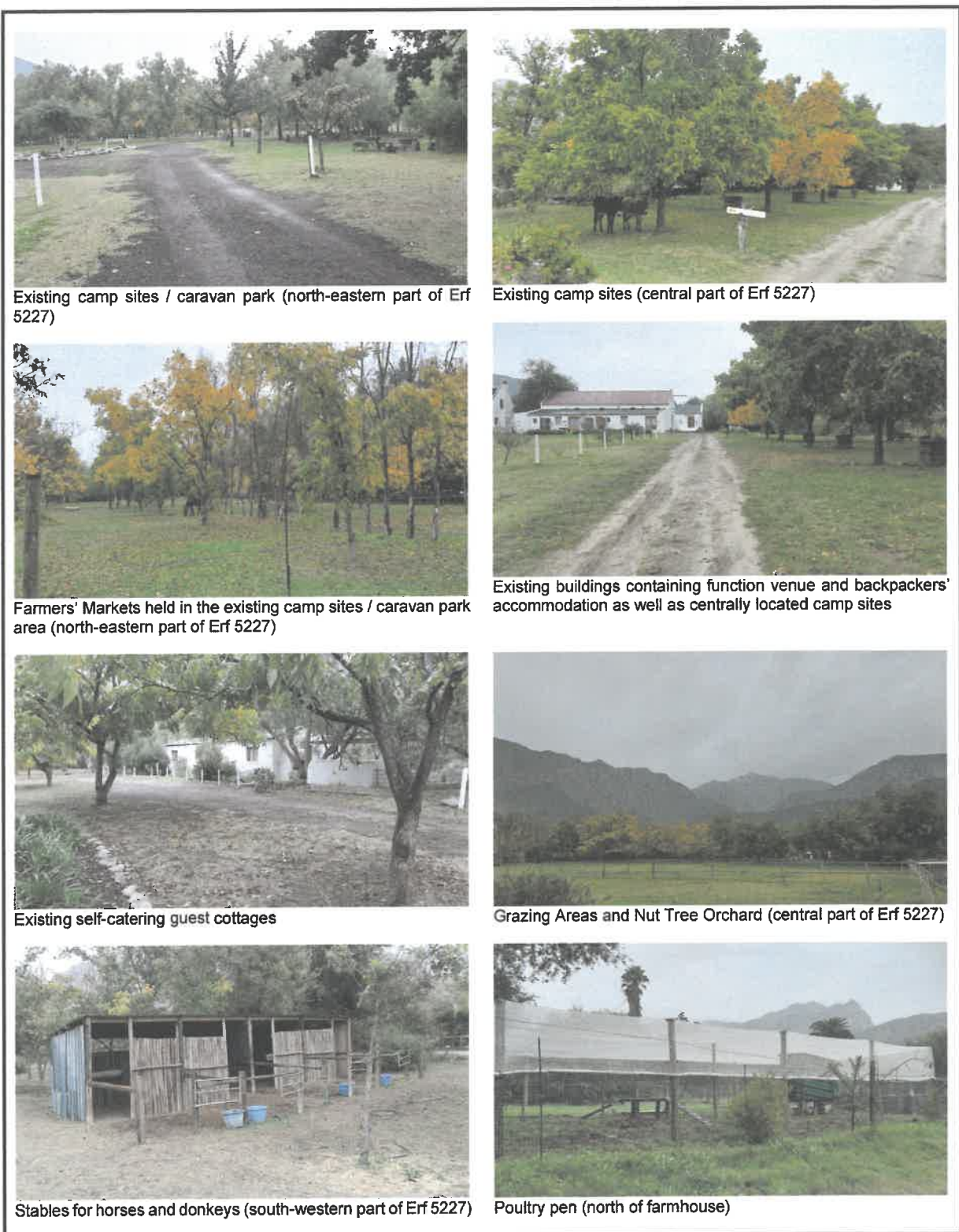


FIGURE 1 – OVERVIEW OF LAND USES

2.5 HISTORICAL AND REGIONAL CONTEXT OF MONTAGU

The town is named after the former secretary of the Cape Colony, John Montagu, but was once known as Agter Cogman's Kloof. It is situated at the confluence of the Keisie and Kingna rivers. Cogman's Kloof is a gorge through the Langeberg between Ashton and Montagu on the R62 road to Oudtshoorn. It is named after the Cogmans, a Khoi chieftom that existed in the area around the beginning of the 18th century. The pass was constructed by Thomas Bain from 1873 - 1877 and follows the course of the Kingna River, which flows southwest of Montagu. The town was founded on the farm "Uitvlugt" in 1851.

Montagu is a town in the Klein Karoo, about 2 hours' drive from Cape Town. Montagu is near the Robertson Wine Valley and not far from the Breede River Valley. The town is situated on the scenic Route 62 and is considered a perfect retreat for eco, wellness and adventure sports. The town offers historical architecture and various wine and dine experiences. Montagu is known for its hot mineral springs and scenic mountains. Nearby rock formations make it one of the country's major rock climbing venues. The 1 266 m high Bloupunt peak overlooks the village and offers several hiking trails, as well as kloofing and mountain biking trails further afield.

Montagu is situated in the fertile Keisie Valley. The valley's climate and soil are ideal for the production of various fruits and vegetables. Stone, citrus and soft fruits as well as squashes and gourds are grown in abundance here, and come spring, the valley is awash with white and pink apricot and peach blossoms. The Koo valley, a high lying valley well known for fruit processing and tourism, farming area lies north of the town. The region is also known for its excellent grape cultivars and wine production. Some of South Africa's top wines are produced in the area.

Montagu Dried Fruit and Nuts is a popular household brand. Their products are sourced from top-quality farms in the Montagu region and include dried fruit, nuts, sweet fruit snacks and seeds. In addition to supplying customers around the country with delicious goods, they are also partners with brands like internationally acclaimed Willow Creek, Ashton Cellars, Bellair yogurt and carob coated dried fruit and nuts, Red Espresso and Health Connection Wholefoods. This allows them to supply these and other top-quality products in their stores, promoting a healthier lifestyle.

3. DEVELOPMENT PROPOSAL

Existing development on the approximately 5 hectares split zoned erf includes the owner's dwelling unit, outbuildings and various forms of tourist accommodation such as self-catering guest cottages, backpackers' accommodation, caravan stands and camping sites. In terms of Condition (a) of the Council Decision taken in 1995 (Item 276/95), development was restricted to the extent of the resort development shown on the plan submitted with the application (as amended per building plan approvals dated 08/06/2017 and 21/11/2018). The land owner intends to expand the camping sites towards the south-western portion of the property by providing a few low impact, off-grid camping sites adjacent to the existing Lapa and along the river. The approved site development plan does not cover the south-western portion of Erf 5227 Montagu where camping sites are proposed and consequently this submission is to seek approval of a site development plan covering the whole property. Application is made for amendment of Condition (a) of the Council Decision taken in 1995 (Item 276/95). Cognizance is taken of historical land uses and previous approvals. The intention is to comply with the current zoning of Erf 5227 Montagu as well as the rules and regulations of the De Bos Country Estate Home Owners Association Constitution (see Section 4 of the report).



The following aspects are aimed at broadening the appeal of De Bos Backpackers and Camping to visitors of Montagu who want an outdoor, peaceful and scenic experience:

- Renovation and use of the existing Lapa area containing a kitchen, ablutions, covered area and pond;
- Camping area adjacent to the Lapa;
- Camping area on the shaded banks of the Keisie River.

The key aspects of the application for the proposed camping area are as follows:

- The site development plan submission does not change any previous submissions or approvals;
- The camping area takes up no more than 30% of the south-western portion of Erf 5227 Montagu;
- No new buildings, structures or services are needed or proposed;
- The number of guests in the south-western part of the property will be restricted to a maximum of 50;
- Guests will be required to comply with the Conduct Rules of the Constitution of De Bos Country Estate;
- Access will be internal, consequently new access points to Erf 5227 will not be necessary and access will not interfere with the De Bos Country Estate servitude road.

Application is also made for consent use for the following:

- 1) A function venue in an existing building related to the resort.
- 2) Tourist facilities, including but not limited to a farmers' market and recreational facilities.

The purpose of the function venue is to host functions, weddings and expos on the property. The existing Barn building is to be used for indoor functions. A maximum number of 120 guests per allowed per function. Permission is also requested to host outdoor functions, weather permitting, in open spaces in the central and north-eastern parts of the property.

Consent is required for tourist facilities to provide a range of amenities for tourists or visitors, especially a farmers' market and recreational facilities. The Lapa, ablution facilities and swimming pool are considered lawful tourist facilities with historic use rights as part of the original resort development. The primary resort activities will take place in the central and north-eastern parts of Erf 5227 Montagu.

Please find attached - Annexure Q: Site Development Plan

4. HOME OWNERS' ASSOCIATION

Erf 5227 Montagu forms part of the De Bos Country Estate. The attached Constitution of the De Bos Country Estate Home Owners Association (HOA) was approved by the Manager: Town Planning, Langeberg Municipality, on 7 October 2009. The Home Owners Association refused to give written consent for submission of the land use planning application. In terms of Section 25.2 of the Constitution, no owner of any of the erven in De Bos Country Estate shall be entitled to commence with building on his property, prior to lodgement of building plans with the local municipality for approval, without written consent from the Trust Committee of the HOA. No reference is made to obtaining consent prior to lodgement of a land use planning application and the land owner is therefore within his/her rights to submit an application to the local municipality. Consent from the HOA will however be required if the land owner intends to proceed with submission of building plans for any building works, if required.



The design guidelines of De Bos Country Estate, attached as Annexure A to the Constitution, states that the guidelines are purely there to ensure that home owners and prospective home owners have the guarantee that development will not change the country feel of the Estate and that development is carried out in such a way that the character thereof is maintained.

Point 1 in the conduct rules for the De Bos Country Estate, attached as Annexure B to the Constitution, clearly states that the area between Erven 5228, 5229, 5301-5305 Montagu and the river on Erf 5227 Montagu is not for common usage and remains part of De Bos Backpackers and Camping Resort. However, the owners of Erven 5228, 5229, 5301-5305 Montagu may use this area for walking, horse riding, cycling, sitting on benches and general enjoyment of nature around the pond and along the river. Picnics and other use of the area would require consent from the owner of Erf 5227 Montagu. General consideration for the other members in the estate should be practised when using the area. Reasonable usage of the area (such as children riding bikes, talking and laughing) to create a healthy family environment is allowed.

Please find attached - Annexure R: De Bos Country Estate Home Owners Association Constitution

5. LEGISLATIVE FRAMEWORKS AND POLICIES

5.1 SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (ACT 16 OF 2013)

Section 42 of SPLUMA prescribes certain aspects that must be taken into consideration when deciding on an application:

- a) development principles set out in Chapter 2 of SPLUMA;
- b) protect and promote the sustainable use of agricultural land;
- c) national and provincial government policies;
- d) the municipal spatial development framework; and
- e) take into account —
 - the public interest;
 - the constitutional transformation imperatives and the related duties of the State;
 - the facts and circumstances relevant to the application;
 - the respective rights and obligations of all those affected;
 - the state and impact of engineering services, social infrastructure and open space requirements;
 - any factors that may be prescribed, including timeframes for making decisions.

5.1.1 COMPLIANCE WITH SPLUMA PRINCIPLES

The application complies with the five main development principles of SPLUMA, as set out below:

1) Spatial Justice:

- Past spatial and other development imbalances must be redressed through improved access to and use of land;
- Spatial development frameworks and policies at all spheres of government must address the inclusion of persons and areas that were previously excluded, with an emphasis on informal

settlements, former homeland areas and areas characterized by widespread poverty and deprivation;

- Spatial planning mechanisms, including land use schemes, must incorporate provisions that enable redress in access to land by disadvantaged communities and persons;
- Land use management systems should include all areas of a municipality and specifically include provisions that are flexible and appropriate for the management of disadvantaged areas, informal settlements and former homeland areas;
- Land development procedures must include provisions that accommodate access to secure tenure and the incremental upgrading of informal areas;
- A competent authority contemplated in this Act or other relevant authority considering an application before it, may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property is affected by the outcome of the application.
- The right of owners to develop land in accordance with current use rights should be recognized.

Compliance:

This section is not relevant to the land use planning application but it will contribute to improved access to and use of land. The property owner is exercising his/her right to make an application to the municipality.

2) Spatial Sustainability:

- Promote land development that is spatially compact, resource-frugal and within the fiscal, institutional, and administrative means of the relevant competent authority in terms of this Act or other relevant authority;
- Ensure that special consideration is given to the protection of prime and unique agricultural land;
- Uphold consistency of land use measures in accordance with environmental management instruments;
- Promote and stimulate the effective and equitable functioning of land markets;
- Consider all current and future costs to all parties for the provision of infrastructure and social services in land developments;
- Promote land development in locations that are sustainable and limit urban sprawl;
- Result in communities that are viable;
- Strive to ensure that the basic needs of all citizens are met in an affordable way;
- The sustained protection of the environment should be ensured.

Compliance:

The application site is located in an urban area with a rural character and the proposed tourist related land uses will support the rural economy. It is expected that the proposal will not have a negative impact on social, economic or environmental considerations due to the nature of the small, low-density footprints as well as the distance of the land uses from existing development on adjacent properties. The low impact camp sites are to be located linear to the river to be visually discreet. The function venue will be operated from an existing building. All proposed land uses will make use of existing infrastructure services. It is expected that the proposal will have a positive economic impact as it will supplement the establishment's income. According to the applicant's understanding, no listed activities in terms of the environmental legislation are triggered by the proposal.



3) Efficiency:

- Land development optimizes the use of existing resources and infrastructure;
- Integrated cities and towns should be developed;
- Policy, administrative practice, and legislation should promote speedy land development.

Compliance:

The proposal is resource frugal since it involves the optimal use of land. Existing infrastructure services will be used. The proposed land uses are allowed as primary and consent uses in the current zoning and will contribute towards the integration of resort uses in an urban area with a rural character. Application procedures should be efficient and streamlined and timeframes must be adhered to by all parties, including authorities, the applicant and all interested and affected parties.

4) Spatial Resilience:

- Flexibility in spatial plans, policies and land use management systems are accommodated to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks.

Compliance:

The proposal is considered consistent with the relevant spatial frameworks, policies and zoning scheme, as explained in the report.

5) Good Administration:

- All spheres of government should ensure an integrated approach to land use planning;
- All government departments must provide their sector inputs and comply with any other prescribed requirements during the preparation or amendment of spatial development frameworks;
- The requirements of any law relating to land development and land use must be met timeously;
- The preparation and amendment of spatial plans, policies, land use schemes as well as procedures for development applications, include transparent processes of public participation that afford all parties the opportunity to provide inputs on matters affecting them;
- The legislation, procedures and administrative practice relating to land development should be clear, promote predictability, trust, and acceptance to inform and empower members of the public.
- A spatial development framework, zoning scheme or policy should be developed in phases and each phase in the development thereof should include consultation with the public and relevant organs of state and should be endorsed by the relevant competent authority.
- Decision-making procedures should be designed to minimise negative financial, social, economic, or environmental impacts.
- Development application procedures should be efficient and streamlined and timeframes should be adhered to by all parties.
- Decision-making in all spheres of government should be guided by and give effect to statutory land use planning systems.



Compliance:

This principle has no direct bearing on the application. It is the responsibility of the relevant authority to consider the application fairly and within the prescribed timeframes. Decision making should be guided by national, provincial and local development policies.

5.2 WESTERN CAPE LAND USE PLANNING ACT (ACT 3 OF 2014)

Section 19 of LUPA considers the aspects regarding the compliance or consistency with, and deviation from, spatial development frameworks or structure plans:

- a) If a spatial development framework or structure plan specifically provides for the utilisation or development of land as proposed in a land use application or land development application, the proposed utilisation or development is regarded as complying with that spatial development framework or structure plan.
- b) If a spatial development framework or structure plan does not specifically provide for the utilisation or development of land as proposed in a land use application or a land development application, but the proposed utilisation or development is not in conflict with the purpose of the relevant designation in the spatial development framework or structure plan, the utilisation or development is regarded as being consistent with that spatial development framework or structure plan.
- c) If the proposed utilisation or development of land in a land use application or a land development application does not comply with and is not consistent with the relevant designation for the utilisation of land in an applicable spatial development framework or structure plan, the proposed utilisation or development deviates from that spatial development framework or structure plan.

Compliance:

According to the Langeberg Municipal Spatial Development Framework, the application site is located within the urban edge. The area is earmarked for urban agriculture and the property is zoned Resort Zone / Agricultural Zone II. Tourist accommodation and tourist facilities compliment both the resort and agricultural land use. The proposal is considered consistent with the municipal Spatial Development Framework.

5.3 WESTERN CAPE PROVINCIAL SPATIAL DEVELOPMENT FRAMEWORK (2014)

The Western Cape Provincial Spatial Development Framework (WCPSDF) serves as strategic spatial planning policy that communicates the provinces spatial planning agenda and sets out to put in place a coherent framework for the province's urban and rural areas that:

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

The aim of the WCPSDF is to restructure the urban and rural landscape of the Western Cape to offer socio-economic opportunities for all. The guiding principles for the WCPSDF is spatial justice, sustainability and resilience, spatial efficiency, accessibility, quality and liveability in accordance with SPLUMA. Spatial growth patterns have an impact on municipal finance. Therefore, urban growth patterns should be affordable and sustainable. The urban edge, densification and other principles contributes to having a positive impact on the sustainability of urban areas. Higher densities, a shift from a suburban to urban development model and more compact settlement footprints, are needed for a more sustainable future. The proposal compliments the spatial goals that aim to take the Western Cape on a path towards greater productivity, competitiveness and opportunities within the spatial economy; more inclusive development in the urban areas; and strengthening resilience and sustainable development. The three spatial themes of the WCPSDF are as follows:

- Resources - sustainable use of spatial assets and resources;
- Space Economy - opening up opportunities in the space economy;
- Settlement - developing integrated and sustainable settlements.

The Province's economic prospects clearly lie in the urban space-economy, with public infrastructure investment forecast to be the leading driver of growth. Most of the economic sub-sectors that the Western Cape Government are targeting for growth are urban based. Tourism based in settlements or along regional tour routes, themed and focused on outdoor activities, is an important economic prospect of the Western Cape. The integrity of the Province's natural and built environments is also of critical importance to the further development of tourism, as the Western Cape's tourism economy is nature and heritage based, and built on a foundation of a high-quality and unique environment.

Compliance:

The proposal aims to diversify and strengthen the rural economy by providing compatible and sustainable land uses - activities that are appropriate in a rural context, generate positive socio-economic returns, do not compromise the environment or ability of the municipality to deliver on its mandate and of an appropriate scale and form. The proposal intends to promote compact, mixed use and integrated settlements by prioritising development investment based on the economic role and function of Montagu, acknowledging that tourism remains an important economic underpinning of the town.

5.4 GUIDELINES FOR RESORT DEVELOPMENTS IN THE WESTERN CAPE (2005)

Please note that the Guidelines for Resort Developments in the Western Cape, 2005, is not applicable anymore and only mentioned to explain the discrepancies found in land use rights of Erf 5227 Montagu. Since the promulgation of the "Section 8" Scheme Regulations in the eighties, and the accordant adjustment of "Section 7(2)" Zoning Schemes in line therewith, a vast number of resort applications have been submitted to public authorities, and because substantial financial interest was often involved, applicants have at times exerted considerable pressure for development to be permitted outside of urban nodes. As a result, dealing with resort applications has often been complex, even more so as a result of the creation of the Resort Zone II concept. Resort Zone II applications have a tendency to be more attractive to private developers than the development of day resorts or resorts offering accommodation to rent only, as was permitted under Resort Zone I. In the absence of clear guidelines, the danger has since existed that resort zoning (especially Resort Zone II) could be recommended for approval in unsuitable locations and/or without the imposition of appropriate and adequate development conditions such as those pertaining to size, number and placement of resort units.

The above-mentioned situation created the potential for those developers who may be unscrupulous, to exploit the lack of clearer guidelines than those which have existed up to the present. Consequently, the formulation of suitable provincial guidelines, built upon the considerable experience gained in the interim, were long overdue. Resort development required approval in terms of both LUPO (municipal and provincial) and the ECA (provincial) and the guideline document, prepared by Department of Environmental Affairs and Development Planning in 2005, was consequently aimed at facilitating the processing of applications in terms of both pieces of legislation. In the 2005 model by-law only holiday accommodation, conservation usage and private open space use were primary uses within a resort zoning, while all associated uses, namely tourist facilities, conference facilities, holiday housing and hotels, have been listed as consent uses.

Compliance:

The 2005 resort guidelines were not applicable to the original resort development, approved in 1995. On the other hand, it was applicable to the applications approved in 2005 and 2008. Tourist and conference facilities were considered primary rights in the resort zone in terms of the legislation applicable at that point in time. Such facilities were only considered consent uses after 2005. Since the original resort development started in 1995 many ancillary uses to the resort were considered permitted land uses.

5.5 WESTERN CAPE LAND USE PLANNING GUIDELINES FOR RURAL AREAS (2019)

Even though the application site is located in an urban area, the area has a rural character and the surrounding area consists of a number of smallholdings. Therefore, the Western Cape land use planning guidelines for smallholdings, resorts and rural business were taken into consideration.

The objective of smallholdings is to accommodate larger residential properties in order to provide a full range of opportunities. This may be used for limited agriculture, but primarily serve as places of residence for people who seek a rural lifestyle. Smallholdings are traditionally located in a serene and tranquil environment with farming or country life characteristics outside the densely populated urban areas of the city or towns. Natural vegetation and agricultural landscaping contribute to the rustic ambiance. The demand for residential smallholdings in the urban fringe stems from the rural lifestyle opportunities they offer in close proximity to town. Notwithstanding the fact that some residents keep horses, livestock or cultivate some of their land on a part-time basis, smallholdings are primarily used for extensive residential purposes. A smallholding unit size of between 4000 m² and 3 ha is recommended in the urban fringe of a demarcated urban area, with consideration to subsequent subdivision as part of the urban growth frontier.

The objectives of tourist accommodation are as follows:

- To provide a range of opportunities, including different typologies, for tourists and visitors to experience the Western Cape's unique rural landscapes; e.g. additional dwelling units on farms, B&Bs, guesthouses, backpacker lodges, lodges, resorts, hotels, and camping sites.
- To offer more people access to unique tourism and recreational resources in sought-after natural areas, where it would not otherwise have been possible.
- To contribute towards the sustainability and well-being of the relevant areas where tourist accommodation is considered.
- To align the scale and form of overnight facilities with the character and qualities of the Western Cape's diverse rural areas.
- To diversify farm income.
- To provide accommodation in proclaimed nature reserves.



The objective of rural business is to facilitate the development of rural businesses serving the needs of local communities, rural tourists and agricultural production as well as to provide guidance on suitable locations for appropriate development along main tourism routes. Place-bound businesses (businesses ancillary to agriculture or serving rural needs) include farm stalls, farm shops, restaurants and venue facilities (e.g. conferences and weddings). Place-bound businesses should preferably be located on the farm to consolidate the farmstead precinct, and complement the farm's operations. Restaurants and venue facilities should be located within the farmstead precinct and be of appropriate scale and vernacular design, generate positive socio-economic returns and do not compromise the environment; agricultural activities, production and sustainability, risk and finances; and the scenic, heritage and cultural landscape. Restaurant and venue facilities to be of a scale compatible with the farmstead precinct and/or surrounding rural context.

Given the Western Cape's unique rural communities and landscapes, tourism offers exciting prospects to diversify and strengthen the rural economy. Accordingly, the Western Cape Government approach to rural accommodation is to facilitate the provision of a variety of short-term tourism accommodation across the rural landscape that is in keeping with the local character. This policy envisages a wide range of accommodation or residential opportunities in the rural area which is summarized below:

LOCATION	TYPE OF ACCOMMODATION
Farms	One homestead (owner's dwelling) Five additional dwellings Agri worker housing Guest house Camping sites
Resorts	Temporary Tourist accommodation Employees' accommodation
Nature reserves	One homestead (Owner's dwelling) Accommodation for tourists Employees' accommodation
Smallholdings (on urban fringe)	One homestead (Owner's dwelling) Second dwelling Guest house
Agri-village	Accommodation for bona fide agri workers

(Source: Western Cape Land Use Planning Guidelines for Rural Areas Report)

FIGURE 2 - ACCOMMODATION OPPORTUNITIES IN THE RURAL AREA

Compliance:

In terms of the Western Cape Land Use Planning Guidelines for Rural Areas, Erf 5227 Montagu is not considered a smallholding but rather a farm due to its size exceeding 3 hectares. Camp sites are considered appropriate on farms. Interestingly, many municipalities in the Western Cape allow up to six camp sites as a primary use in both the Agricultural Zone I and II categories. The fact that the application site is zoned Resort Zone and Agricultural Zone II confirms that tourist accommodation, including camp sites, is an acceptable land use on smallholdings or farms. The proposal is considered appropriate in a rural context due to its scale and form. It is anticipated that positive socio-economic returns will be generated. The proposed development is compliant with the agricultural and resort zoning. Tourist accommodation is permitted on farms. The proposed land uses are considered appropriate low impact uses. Due to the small footprints of the proposed land uses, it is expected that the non-agricultural land uses will not detract from the rural character of the property. The proposed land uses are located in existing buildings and in visually unobtrusive locations.

5.6 LANGEBERG MUNICIPALITY SPATIAL DEVELOPMENT FRAMEWORK (2015)

Montagu appears well placed to benefit from future growth in the tourism, retirement and big city markets as it is close to the Breede River Valley and its amenities in a location of outstanding natural and urban quality. Urban agricultural areas should be protected and consolidated as important ecological and heritage resources. The application site, the application site is located within the urban edge. The area in which the application site is located is earmarked for urban agriculture.

Compliance:

The provision of tourist accommodation, a function venue and tourist facilities in a scenic area in Montagu will contribute towards the tourism potential of the town. The proposal promotes preservation of the rural visual aesthetics by allocating most of the property to non-intensive agriculture. Only 2% of the property is covered. Tourist accommodation and tourist facilities compliment both the resort and agricultural land use. The proposal is considered consistent with the municipal spatial development framework.

5.7 LANGEBERG MUNICIPALITY INTEGRATED DEVELOPMENT PLAN (2023)

Montagu has medium socio-economic needs and medium economic growth potential. Montagu Caravan Park is listed a prominent tourist attraction. The following proposals made in the Integrated Development Plan will have an impact on De Bos Country Estate:

- Tarring of road surface of Middle Street up to the De Bos Country Estate entrance;
- Closure of Middle Street, from the De Bos Country Estate entrance to the Kogman & Keisie farm entrance.

The Langeberg Municipality is responsible for tourism and the marketing of the entire local area as a preferred tourism destination. To promote the Langeberg area as a preferred tourism destination and to attract investors to the area, attention should be drawn to the area's niche strengths:

- Strong and well-known wine industry
- The established and popular Route 62
- The beautiful and tranquil natural environment
- Close proximity to Cape Town, the gate-way to the rest of the Western Cape
- The availability of good infrastructure

As one of the key drivers of the local economy, the Langeberg Municipality is committed to support local tourism and to create an environment which is conducive to unlock economic opportunities for the benefit of our broader community. Tourism related events are supported.

Compliance:

The application will not have a negative impact on the proposals made regarding the streets as the guests of De Bos Camping and Backpackers do not make use of the entrance from Middle Street. The scale of the proposal is small and most of the land uses are already being carried out. It is therefore expected to not have a negative impact on the existing roads. The proposal is not directly related to the strategic objectives set out in the Integrated Development Plan except for the fact that it will support the growth and development of the tourism sector.

5.8 MONTAGU ZONING SCHEME REGULATIONS AND REGISTER (2000)

The application site was formerly zoned as Special Zone in terms of the Montagu Zoning Scheme Regulations and Register, 2000. The primary uses in this zoning category are "holiday resort" and "caravan parks".

"Holiday resort" means an informal layout of dwelling units with a holiday character and a harmonious appearance, which is built in accordance with the detail plans approved in terms of the Provincial holiday resort requirements, and which is developed on a coordinated basis as a unit or in phases.

"Caravan park" means any land used or intended to be used for the accommodation of caravans and tents, but does not include rondavels or cottages.

Compliance:

Although the abovementioned bylaw has been repealed, reference is made to it since the 2005 and 2008 approvals were granted in terms of this bylaw. According to the description of a "holiday resort", a resort should have been in accordance with the Provincial holiday resort requirements. The Guidelines for Resort Developments in the Western Cape, 2005, (see Section 5.4 of the report) were applicable to the applications approved in 2005 and 2008. Tourist and conference facilities were considered primary rights in the resort zone prior to 2005. Since the original resort development started in 1995 some ancillary uses were added to the resort but were still considered permitted land uses.

5.9 LANGEBERG MUNICIPALITY INTEGRATED ZONING SCHEME BY-LAW (2018)

The application site currently has a split zoning for Agricultural Zone II and Resort Zone in terms of the Langeberg Municipality: Integrated Zoning Scheme By-law, 2018.

The objective of the Resort Zone is to promote tourist and holiday facilities in areas with special environmental or recreational attributes, and to encourage general public access to these facilities. At the same time, care should be exercised to minimise potential negative impacts of development on fragile environments. The guiding principle should be that a resort must not detract from the amenity that attracted the holiday facilities in the first place, nor should it cause a public nuisance for other people living and working in the vicinity. The primary use in this zoning category is "tourist accommodation".

"Tourist accommodation" means a harmoniously designed and built holiday development, used for holiday or recreational purposes, whether in private or public ownership, that—

- a) consists of a single enterprise that provides overnight accommodation by means of short-term rental or time sharing only;
- b) may include the provision of a camping site, caravan park, chalets or mobile home park, resort shop, private or public roads, wellness centre, or self-catering accommodation; and
- c) does not include a hotel.

Development parameters:

- 1) A site development plan must be submitted to the Municipality for its approval, clearly indicating the position of all structures, stands, services and internal roads.
- 2) When land is rezoned to Resort Zone, the Municipality must impose conditions with regard to density, layout, landscaping, and building design.



Application is made for a "function venue" as a consent use in an existing building of the resort.

"Function venue" means a building or structure used for functions, weddings and expos on what is mainly a rural property.

Development parameters:

Development parameters applicable to "agriculture" apply on a rural property, together with the limitation that any function venue in a rural area, including all components of the venue, may not exceed a total floor space of 500 m².

The objective of the Agricultural Zone II is to accommodate larger residential properties, which may be used for limited agriculture, but primarily serve as places of residence for people who seek a rural lifestyle. The primary use in this zoning category is "smallholding".

"Smallholding" means an extensive landholding of minimum 0.86 hectares in extent, including a dwelling house that is primarily a place of residence on which small scale agricultural activities may take place.

Development parameters:

Development parameters applicable to "agriculture" apply, except that building lines of 5 metres from any boundary apply.

Application is made for "tourist facilities" as a consent use.

"Tourist facilities" means amenities for tourists or visitors and—

- a) includes lecture rooms, restaurants, gift shops, restrooms, farmers' market and recreational facilities;
- b) does not include an off-road trail, a hotel, wellness centre; or tourist accommodation.

Development parameters:

Development parameters applicable to "agriculture" apply.

Compliance:

The existing resort development complies with the development parameters of the split zoning. It should be noted that most of the development was approved in terms of former legislation. Given the fact that the development parameters of agriculture apply to both a function venue and tourist facilities and that both are allowed as consent uses, these land uses are considered desirable. The existing tourist accommodation (rental units, camp sites and caravan stands) provides overnight accommodation by means of short-term rental. The proposed land uses will comply with the abovementioned development parameters. The function venue will not exceed a total floor space of 500 m². Tourist facilities will be operated indoors (in existing buildings) and outdoors, depending on the type of land use.

The assumption is made that the existing function venue and tourist facilities on Erf 5227 Montagu were never recorded in the zoning register with the transition to the new legislation in 2018, as explained in Sections 5.4 and 5.8 of the report. This explains why no consent uses are listed on the 2022 zoning certificate even though the uses have been carried out historically as part of the resort development. The application for consent use for a function venue and tourist facilities is submitted to ensure that these land uses are recorded as lawful consent uses.



6. MOTIVATION

6.1 NEED

The application serves to obtain consent for expansion of the camping area to the south-western part of the property as well as to ensure that all land uses are being carried out lawfully. A site development plan is submitted with this application to clearly indicate the different land uses.

6.1.1 CARAVAN AND CAMPING SITES

No specific areas were identified for caravan and camp sites in either the applications approved in 2005 and 2008 or on the approved site development plans of 2017 and 2018. Existing formal and informal caravan stands and camping sites are dispersed over the property. Most of the caravan and camping sites in the north-eastern part of the property will have electricity. These stands are located close to the main facilities of the resort where most of the activities take place. In order to supplement the resort's income and to provide a range of camping opportunities, the land owner intends to provide low impact camping sites next to the Keisie River further south. Camping sites are considered a primary land use in the Resort Zone under tourist accommodation.

The proposed camping sites on the south-western part of the application site will be off-grid. Specific rules will apply to these sites such as no music or disturbing noises. No vehicle access will be granted to these sites and campers choosing to stay in this area will have to be able to carry everything they need to the camping site. The type of camper who will enjoy this area prefer to set up camp as far from civilization as is humanly possible. These types of campers are enthusiastic about the outdoors. They tend to be out the whole day, exploring nature either by hiking or mountain biking, and will not spend a lot of time at the camping site during the day. Backpacking is an adventure that blends hiking with camping. It lets campers broaden their horizons beyond the car campground to enjoy a richer, more immersive outdoor experience. Because these hikers have to carry and fit it all into a pack, backpacking gear has to be lightweight and compact. Bikepacking, in essence, is an overnight or multi-day tour by bike, completed on mixed terrain or entirely off-road with the rider carrying their equipment on their bike. This discipline of cycling has started to boom in popularity in recent years. With limited packing space, they use lightweight gear and their camping setup is inconceivably minimalistic. The proposed low impact camping sites are intended for these types of adventurous campers who long to be in the outdoors. The proposed non-electrified, low impact camping sites are indicated on the site development plan.

In the 2005 application by TPS Consulting Town and Regional Planners, reference is made to the Lapa (a thatch structure with ablutions) used for group camping purposes on the then Lot 307. This implies that the existing Lapa and a camping area for groups are both historical lawful land use rights on Erf 5227 Montagu. The Lapa is also shown on the consolidation and subdivision plan submitted by Umsiza Planning in 2007. Reference is made in the 2007 application to the Lapa with its ablution facilities being primarily used for tourist groups. The existing lawful land use (Lapa and ablutions) is indicated on the approved site development plans dated 2017 and 2018. The land owner intends to refurbish the existing building and use it for cooking, scullery and ablution facilities for the campers on the south-western portion of Erf 5227 Montagu.





FIGURE 3 – EXISTING LAPA

6.1.2 FUNCTION VENUE

Neither the 2005 nor the 2008 approval letters made reference to a function venue. The historical barn building is often used as a function venue. Weddings and other functions are also held outdoors from time to time. This land use has been carried out for many years and the land owner is not deliberately erring in doing so as he/she was under the impression that it is allowed in the existing resort approval. No definition for a function venue could be found in the former zoning scheme bylaw, being the Montagu Zoning Scheme, 2000. The assumption is made that the land use was considered a primary right in the Special Zone (holiday resort and caravan park) but that it was not registered as such with the migration to the current zoning scheme bylaw. Application is hereby made to ensure that a function venue may be operated lawfully from Erf 5227 Montagu.



FIGURE 4 – EXISTING FUNCTION VENUE (OLD BARN)

De Bos Backpackers and Camping is a magical setting for a wedding or function. Surrounded by a majestic backdrop of mountains, the breathtaking views are a photographer's paradise. The venue is perfect for indoor or outdoor functions and all types of occasions, be it birthdays, anniversaries or company functions. Guests can stay in our various cottages, suites or backpacker rooms.

6.1.3 TOURIST FACILITIES

The swimming pool is considered a lawful recreational facility being an historic use forming part of the original holiday resort and caravan park (primary uses in the Special Zone 1 in terms of the Montagu Zoning Scheme, 2000). A farmers' market has been held for many years and is considered a desirable land use right, although it is not registered as a consent use in the zoning register. In order to rectify this discrepancy, application is made for consent use for tourist facilities to lawfully operate the farmers' market. Approval of the consent use for tourist facilities will also allow the land owner to provide lecture rooms, a restaurant, gift shop, restrooms and other recreational facilities if the need arises to diversify the establishment's income. It will be subject to building plan approval, if required.

6.2 DESIRABILITY

The desirability of the proposed development relies heavily on the consistency with policy documentation but has a distinctly spatial focus. Specific factors that favour the proposal were taken into consideration.

6.2.1 LOCATION AND PROMINENCE IN TOWN

The application site is located in an urban area, bordered by residential erven as well as smallholdings. The property is prominent in the surrounding area as it is a well-known resort, adjacent to the Montagu Caravan Park. The De Bos Backpackers and Camping resort is within walking distance from fabulous restaurants, supermarkets, museums and much more to do in town.

6.2.2 SITE CHARACTERISTICS

The approximately 5 hectare sized smallholding is fairly level except for south-western part where a slight slope (approximately 3%) in the south-eastern direction towards the Keisie River is seen. The river runs along the south-eastern boundary of Erf 5227 Montagu. The south-western portion of the property is completely under the 1:50 year flood line and no buildings may be erected in this area. This portion of land is currently used for a nut tree orchard as well as grazing and stabling areas for horses and donkeys. The existing buildings of the resort are located above the flood line area, in the central and north-eastern parts of the property. Nut tree orchards are also planted north-east and south-west of the farmhouse.

6.2.3 FUNCTIONAL LINKAGE TO AND DISTANCE FROM NODES AND CORRIDORS

Montagu is known as the gateway to the Klein Karoo. For a small town, Montagu offers a wide choice of restaurants and tourist accommodation of which many are located along Route 62. This road serves as a tourist route and stretches across the Western and Eastern Capes of South Africa. Visitors can travel from Cape Town to Port Elizabeth and enjoy the scenery and directness of the route while driving. This scenic route passes through farming towns such as Calitzdorp, Ladismith, historic Amalienstein, Zoar and the fruit growing and wine producing towns of Barrydale, Montagu, Ashton, Bonnievale, Robertson, McGregor, Rawsonville, Worcester, Ceres, Wolseley, Tulbagh, Wellington and Paarl. It includes the Langkloof with the following towns; Misgund, Louterwater, Krakeel, Joubertina and Kareedouw.



The site is located approximately 0.39 km from the R62 Road (better known as Route 62) via Brown and Rose Streets. The application site gains vehicular access from Brown Street (tarred road) as well as Middle Street (gravel road). Montagu Caravan Park, a popular resort, is located adjacent to the application site. The Central Business District of Montagu is approximately 0.93 km from Erf 5227 Montagu. The site is located approximately 1.17 km from the intersection of Du Toit Street and the R62, where Spar grocery store and the Montagu Primary School are located. The Langeberg municipal office is approximately 0.483 km from the application site.

6.2.4 DEGREE OF ACCESSIBILITY AND TRAFFIC IMPACT

Unobstructed vehicular access to Erf 5227 Montagu is obtained from Brown Street (tarred road) as well as Middle Street (gravel road). The ingress/egress point from Brown Street is used for guests visiting the resort and the access point from Middle Street is for private use of the farmhouse as well as delivery vehicles. A right-of-way servitude is registered over Erf 5227 Montagu in favor of Erven 5228, 5229, 5301-5305 Montagu. There is no intention to make use of the right-of-way servitude for any land uses or activities on Erf 5227 Montagu and the owners of the aforementioned properties will have unobstructed use of the servitude road.

Since the property is already occasionally used as a function venue and for tourist facilities, no significant traffic impact is expected by approval of the consent uses. The additional traffic generated by the proposed low impact camp sites will not have an adverse impact on the surrounding area. The guests making use of the low impact camp site will use the ingress/egress point from Brown Street, as all other guests of the resort do, and no vehicles will be allowed beyond the existing Lapa, located centrally on Erf 5227 Montagu. Campers will have to carry all their equipment to the sites at the lower part of the property. The land owners of Erven 5228, 5229, 5301-5305 Montagu will therefore not be disturbed by vehicles entering and exiting that area. The function venue and tourist facilities which are already in use as well as the proposal for a few low impact camping sites in the south-western part of the property is not expected to have a significant impact on the traffic count of the public road from which access to the property is gained.

Adequate parking space is available due to the fact that the property is a smallholding and only 2% of the property is covered by buildings. Sufficient parking bays are provided, as shown on the site development plan. The property is located favourably when taking into consideration the accessibility to roads and amenities in the area. The property is secluded yet within close proximity to the centre of town, where guests can experience everything that Montagu has to offer.

6.2.5 DESIRED OR PLANNED CHARACTER OF THE AREA

The application site is located within the urban edge of Montagu town. The surrounding area consists of residential erven, the Montagu Caravan Park and a number of smallholdings, of which many offers tourist accommodation and/or tourist facilities. Small-scale agricultural land uses can be found on some of the smallholdings but the surrounding area is not considered an intensive agricultural area. The agricultural land uses and open spaces on undeveloped parts of these smallholdings contribute towards the preservation of the rural and historical character of the surrounding area. The existing and proposed land uses on Erf 5227 Montagu fit in with the character of the surrounding area since it is tourist related and makes use of the unique rural character to create a tranquil environment.



6.2.6 IMPACT ON THE SURROUNDING AREA

The property is located in a low density area consisting of residential erven and smallholdings. Tourist accommodation and/or tourist facilities are carried out from many of the adjacent properties. The proposed consent uses (function venue and tourist facilities) have been carried out for many years and the application only serves to legalize it. Tourist accommodation (including camp sites), a function venue and tourist facilities are considered ancillary and compliant land uses in the existing zoning and contribute towards tourism in Montagu. The overall character of the property will remain rural as only a small portion of land is covered and/or used ancillary to the resort.



(Source: Cape Farm Mapper - <https://gis.elsenburg.com/apps/cfm/>)

FIGURE 5 – VISIBILITY OF THE PROPOSED LOW IMPACT CAMP SITES

The natural environment and the manner in which the existing buildings are built on Erven 5228, 5229, 5301-5305 Montagu contribute towards the privacy on these erven. The following observations were made during a site visit and the findings are shown in Figures 5 and 6:

- Most of the dwelling units face north-west with garages facing towards the south-eastern boundaries;
- The private open spaces (lawns and swimming pools, where applicable) of most of the dwelling units are located to the north of the houses or behind existing outbuildings;
- Vegetation and/or hedges forms a privacy screen along the south-eastern boundaries of most of these erven;
- Dense vegetation on some of the erven creates a barrier between the developments and the servitude road;
- The open space between the proposed low impact camp sites and the erven to the north consists of a nut tree orchard and other natural trees;
- The proposed low impact camp sites will be located slightly lower than the dwelling units on Erven 5228, 5229, 5301-5305 Montagu, which restricts direct line of sight from the camp sites towards the dwelling units;
- The proposed low impact camp sites along the Keisie River will be located approximately 40 to 60 metres from the erf boundaries of Erven 5228, 5229, 5301-5305 Montagu. It is interesting to note that the lengths of these residential erven range between approximately 50 to 70 metres. In theory, another row of erven could have fit in between Erven 5228, 5229, 5301-5305 Montagu and the proposed low impact camp sites.

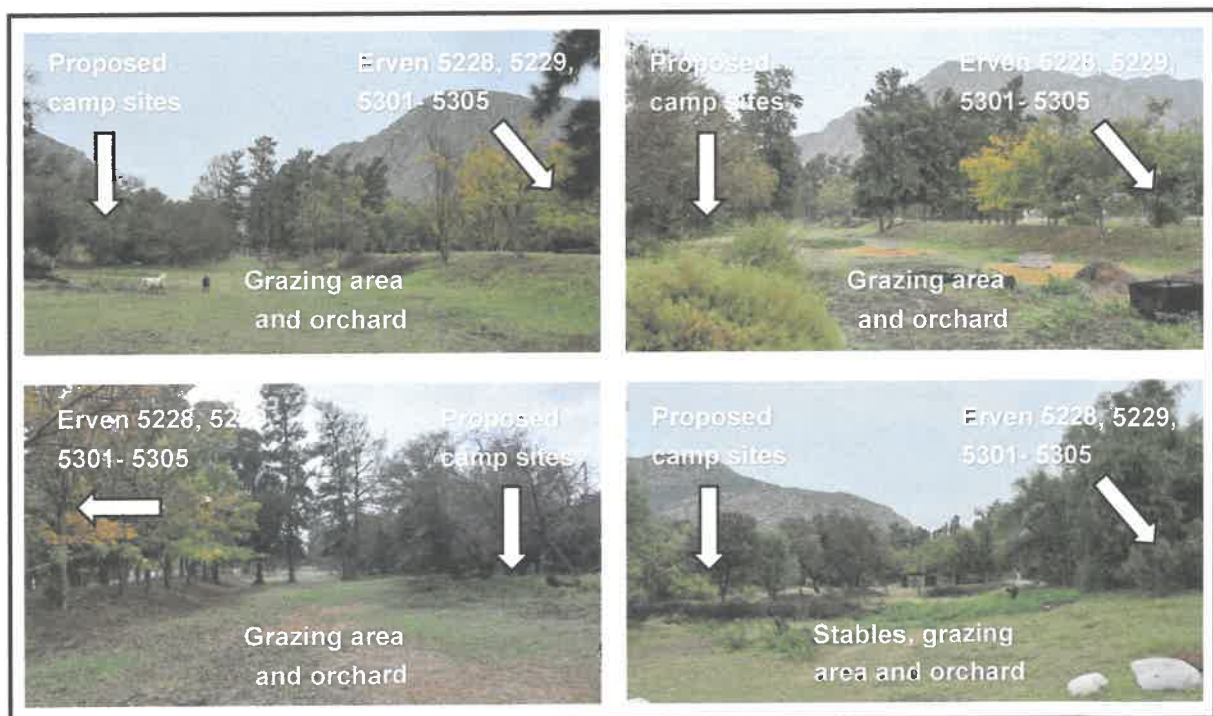


FIGURE 6 – PROPOSED OFF-GRID CAMPING IN RELATION TO RESIDENTIAL ERVEN IN DE BOS COUNTRY ESTATE

It is expected that the proposed low impact camp sites will not have a negative physical or visual impact on adjacent properties due to the following:

- The distance between the proposed camp sites and Erven 5228, 5229, 5301-5305 Montagu;
- The Keisie River and/or Long Street being located between the application site and adjacent erven to the south.
- Their right to use the area between their properties and the river for walking, horse riding, cycling, sitting on benches and general enjoyment of nature around the pond and along the river will not be taken away. They will still be allowed to make use of this area, with general consideration for the other members in the estate.

6.2.7 IMPACT ON THE RURAL CHARACTER

None of the former land use planning approvals set a condition that the zoning and land use of Erf 5227 Montagu must remain agricultural. The approvals were granted on condition that the rural character be preserved. Even with the most recent decision taken in 2008, the development of seven Single Residential Zone I erven as well as the Remainder (Split Zoning for Resort and Agriculture) was approved on condition that the rural character be preserved. In terms of Condition 3.9 of the approval letter, the Remainder (now Erf 5227) as well as the seven (7) residential erven must comply with this condition. Given the fact that the seven residential erven are zoned Single Residential Zone I, it is concluded that preserving of a rural character does not imply that the zoning of a property should be agricultural or that only agricultural land uses may be carried out. In the case of De Bos Country Estate, a Single Residential Zone I erf can still have a rural character if the architectural and management guidelines of the country estate is applied. Erf 5227 Montagu definitely has a rural character despite the fact that resort land uses are carried out. Rural character refers to the patterns of land use and development where open space, natural landscapes, and vegetation are preserved over the built environment. The low density development on Erf 5227 as well as the small-scale agricultural uses, including the keeping of horses and donkeys as a tourist attraction, contributes toward the preservation of a rural character.

The proposal will not change the country feel of De Bos Country Estate since the planned land uses (function venue, tourist facilities and low impact camping site) complements the primary land use. The proposal is sensitive to the natural surroundings and existing small-scale agricultural land uses. Existing buildings and/or already disturbed footprints will be used as far as possible. Most activities of the resort will take place in the north-eastern part and only low impact camping and agricultural land uses will be allowed on the south-western part. The off-grid camping, far away from other facilities, will create a true country feel camping experience. A function venue and tourist facilities are permitted as consent uses in the current split zoning and are therefore desirable from a land use perspective. It is expected to not have a negative impact on the rural character of the property but rather complement the existing development. The existing buildings and facilities will be used for these land uses. The proposal will not have a negative impact on the rural character of the property but will make optimal use of existing development.

Camping is a permitted land use in the Resort Zone and tourist accommodation primary use. The lower part of the proposed low impact camp sites along the Keisie River will be located approximately 40 to 60 metres from the erf boundaries of Erven 5228, 5229, 5301-5305 Montagu, leaving adequate space for grazing area for animals. The nut tree orchards will not be removed. No buildings will be erected in the low impact camp site area since no development may take place within the 1:50 year flood line. A few minimalistic braai areas and refuse bins will be provided where campers can safely cook their food and dispose their waste.



The intention is not to create formal camping sites or caravan stands in the south-western part of the property but rather to give an opportunity to campers who are enthusiastic about the outdoors to set up camp far from civilization. The informal camp sites are proposed along the river, where grass normally don't grow and is therefore not expected to have a negative impact on the grazable areas. The horses and donkeys will still be allowed to roam freely in open spaces and between the camp sites, as is currently the situation at the north-eastern and central camping areas. The animals play a role in preserving the country feel of the resort. When these sites are not in use, it will most likely not even be possible to notice the camping sites. The intention is to place the proposed camping sites as visually discreet as possible to maintain a country feel. The proposal for expansion of the camp sites area to the south-west will therefore not have negative effect on the rural character of Erf 5227 Montagu.

While urban life dramatically demands people's attention, trees, forests, rivers, streams and oceans don't ask anything of us. Camping in nature gifts campers with the health benefits of fresh air, sunlight and a peaceful setting to simply be in, offering the 'mental reset' they often need to keep energized and motivated. Getting back to nature is the main beauty of camping. The target market of these secluded camp sites, surrounded by nut tree orchards, natural vegetation and the Keisie River, are campers who wish to experience the country feel tucked away in the heart of Montagu. Special rules will apply to the low impact camping site area to prevent noise disturbances and maintain a peaceful country feel.

6.2.8 IMPACT ON INFRASTRUCTURE SERVICES

Infrastructure services are already provided by the Langeberg Municipality, which include electricity, water supply, sanitation and refuse removal. It is anticipated that the proposal will not have a negative impact on municipal service delivery. The resort will make use of some existing infrastructure services and the land owner is responsible for upgrades, if required. The existing water use right for irrigation purposes allocated to the property by the CBR Irrigation Board will not be affected by the proposal. Existing access points and internal roads will be used. No expansion of any building footprint is proposed.

There should be no noticeable impact on the existing municipal services infrastructure since existing buildings and facilities will be used. The proposed function venue and tourist facilities land uses are carried out occasionally and will not create a permanent increase in usage of infrastructure services. These land uses are already being carried out and sufficient capacity for infrastructure services are available. The existing communal ablution facilities will be used for the camp sites, function venue and tourist facilities. A total of 16 toilets are provided over the resort, excluding the bathrooms in the farmhouse and self-catering accommodation. Temporary toilets will be provided for larger functions or farmers' market, if necessary.

The proposed expansion of the camping area to the southwestern portion will not require new buildings or the provision of services, as these sites will be off-grid. The renovated Lapa will be used for communal cooking, scullery and ablution facilities for campers. The Lapa is already serviced with a sewerage line running from Middle Street along the sewer servitude on Erf 3505, as shown on the Site Development Plan. A water pipe will be extended from the central part of the property to the Lapa. A gas geyser is proposed for heating of water at the Lapa. The Boma area is proposed for communal braai and recreational activities next to the pond and existing Lapa.

A number of refuse bins are provided over the resort for campers to dispose waste. Refuse bins will also be provided at the proposed low impact camp sites. The bins are cleaned on a regular basis and waste is taken to a communal waste disposal site close to the Middle Street entrance from where it is collected by the municipality. The property is maintained well and grass is kept short to preserve a neat and safe area for guests.



6.2.9 SOCIO-ECONOMIC IMPACT

Economic growth is the foundation of all successful development. It is a known fact that tourism continues to drive economic development and job creation in the Western Cape. Many forms of employment opportunities are created with a function venue and tourist facilities. Montagu's labour force as well as other tourist establishments and businesses will benefit in many forms if the De Bos Backpackers and Camping resort operates at its full potential.

The resort is a rural bliss, a perfect setting for a function venue (weddings, birthday parties, year-end functions, open air shows and family events). The proposed farmer's market is a good initiative to involve local farmers, artisanal food producers and artists. The market will attract the enthusiastic attention of proud locals and discerning travelers.

The resort offers a range of accommodation types in an exquisite location with panoramic views of the surrounding mountains. The provision of low impact, off-grid camp sites contribute to the provision of a range of accommodation types for tourists and visitors to experience the Western Cape's unique rural landscapes.

Montagu is host to some of the best rock climbing in South Africa as well as other exceptional activities such as the famous hot springs, horse riding, wine tasting, endless hiking and both on and off-road cycling. The provision of tourist accommodation and tourist facilities in Montagu is desirable since the tourism industry is a major contributor to the South African economy. The proposal is regarded as socio-economically beneficial in the long term as a small-scale resort development with a range of accommodation types and tourist facilities will be provided in a sustainable manner to supplement the establishment's income. The proposed development will offer more people access to unique tourism and recreational resources in sought-after natural areas, where it would not otherwise have been possible.

6.2.10 CULTURAL OR HISTORICAL IMPACT

The property is located in the heritage area of Montagu and consist of a number of historical buildings, such as the Cape Dutch style farmhouse and renovated barn. The proposal for a function venue is aimed at making optimal use of the existing buildings which are already used for the resort. The function venue is to be operated inside the renovated historical barn building. There is no reason to believe that the proposal will impact negatively on heritage resources.

The farmers' market will have a positive cultural impact. In recent decades, farmers markets have again assumed their historic role as important social and economic institutions in many of our communities. For many communities, farmers markets are playing a pivotal role in maintaining and enabling cultural ties.

6.2.11 ENVIRONMENTAL IMPACT

It is expected that the proposal will not have a negative environmental impact since the existing buildings and development footprint will be utilized. The provision of off-grid camp sites along the Keisie River should not have a negative impact on the environment as no physical development will take place within the 1:50 year flood line area. Refuse bins will be provided for campers for waste disposal. The camp sites will be cleaned and maintained on a regular basis and strict rules will apply to ensure that the biophysical environment managed, conserved and protected.



6.2.12 PUBLIC INTEREST

The public interest of this land use application is determined by its nature and location. The application site is located in an urban area with a rural character. It is expected that the proposed land uses will not impact negatively on the adjacent land owners. The public interest of this land use application is regarded as limited. Most land uses are already being carried out and the proposed uses are ancillary and subservient to the main uses. It is expected that the proposal will not have a negative visual impact on the surrounding area due to the dense vegetation and distance from existing development in the surrounding area. Resort related land uses such as a function venue, tourist facilities and a range of accommodation types will attract tourists to the area and may in turn have a positive impact on the economy of Montagu. A public participation process will be followed as per the requirements of the Langeberg Municipality: Land Use Planning Bylaw, 2015.

7. CONCLUSION

Application is made for the following:

- 1) Amendment of a condition in respect of the existing approval in terms of Section 15(2)(h) of the Langeberg Municipality: Land Use Planning Bylaw, 2015, which condition limits the extent of the resort development to the site development plan submitted with the rezoning application (as amended per building plan approvals dated 08/06/2017 and 21/11/2018), in order to amend the approved site development plan;
- 2) Consent use contemplated in the zoning scheme in terms of Section 15(2)(o) of the Langeberg Municipality: Land Use Planning Bylaw, 2015, for a function venue;
- 3) Consent use contemplated in the zoning scheme in terms of Section 15(2)(o) of the Langeberg Municipality: Land Use Planning Bylaw, 2015, for tourist facilities.

The proposal is considered favourable for the following reasons:

- The proposed development aims to ensure compact, balanced and strategically aligned activities and land uses that are in line with the desired and planned character of the area;
- The proposed land uses are consistent with the current zoning and rural character of the area;
- The proposed function venue, tourist facilities and low impact camp sites are considered an appropriate form and scale within the current zoning category of the property;
- The land uses are proposed at the most sensible positions, considering the site characteristics, and allows the land owner to optimise the property's potential;
- The proposed development is expected to generate positive socio-economic returns and have a positive impact on tourism;
- The proposal will not compromise the municipality's mandate to deliver services efficiently.

In light of this motivation and the information contained within the report, the application is considered desirable. It is therefore recommended that the application be supported.

MM COETZEE Pr. Pln



Objections

Myrna Staal

From: Jack van Zyl
Sent: Wednesday, 23 August 2023 13:51
To: Myrna Staal
Subject: FW: VOORGESTELDE VERGUNNINGSGEBRUIK EN WYSIGING VAN VOORWAARDE: ERF 5227, BROWNSTRAAT 8, MONTAGU
Attachments: Special Meeting Announcement 25 October 2022 and Agenda (1).doc; Minutes of Special Meeting 25 October 2022.docx (1).pdf; 01 - 13.12.22 De Wet letter to Mr A Simmans.docx; DE BOS COUNTRY EST HOA Approved Constitution.pdf

Myrna

Beswaar 1. Print en sit op lêer asb.

Jack van Zyl
Professionele Beplanner (A/1170/2022)
Senior Stadsbeplanner



023 614 8000
jvzyl@langeberg.gov.za

From: David Olivier <hrdavidolivier@gmail.com>
Sent: Wednesday, August 23, 2023 10:59 AM
To: Jack van Zyl <JvZyl@langeberg.gov.za>
Cc: Janelle Vermeulen <jvermeulen@langeberg.gov.za>
Subject: Fwd: VOORGESTELDE VERGUNNINGSGEBRUIK EN WYSIGING VAN VOORWAARDE: ERF 5227, BROWNSTRAAT 8, MONTAGU



Dear Mr. Van Zyl,

Attached herewith, please find a letter from Mr. Hannes Du Bois addressed to Mr. Andrew Simmans dated 13.12.2002 pertaining to usage of the south western portion of Erf 5227 (De Bos Guest Farm). Mr. Du Bois provides a legal opinion that the Constitution of the De Bos Country Estate Annexure B: Conduct Rules for De Bos Country Estate (attached), specifically limits the usage of the south western portion to members of the HOA and confirms that it will retain its agricultural nature. The constitution is foundational to the usage of land opposite the 7 erven, which collectively form the territory of the De Bos Country Estate.

The latest SDP submitted by Mrs. Simmans, attempts to expand the commercial activities of the De Bos Guest Farm into the territory of the De Bos Country Estate. Arguing that the new zoning terminology and usage changes the limitations of usage contained in the Constitution is incorrect and false. I object to plans to use the lapa as an entertainment area, scullery and ablutions for tourists. The location of the lapa is directly adjacent to the service road of De Bos Country Estate and opposite the residential dwelling of the De Wet's. The plan mentions that no changes to existing structures will be required. This is a falsehood, as there is currently no sewage, water and electricity connection to the lapa and no boma exists. They do not exist as the structure has not been used for those purposes since the establishment of the De Bos Country Estate. Likewise no camp sites exist on the south western portion of Erf 5227 for the same reason.

Whatever business expansion plans Mrs. Simmans wishes to implement, they cannot be in violation of the Constitution of the De Bos Country Estate. In fact the latest plan may not be submitted to the Municipality without

the prior approval of the HOA. Said approval was voted against by all 7 erven members at a special HOA meeting (attached). Mr. Simmans was present at the meeting.

Thank you and kind regards,

David Olivier
0729665514

----- Forwarded message -----

From: David Olivier <hrdavidolivier@gmail.com>

Date: Wed, Aug 16, 2023 at 2:44 PM

Subject: Re: VOORGESTELDE VERGUNNINGSGEBRUIK EN WYSIGING VAN VOORWAARDE: ERF 5227, BROWNSTRAAT 8, MONTAGU

To: Janelle Vermeulen <jvermeulen@langeberg.gov.za>

Cc: Jack van Zyl <jvzyl@langeberg.gov.za>

Good afternoon Ms. Vermeulen,

Thank you very much for sending the proposal. I understand from my neighbours that there are also multiple appendices which form part of the proposal. Would you please be so kind as to send those to all the De Bos Country Estate Owners also.

Thank you and kind regards,

David Olivier
0729665514

On Wed, Aug 16, 2023 at 12:27 PM Janelle Vermeulen <jvermeulen@langeberg.gov.za> wrote:

Goeie dag,

Vind asseblief bogenoemde aansoek vir u aandag en kommentaar.

Vriendelike groete/Kind Regards

Janelle Vermeulen

Sekretaresse: Stadsbeplanning / Secretary: Town Planning

023 614 8030

jvermeulen@langeberg.gov.za



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OUR REF : JPDUB/af/HD0411

DATE : 13 DECEMBER 2022

MR ANDREW SIMMANS
MONTAGU

E-mail: asimmans@gmail.com

JOHANNES PETRUS DU BOIS
(B.A. LL.B.)
Assisted by:
ANDREA COETZEE (LL.B.)

Dear Sirs

DE BOS COUNTRY ESTATE: USAGE AND CONDUCT RULES

1. We act on behalf of two of the owners of the subdivided properties being Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305, all being members of the De Bos Home Owners Association ("HOA"). The two owners are the owners of Erven 5304 and 5305 hereinafter referred to as De Wet/Coetzer.
2. The owners of the seven subdivided Erven mentioned above, are hereinafter referred to jointly as the subdivided owners.
3. We were provided with voluminous documents pertaining to the history of this matter, the most important of which referred to the following aspects of the De Bos Country Estate:
 - 3.1 Annexure "A" to the Constitution: Design Guidelines;
 - 3.2 Annexure "B" to the Constitution: Conduct Rules;

- 3.3 The Constitution of the De Bos Country Estate Home Owners Association;
 - 3.4 Zoning Certificate for Erf 5227 (3 Middle Street, Montagu) issued on 11 November 2022;
 - 3.5 Email by Mr Jack van Zyl of the Langeberg Municipality dated 6 December 2022;
 - 3.6 Email by yourself (Andrew Simmans) dated 29 November 2022 addressed to the subdivided owners;
 - 3.7 Emails by Mr Kevin Knight (one of the subdivided owners) dated 12 August 2018 and 29 November 2022, respectively and addressed to the subdivided owners.
4. An Agenda of the HOA for a Special General Meeting to be held on 25 October 2022 at which meeting 4 Resolutions were tabled for consideration and voting upon.
 5. It is our understanding that Resolution 1 was not voted upon and the other Resolutions did not pass at the said meeting.
 6. However, our instructions are rather to concentrate in this letter not on the Resolutions that did not carry at the said meeting (and the reasons for that), but only on the question of the usage of the property as described by Mr Knight in his email of 29 November 2022 as *"below the beef wood trees on the south-western aspect of the De Bos property i.e. a straight line from our entrance road past the De Wets boundary towards Long Street."* (hereinafter "the southern portion")
 7. Our legal advice was requested with regard to the right of the owner of the Remainder of Erf 5227 (yourself) to use that portion of the property for, as you advised Mr Jack van Zyl and we quote from his email of 6 December 2022: "Mr

Simmans confirmed that he agrees with the above with the understanding that the lapa area at the southern end of the SDP provides ablutions and entertainment area for campers". This aspect is of grave concern to the subdivided owners with specific reference to De Wet/Coetzer and for obvious reasons as the lapa is located right next to their properties.

8. The lapa is located on the southern portion just across the service and servitude road from Erf 5305 (De Wet property).

The Law pertaining to the Constitution and its annexures of the De Bos Country Estate:

9. To advise regarding the primary use rights of the members of the HOA, one must first and foremost have regard to the Constitution and its annexures, including Annexure "A" and specifically Annexure "B" (Conduct Rules).
10. The Zoning Certificate of the property as a whole (Remainder of Erf 5227) provides for zoning of the property as Resort Zone/Agricultural Zone II with certain primary use rights including tourist accommodation.
11. The primary use rights should be read in conjunction with the Conduct Rules which have, as stated above, been incorporated in the Constitution.
12. The Constitution itself only refers to building rules which concerns the development of the property pursuant to the rezoning of the property. See clause 25.
13. Our advice however does not concern the development of the property as such as that aspect takes place almost exclusively on the northern portion of the Remainder of Erf 5227. That development was already approved by the subdivided owners in 2018.

The object and purpose of the De Bos Country Estate:

14. The object of the HOA is to promote, advance and protect the interests of its members relative to their ownership of Erven in the De Bos Country Estate. See clause 3.1 of the Constitution.
15. However, the Conduct Rules provide detailed prescribed guidelines (clause 1 to 3 of Annexure "B") as to the usage of the southern portion of the property. The usage of this area is restricted to walking, riding horses, cycling, sitting on the benches and general enjoyment of the peaceful nature around the pond and along the river. Picnics or any other use of the area would require consent of the owner of the Remainder of Erf 5227. This usage is however restricted to the subdivided owners and not to anyone else. This usage is further curtailed in clause 3 and we quote from that clause: *"General consideration for the other members in the estate should be practiced when using the area referred to in clause 2 above and no screaming or shouting will be allowed. Likewise, members should also allow for usage of this area within reason (children riding bikes, running or riding horses, talking and laughing) this creating a healthy family environment."*
16. From the above it is patently clear what the expressed common intention of the HOA and its members were (and still are) as envisaged when the De Bos Country Estate was established.
17. The Conduct Rules therefore confirm the object and common purpose and intention of clause 3.1 of the Constitution.
18. Furthermore, it curtails/restricts the zoning status of the property and its primary use rights for tourist accommodation in the following manner, notwithstanding the definition of tourist accommodation:

- 18.1 Only members of the HOA will have the usage of the area between the residential Erven and the river and that usage is described in the above Conduct Rules (southern portion).
- 18.2 By definition no members of the general public being campers or visitors to the Bos Country Estate, will have the right to use, for any purpose whatsoever, the said portion between the residential area and the river (southern portion).
- 18.3 By definition further, no campers or members of the public renting a chalet or mobile home park, will have access for whatever purpose to that area.
19. From the above it is patently clear that the lapa located on the southern portion, will only be accessible to the members of the HOA and nobody else.
20. That this has been the common intention and agreement of the HOA can clearly be gleaned from an email by Kevin Knight dated 12 August 2018. In that email he referred to a phase 3 of the proposed improvements and repairs to certain buildings located mainly on the northern portion of the property and we quote with regard to the lapa: "refurbished lapa – which is adjacent to the service road – for use of Simmans family and HOA members on request."

Conclusion:

21. From the above the grave concerns harboured by our clients pertaining to the intended use of the lapa area to provide ablutions and entertainment for campers, are contrary to the Constitution in terms of the Conduct Rules.
22. The only way campers or other members of the public may have access to the southern portion of the property, is if and when the Conduct Rules have been amended or deleted to allow for that usage by any campers or members of the public. It is telling that the proposed special meeting of 25 October 2022 was scheduled for exactly that purpose, but the Resolution to delete clauses 1 to 3 of Annexure "B" did not carry.

23. We further understand that a fence which existed where the southern portion of the property begins, preventing campers to have access to the southern portion, has since been removed. That fence was indicated in the 2017 SDP, but for some reason or other not in the 2018 SDP consented to by the Langeberg Municipality. Be that as it may, and the fact that the said fence was removed from the SDP as well as physically, does not and cannot provide any indication that access to the southern portion has now been granted to the campers by the subdivided owners.
24. Our instructions therefore are to advise that our clients will not allow any usage in whatever form, be it entertainment, ablutions provided at the lapa or on any part of the southern portion to the campers or members of the general public.
25. As you will have noted, Mr Jack van Zyl addressed a letter to our clients on 6 December 2022. He has thus been copied into this letter and his response on behalf of the Langeberg Municipality, will be appreciated.
26. Kindly acknowledge receipt.

Yours Faithfully
DU BOIS ATTORNEYS
Per

JP DU BOIS
DIRECT E-MAIL : hannes@jpdubois.co.za

CC: Mr Jack Van Zyl – JvZyl@langeberg.gov.za / Mrs Vanessa De Wet – vanessadewet@gmail.com / Mr Kevin Knight – kevin.knight03@outlook.com

Basnaar 2

Steven de Wet

Erf 5305, De Bos Country Estate,
No 5 Middel St, Montagu, 6720

FAO: Langeberg Municipality,
The Manager, Town Planning,
3 Retief St, Montagu, 6720

DATE: 23 AUGUST 2023

REF: 15/4/1/1&5 (RE 5227 PLANNING APPLICATION)

Dear Sir,

**OBJECTION TO APPLICATION BY RE5227 FOR PROPOSED CONSENT USE(S) AND
AMENDMENT OF CONDITION**

1. I acknowledge receipt of your letter dated 7 August 2023 (received by email on the 8th) regarding the planning proposal of Remainder Erf 5227 (8 Brown St). Note I only received the full application (with its associated Annexures) on 28 August 2023.
2. I have examined the application and plans presented by Planserv on behalf of Agama Mountain Products CC, owner of RE 5227. I know the site well; being the owner of Erf 5305 and a member of the De Bos Country Estate (DBCE), of which the applicant's client is also a member.

OBJECTIONS

3. I wish to strongly object to:
 - 3.1 any amendment of the condition referred to in the application; namely Condition(a) of the Council Decision taken in 1995 (Item 276/95). The condition is binding and 'all development is limited to the scope and use as indicated in that application'. Furthermore, only the SDP 2017 (with its own restrictions and conditions) that is approved and recognised by the HOA.
 - 3.2 – the proposed consent use for a 'Function venue'
– the proposed consent use for 'Tourist facilities'

Currently RE 5227 has only Primary use rights 'Tourist accommodation' and 'Smallholding'. There are NO Consent, Departures or Non-Conforming uses approved for RE 5227, nor any recognised historical land use rights. Any change would require approval by De Bos Country Estate HOA.

DE WET (ERF 5305)

As the De Bos Guest Farm's immediate neighbours, we have already historically been subjected to noise and disturbances from their commercial activities; these have included a variety of unauthorised and unapproved functions / entertainment activities in the past. Having already accepted the noise from the additional campsites (14) and large swimming pool recently developed in the field adjacent to our property, we definitely do not want further resort activity nearby our residence dramatically escalated.

With the inevitable consequences of large crowds of people and the infrastructures that will be needed to accommodate them, the proposal seeks to not only increase the frequency and number of commercial activities, but also to have these activities take place directly adjacent to our residential property on a much larger scale. Proposed infrastructure includes parking bays for an additional 118 vehicles, an entertainment boma, a kitchen, scullery, and ablutions, as well as 18 new camp sites that would be situated directly adjacent to our residential property. To add to this the owner wants to disperse braais, bins and temporary toilets throughout the estate to service the crowds; this is not what was envisioned in the establishment or purchase into the DBCE. The proposal does not take into account the noise, traffic, disturbance, and security issues to which other HOA members within the same estate will be subjected to. We therefore strongly object to the proposal and assert that the planning application has not been objectively compiled with due regard for other HOA members.

In an effort to support and justify Agama's plans for commercial expansion, the proposal contains a number of inaccuracies and misconceptions. To name just one example: Planserv page 23 - 6.2.6 Impact on surrounding areas states *"In theory, another row of erven could have fit in between Erven 5228, 5229, 5301-5305 Montagu and the proposed low impact camp sites."* And *'the campsites are 40 to 60 meters from the Erf boundaries of [the single erven]'*

This statement is completely inaccurate and aims to detract from the reality that in some instances the proposed campsites as well as a campers kitchen, scullery and ablutions are within only 10 meters of our property boundaries. See attached satellite image ([Annexure A - Aerial view](#)) depicting actual placement of existing boma and proposed camp sites, which is significantly different from their inaccurate depiction presented in the proposal.

My strong objection seeks to formally address some of the planning proposal's inaccuracies. As an HOA member prior to the applicant's client, and having witnessed firsthand the current landowner's history of noncompliance and disregard for the HOA Constitution's rules and conduct guidelines, I would like to provide a much needed background and history of the establishment of the DBCE, as well as the legal ramifications of being a HOA member, which in this case is critical when considering the proposal and affording additional rights to the current landowner of RE 5227.

REASONS FOR OBJECTIONS (SUMMARISED)

1. The Constitution and its Rules are binding

The owner of Remainder Erf 5227 is a member of The De Bos Country Estate (DBCE) and is contractually bound to uphold the Constitution and Rules of the DBCE.

The De Bos Country Estate is NOT a mass tourist attraction, nor is RE 5227 a separate rural property that can act independently without obligation. The DBCE is a country lifestyle estate of which the owner of RE 5227 is a legal part. The protection of the development's agricultural / rural character has been an enduring condition for approval by the Municipality on the consolidation / subdivisions of the original erven and is currently upheld/underwritten in the DBCE HOA's Constitution (Governance Documentation).

The planning application disregards both the Constitution's regulations and the need to protect the estate's rural character. Such an application cannot proceed without compliance with the express and/or implied intentions and conditions outlined in the governance documentation, as well as the HOA's mandatory approval.

2. RE Erf 5227 has NO historical land use rights

The Municipality set binding conditions for the establishment of the DBCE:

- Condition(a) in 1995 (276/95)
- The approval letters of 2005 and 2008
- The DBCE Constitution and Rules

The proposal does NOT take cognizance of the above conditions, the historical land use nor the previous approvals.

Remainder Erf 5227 has NO historical land use rights other than what the Municipality has confirmed in the new zoning certificate of 2022. No departures (additional consent uses) are approved by the HOA and without such approval, the application should not have been lodged with the Municipality in the first instance.

3. Noise and disturbance

The proposed additional consent uses (under resort zoning) will have a highly negative impact: the noise, disturbance and security issues will disrupt the tranquil and peaceful character established on the estate since inception, and also derogate much from the properties of the single erven within the estate. Furthermore, the new consent uses, introduce a foreign land-use pattern which is specifically warned against for the Montagu Conservation Area in which the DBCE is located.

REASON 1

RE ERF 5227 IS A MEMBER OF THE DBCE BOUND BY THE HOA CONSTITUTION AND RULES

The Constitution and its Rules

1. Creating a homeowners association was an important condition imposed by the Municipality in 2008 when they approved the consolidation and subdivision of the original De Bos farm.
 - 1.1 In approval letter of 2008 Clause 3.9 states:
[Translated] A home owners' association must be established prior to the entire development, to which all the owners of the Single Residential plots, as well as the Remainder, must belong. (Annexure B - Approval letter 2008)
2. The De Bos Country Estate (DBCE) was established when the original De Bos Farm (Erf 307-310) was consolidated (to become Erf 5227) and then subdivided:
 - 2.1 Clause 2.5 of the Constitution states:
'Development Area' means the country estate development established on consolidated Erf 5227 Montagu and included newly subdivided Erven 5228, 5229, 5301, 5302, 5303, 5304, 5305 Montagu and also includes the Remainder of Erf 5227 Montagu. (Annexure C - Constitution DBCE)
 - 2.2 As soon as the 1st subdivision was registered, the original Erf 5227 (De Bos Farm) automatically became the Remainder Erf 5227 (De Bos Guest Farm) and its new extent was endorsed on its title deed.
3. Thus the De Bos Country Estate (DBCE) consists of 8 members: The owner of the Remainder Erf 5227 and the owners of the 7 Single Residential plots 5228–29, 5301–05. All 8 are legally required to be members of the De Bos Home Owners Association (HOA). See Clause 4.1 on Membership of the Constitution.
4. The De Bos Country Estate Home Owners Association ("HOA") was incorporated as a common law association as opposed to a non-profit company, which is governed by the Company Act. Thus, the Constitution and Rules of the HOA is the **Governance Documentation** to ensure that all members are legally liable to make contributions towards the HOA and to abide by the content of the Constitution and its Rules. It is important to note that the DBCE Constitution and its Rules constitute a contract that binds EVERY member of the HOA, including the owner of RE 5227
 - 4.1 RE 5227 is also presently referred to in the Constitution as 'The De Bos Guest Farm'.

Protecting the agricultural character of DBCE

5. From the outset, the Municipality stipulated conditions to protect the agricultural character of the development. In the approval letter of 2008, Stuart Brown, the applicant/developer at the time, was required to create a constitution that made provision for the operation of the estate that ensured the agricultural character was preserved going forward:

- 5.1 Approval letter 2008 Clause 2.1 states:

*[Translated]: The Montagu Scheme Regulations include the application property in the Long Street urban conservation area with the **aim of protecting the agricultural character of it.***

- 5.2 Approval letter 2008 Clause 3.9 states:

*[Translated]: The applicant must draw up a constitution for the Homeowners' Association, in which further provision is made for the operation of the Remainder and the 7 new plots as an 'equestrian estate', as well as architectural and other management guidelines **to ensure that the development maintain[s] an agricultural character..***

(Annexure B - Approval letter 2008)

6. These conditions are formalised in the Constitution and its Rules, and are part of the management guidelines of the DBCE described as 'A Country Lifestyle in a Country Town':

- 6.1 Annexure "A" of the Constitution states:

*The guidelines are purely there to ensure that home owners and prospective home owners have the **guarantee that development will not change the country feel of the Estate and that development is carried out in such a way that the character thereof is maintained.***

(Annexure D - Constitution Rules Annex 'A')

- 6.1.1 Clause 1 of Annexure "A" however, cannot be read in isolation and must be considered in conjunction with the immediate next paragraph which states:

*The development within the estate falls under the development guidelines for the Van Riebeeck-/Long-/Bath Street **Conservation areas** as laid out in the Montagu Zoning Scheme Regulations. *(Annexure E - MCAOZ map)**

This is currently known as Area A in the Montagu Urban Conservation Area Overlay Scheme (MCAOZ), which is specified in Schedule 3 of the Overlay Zones approved in terms of Section 16 of the Langeberg Integrated Zoning Scheme 2018 and detailed under Section 3.

6.1.2 Specific aims for Area A in the MCAOZ entail the protection and preservation of the historical heritage of the town; this includes retaining the agricultural zoning and character of the land and preserving historic land-use pattern and density of development especially to the northern side of Long St. It is reiterated that new development within MCAOZ should be consistent with the historic pattern and should not introduce foreign patterns of development.

6.2 Annexure "B" of the Constitution states:

*The area between Erven 5228, 5229, 5301, 5301, 5303, 5304 and 5305 in the DBCE and the river, situated on the Remainder of Erf 5227 Montagu, is not for common usage and remains part of the De Bos Guest Farm and **will also keep its agricultural nature.***

...A general consideration and respect for the spirit in which the estate was created will be maintained.

(Annexure F - Constitution Rules Annex 'B')

7. Annexures "A" and "B" cannot be changed/amended by a simple majority vote. The voting percentage necessary to pass a resolution which would have the effect of adding to, amending or repealing any part of the Constitution (including both Annexures "A" and "B" which form an integral part of the Constitution), shall require the support of all members (thus unanimously) entitled to vote before the resolution may be passed which shall be known as a special resolution, as opposed to an ordinary resolution. Please refer in this regard to clause 8.2 read with clause 17.7 of the Constitution.

7.1. The Rules (Annexures "A" and "B") and thus paragraph 1 of Annexure "A" and clause 1 of Annexure "B" remain in place and are still binding on all members, as long as they are not amended, repealed or added to pursuant to clause 17.7 of the Constitution. This includes the owner of Remainder Erf 5227 (which is Agama Mountain Products CC of which Tracy Brenda Simmans is the sole member).

7.2 Thus, the crux of this matter is to interpret the effect of paragraph 1 of Annexure "A" and clause 1 of Annexure "B" when taking into consideration the wording thereof in conjunction with the express and/or implied intention of the members when the HOA was established. The express intention of the establishment of the HOA is, inter alia, set out in clause 3 of the Constitution which is to promote, advance and protect the interests of its members. This intention must be read in conjunction with paragraph 1 of Annexure "A" and clause 1 of "Annexure B".

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7.3 The Annexures "A" and "B" were in all probability incorporated in the Constitution as an incentive for potential buyers of the of the residential erven:

- The Design Guidelines of Annexure "A" ensuring that home owners and prospective home owners have the guarantee that development will not change the country feel of the Estate and that development is carried out in such a way that the character thereof is maintained.

(Annexure D - Constitution Rules Annex 'A')

- The Conduct Rules of Annexure "B" warranting the peaceful and undisturbed nature of the area between the erven and the river that is not for common (public) usage, and that it will keep its agricultural nature.

(Annexure F - Constitution Rules Annex 'B')

These management and development guidelines in all probability will have motivated a higher initial selling price of the erven and were probably incorporated into the Constitution by the developer for that very purpose.

7.4 The effect of the Governance Documentation of the HOA (the Constitution and Rules) is exactly for this purpose: to guide, and restrict if necessary, the development and usage of the individual properties of the members pursuant to what is stated and agreed to in those governance documents.

8. Property owners buy/bought into the De Bos Country Estate under the conditions set out above, confident that the Constitution and its Rules will legally safeguard this intent (an estate that maintains an agricultural character) and that any future development will not change the country feel of the estate without a unanimous vote.

8.1 Since the inception of DBCE to date, this has comprised of the De Bos Guest Farm providing tourist accommodation (guest cottages, camping/caravan, backpackers) in a quiet rural/agricultural setting together with seven single residential plots situated beside the river within an agricultural area.

8.2 Importantly, in 2022, the Municipality confirmed this arrangement by issuing ONLY Primary use rights of 'Tourist Accommodation' and 'Smallholding' to RE 5227 when the Municipality *mero motu* after the date of commencement of the Integrated Zoning Scheme By-Law 2018 and in terms of Section 7 of the said By-Law translated or reclassified the previous zoning of Agriculture/Special Zone I to the most compatible zoning of Agricultural Zone II/Resort Zone.

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Planning proposals MUST be approved by HOA

9. The Constitution and its Rules state that all building plans must comply with Annexure “A” and be approved by the HOA before any such planning application is lodged with Municipality:

9.1 Clause 25.1 states:

All building plans...[of all erven]...must comply with the Design Guidelines for the De Bos Country Estate as approved by the Langeberg Municipality...and the said Design Guidelines for the DBCE will be deemed to form part of this constitution of the DBCE HOA, attached hereto marked as ‘Annexure A’.

The Constitution itself only refers to ‘building rules’ (See clause 25). But importantly clause 25.1 **deems Annexure A to be part of the Constitution.**

9.2 Clause 25.2 states:

No owner of any erven referred to in clause 25.1 shall be entitled to commence building on his property unless he/she, prior to lodgement of his/her building plans with the local municipality for approval, obtains written approval of the building plans from the Trust Committee of the DBCE HOA...the owner must lodge the aforesaid approval of the HOA together with the owner’s building plans at the local municipality.

- 10.1 The ‘development’ area of the estate is defined in Constitution in clause 2.5 as all the consolidated erven in the country estate: the smaller single plots and the remainder.

- 10.1 A building plan and a site development (SDP/master) plan are not mutually exclusive – they are complementary; whilst a building plan may focus on specific technical details, a SDP is broader and covers the full scope and is used for policy purposes.

10.2 Annexure “A” covers both (the above) aspects of planning/development:

- the introduction covers the overall nature of the development (the entire DBCE) which includes overall development concepts such as vision and character of the estate, land-use planning (changes in consent use) etc.
- whereas the specific numbered guidelines that follow cover the technical and aesthetic building details such as dimensions, materials, architectural style, etc.

- 10.3 The Rules are in place to provide assurance to current and potential owners that development, both general and aesthetic (which could potentially change the character of the estate), will not be carried out in a way that has not been agreed by all members. This forms part of the governance documentation and all members, including RE 5227, are bound to this regulation.

11. Consequently, the country feel/character of the estate is secured and all members comply (unless a modification is approved by a unanimous vote). Furthermore, this prevents the potential for those unscrupulous developers who may exploit the lack of clear guidelines; thus the legal procedure upholds the Municipality's conditions at DBCE's establishment to protect the rural/agricultural character of the both the estate and Montagu Urban Conservation Area A.
12. In the application (page 8 last paragraph), Planserv suggests no consent or approval is required by the HOA when submitting a land-use planning application. However, the applicant would be under the mistaken impression that this may be the case as it is patently clear that:

12.1 Remainder Erf 5227 is not a stand alone property, but a subdivision within the De Bos Country Estate, and as such the owner (a member of the HOA) is bound to the governance documentation of the Constitution which includes the obligation and responsibility of present planning applications to the HOA for approval.

12.2 Annexure "A" is in place to ensure home owners and prospective home owners have **a guarantee that development will not change the character of the estate without due process** (unanimous vote), and that any development is carried out in such a way that the country feel/rural character thereof is maintained.

Much of the language used throughout the application (pages 15, 16, 18, 20, 22) suggests there would be no 'expected' effect/change to the character of the development with phrases such as: *'it is expected that the non-agricultural land use will not detract from the rural character of the property'*. An 'expectation' or 'assumption' in this instance is NOT ever acceptable. Only a unanimous vote by HOA members for change is acceptable.

Proposing an additional 118 parking bays, noisy entertainment bomas, kitchen and scullery areas, braais, ablutions, rubbish and temporary toilets within meters of residential homes within an estate and then to use wording such as 'expected' and 'assume' to convince the audience it will have no effect is highly questionable.

12.3 Any planning application (without HOA approval) which intends to interfere/restrict or infringe upon the Annexures "A" and "B", will be unlawful and will be considered a unilateral amendment of the Constitution and its Rules contrary to clause 17.7 of the Constitution. Such actions shall consequently be of no force and effect pursuant to clause 10.5 of the Constitution.

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12.3.1 Thus it is manifestly clear, it would be unlawful for a member (in this case Erf 5227) to unilaterally apply to amend a condition that originally limited the scope and use as indicated in an application that had previously been approved by the HOA.

12.3.2 It would be unlawful for a member (in this case Erf 5227) to unilaterally apply for a planning departure (additional consent uses) which would affect/change the character of the development without HOA approval.

13. In 2018, the RE 5227 owner submitted Site Plan 2017 (SP01. 22/04/2017) (Annexure G - HOA Approved Site plan 2017) to the HOA for review and approval. Camping activities were originally restricted to the northern area and main house (previously Erf 310, 308-9). Approval was sought to extend a few campsites and construct a sizable swimming pool onto the agricultural and grazing area closer to the residential erven (previously known Erf 307). Given that the approval was requested retrospectively, formal HOA approval was granted in good faith on August 12, 2018, but there were some restrictions (DE WET Annexure H - Site plan 2017 Conditions and timeline.pdf).

Why was it appropriate and relevant for a member to request HOA consent in the past, but not in this instance with this planning application, where there is a far greater impact on the development as a whole? The governance or obligation to abide by the Constitution has not changed.

Development on the Southern Portion

14. On 24 February 2023, the HOA received a site plan (NH202302/SDP Rev) for consideration from the owner of RE 5227 for development on the Souther Portion, the area in front of the single plots. This SDP came with the instruction of reading it "with the rest of the application and motivation letter". This documentation was requested on more than one occasion, but was not forthcoming (Annexure I - Letter to Mr A Simmans 20230306).

14.1 It became apparent that the effort to expand camping and commercial resort activities onto the Southern Portion (in front of the residential erven) would be unlawful and interfere/restrict or infringe upon Annexure "B" (Conduct Rules).

14.2 Please see the Attorney's legal letter (DE WET Annexure J - Attorney Letter Du Bois 20230111.pdf) sent to RE 5227 regarding ANY development on the Southern Portion No other business may be operated on the southern portion which would undermine the usage rights of any of the owners of the residential erven. Needless to say HOA approval was not granted.

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15. Part of this application from Planserv includes a similar, but more extensive and escalated proposal with development extending onto the same area (the Southern Portion) in front of the residential erven.
16. Planserv's perception that the owner of Erf 5227 may use and enjoy the said area (Southern Portion) in an unrestricted manner as he/she may deem fit, solely by virtue of his/her alleged proprietary rights and without taking into consideration the contractual rights of the residential erven, is without legal foundation and thus fatally flawed as it runs contrary to the Constitution. Refer to the legal advice on this matter.
(DE WET Annexure J - Attorney Letter Du Bois 20230111.pdf)
(DE WET Annexure K- DBCE Sketsplan The Southern Portion.pdf)
17. Furthermore, the applicant needs to be made aware that the HOA does indeed have the legal authority to impose on the owner of the Remainder of Erf 5227 strict compliance with Annexure "B" (Conduct Rules), failing which the owner of Remainder of Erf 5227 may be held accountable by means of legal process to refrain from doing anything on that area which may reasonably interfere with, or restrict the usages awarded to the said owners by virtue of the Constitution.
18. As previously said, the HOA should have received this planning application for review in the same manner as the 2017 plan. This has not been done, the law has not been upheld and the owner of Erf RE 5227 has not acted in the accountable manner required and/or implied by the provisions of the governance documents of the HOA and expressly and/or implied set out in the Constitution in conjunction with Annexure and Annexure B thereto.
- 18.1 It should be noted, this is not without effort or engagement on the HOA's part to ensure the Constitution is abided by, as evidenced by the letter it sent to the owner of Erf 5227 earlier this year on March 6, 2023, reminding him of his responsibility (and previous failures) to follow the Constitution's legal procedures and to submit the necessary planning documentation to the HOA for review and approval.
(Annexure I - Letter to Mr A Simmans 20230306) .
19. The legal process has NOT been adhered to by the member (Erf RE 5227); the application's proposal and the SDP(dated 17/07/2023) has NOT been presented to the HOA for consideration. The Municipality is reminded that any planning application, pending or not, by the owner of Remainder of Erf 5227 which proposes to interfere or infringe upon in any way with the said usage rights of the owners of the residential erven (Annexure "B") or changes the country feel or the character of the estate (Annexure "A"). Failure to attach such unanimous resolution in both of the above, will render such a planning application of no force and effect and should not be entertained by the Municipality.

REASON 2

RE ERF 5227 DOES NOT HAVE LAWFUL HISTORIC USE RIGHTS

1. The only lawful land use rights RE 5227 has are:
 - Primary use rights of 'Smallholding' under Zoning Agriculture 2(AZII)
 - Primary use rights of 'Tourist accommodation' under Zoning Resort (RZ).
2. The original town planner, Anna-Christa Redelinghuys of Robertson, who handled the zoning applications and also approved the subdivisions at the municipality's town planning department at the time of the DBCE's establishment in 2008, answered my questions about the revised zoning of 2022 earlier this year. She was referred to me by the attorney Michele Theron, who wrote the DBCE Constitution.

Ms Redelinghuys' recent email dated 23 March 2023 [DE WET Annexure L - History DBCE Original Town Planner ACR 20230323.pdf](#), provides the much-needed clarity and authority on land usage and the history of the subdivision of DBCE, rather than the mistaken impressions frequently offered in the applicant's proposal.

- 2.1 When asked if the property rights within the estate had changed at all after the Municipality's rezoning in 2022: Ms Redelinghuys explains (her text in red):

"No change in land use rights, and the old zoning(s) were simply adjusted to meet the latest by-laws." And "No changes in land use rights, old zonings were just adjusted to meet the latest by-laws. Therefore no changes in zoning".

- 2.2 When questioned about whether the designated camping areas had altered in any manner with the subdivision application (in 2008), Ms ACR responded that the recorded uses at the time of approval were still in effect:

"The detail was not included in the SDP, as it were existing uses with no need for approval. It was only a subdivision application. The area to the south of the small erven are agriculture and cannot be developed due to the floodline. If the resort buildings are expanded then an application for the expansion of the resort will be required."

Existing uses at the time of approval:

Erf 307 (4,9591 ha)

- 2 kothuise/gastehuise
- lapa [note NO ablutions]
- 200 pekanneutbome

Erf 308 en 309 (1,1680 ha gesamentlik)

- hoofwoning en stoor
- oord met tuinwoonstel, woonstelle, slaapsaal, kampeerterrein en kombuis swembad, perdestalle en perde-arena

Erf 310 (1,0238 ha)

- 90 amandel
- en pekanneutbome

3. Therefore any of the suggested or assumed historical or ancillary uses presented in the application should be immediately dismissed as fallacy.

The Lapa

4. The Lapa is misrepresented more than once in the planning application as a building containing its own ablutions with historical use rights that can be used for proposed future resort activities. [Background page 3 *'the existing Lapa, including ablution facilities used for tourist groups...therefore accepted that the Lapa is considered a lawful land use right, forming part of the existing holiday development..'*].

This fictional notion is not accepted, nor considered a lawful land use in any sense. The Lapa currently has no ablutions, has NOT been used for tourist groups, nor shall it be in the future. See legal letter and clause 1 of The Conduct Rules of the HOA Constitution. The Lapa is positioned on the *'The area between the subdivided erven in the DBCE and the river, is not for common use and remains part of the de Bos Farm and WILL keep it's agricultural nature'*.

5. To date the Lapa was used for animals. As property owners since 2013 (Erf 5305), 3 years before the De Bos Guest Farm was purchased (2015/12/01) by Tracey Simmons, at no time has time has the "Lapa" been used for any other purposes than that of an animal shed and storage facility for animals and livestock feed.
6. Furthermore, in August of 2018 (when the HOA approved site plan 2017 retrospectively), the conditions mentioned renovations for a lapa bathroom that will be utilised by only HOA members (not the general public). This was provided to the HOA by the owner of RE 5227.

At that point (2018), a member expresses concern regarding *"the intended ablution, where the sheep kraal is currently situated"* (in other words - a place that has never been utilised as an ablution). To this day, the lapa has not been used for ablutions. So insisting that the lapa with a bathroom has been used for campers since 2004 is patently untrue.

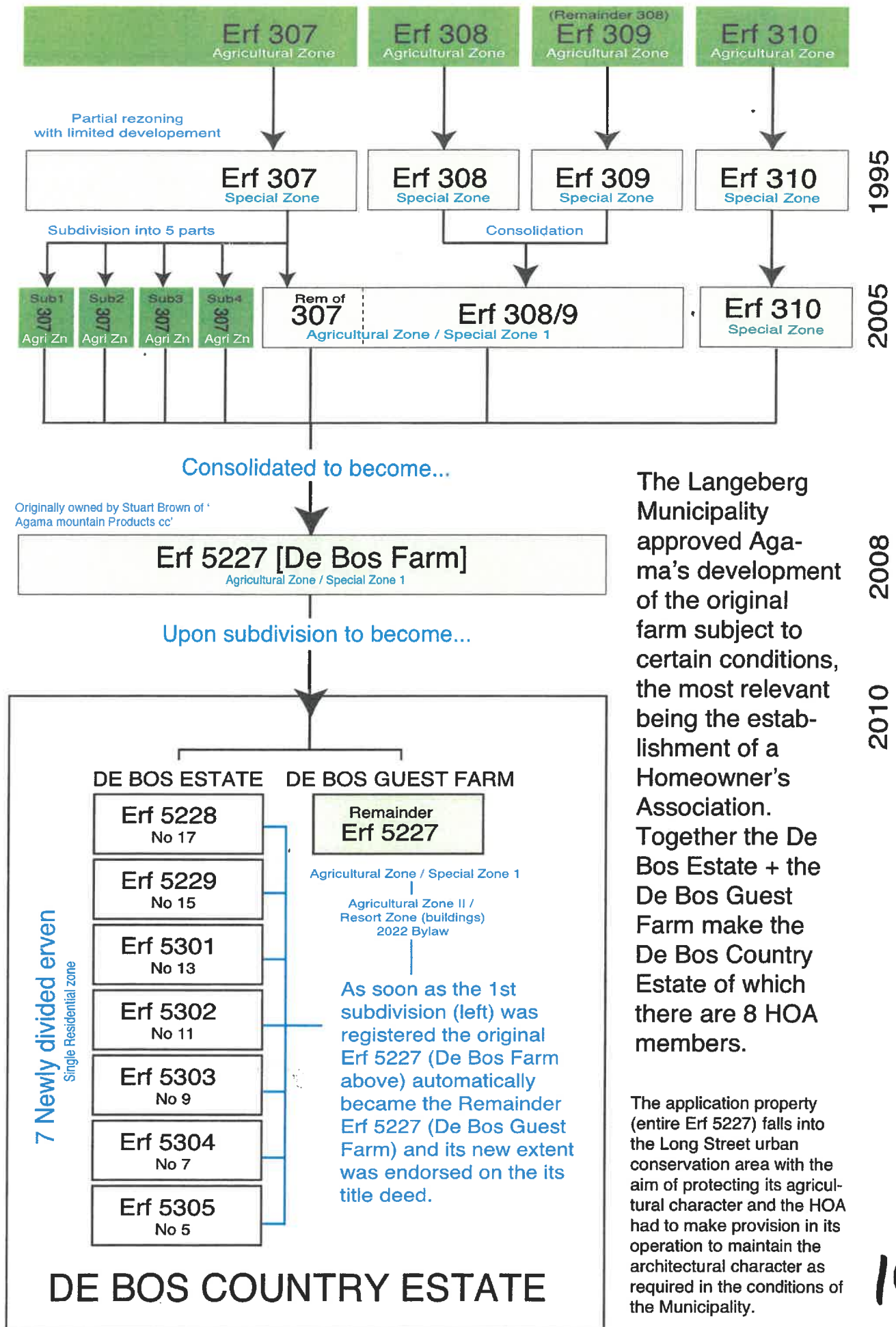
(DE WET Annexure M - Lapa Conditions SheepKraal 20180813.pdf)

7. All site plans prior to 2017 only ever indicated a Lapa (no ablutions). More importantly, the 2010 site plan on which NO Lapa is indicated at all, is declared by the Municipality to supersede all previous plans. Indeed, this is the 'sketsplan' that is retained by current/ future property owners in conjunction with the Constitution and its Rules.

(DE WET Annexure N - Email 2010 supercedes.pdf)

(DE WET Annexure O - Plan 2010 Sketsplan DBCE pg 25.pdf)

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The history of DBCE through Municipal approvals

One of the abiding principal throughout all the Municipal approvals has been to protect the country feel and the (agricultural) character of the property as a whole.

1995 The original 4 erven (307-310) were all zoned 'Agricultural' prior to the 1995 approval. Council decision 276/95 states *[Translated]: (a) 'That approval be granted to the rezoning of plots 307 - 310 from agricultural zone to special zone on condition that in terms of Ordinance 15 of 1985 any and all development is limited to the scope and use as indicated in the application'.* The applicant's suggestion that the keeping of animals intended to be a tourist attraction is another misstatement; the council document states *[Translated]: (b) 'That the owner is granted approval to continue to keep farm animals.'* i.e. continue the regular agricultural activities of the farm.

2005 A decade later, there was an application for subdivision of Erf 307 into five parts. Four out of five sub-divided plots were rezoned back to 'Agricultural', reaffirming the Municipality's **agricultural objective** and tradition on this property. The fifth part of Erf 307 (remainder) was consolidated with Erf 308 and 309; these received split zone Special Zone 1/Agricultural. Interestingly, the 4 plots that were rezoned 'Agricultural' would later become the 7 single residential erven, with the area in front of them (the Southern Portion) to '**remain agricultural**' according to the Constitution.
(DE WET Annexure P - Subdivision Plan No 3 from 2005.pdf)

2008 Next, in 2008, the full consolidation of all 4 original plots (Erfs 307-310) was approved into Erf 5227 with the view to later subdivisions and subsequent creation of the De Bos Country Estate (7 single plots and the remainder). It is of paramount importance to note that the initial application to subdivide into 12 plots was rejected because of the binding conditions put in place by the Municipality in the approval letter of 2008 to maintain and **protect** the agricultural character of the area; Clause 2.1 of approval letter 2008 states..
DE WET Annexure B - Approval Letter 2008.pdf

[Translated]: 'The Montagu Scheme Regulations include the application property in the Long Street urban conservation area with the aim of protecting the agricultural character of it. The permitted density for subdivision of Agricultural land in the scheme regulations is one unit per 0.86ha, which will be exceeded by 12 units in this case and which will therefore be inconsistent with the purpose of the planning area and with the agricultural character of the concerned area'.

This was due to the requirement for the application not only preserve the agricultural character, but to **protect** it, keep it compatible with the historic pattern, **and refrain from introducing foreign development patterns.**

- 2022 Municipality *mero motu* after the date of commencement of the Integrated Zoning Scheme By-Law 2018 and in terms of Section 7 of the said By-Law translated or reclassified the previous zoning of Agriculture/Special Zone I to the most compatible new zoning and ONLY Primary use rights are permitted:
- ‘Smallholding’ under Zoning Agriculture 2(AZII)
 - ‘Tourist accommodation’ under Zoning Resort (RZ).
- 2023 The planning application professes to be both cognizant of the historical land uses and previous approvals (pg7) and yet at the same time:
- seeks to remove a restriction that has been in place (for more than 20 years) that limits the scope of development which safeguards the agricultural character and has been instilled in every approval since 1995.
 - attempts a planning departure (additional consent uses) that does not follow historic development and which will introduce foreign land-use patterns
 - has submitted a planning application without the HOA’s permission despite being reminded that every member who submits a planning application to the Municipality has to do so with the approval of the HOA.

REASON 3

NOISE AND DISTURBANCE

Resort Zone - Tourist accommodation *(DE WET Annexure Q - Zoning RZ and AZII)*

1. [Planserv page 14,15] Previously, in the absence of clear guidelines the danger has since existed that resort zoning could be recommended for approval in unsuitable locations and/or without the imposition of adequate development conditions. The above-mentioned situation created the potential for those developers who may be unscrupulous, to exploit the lack of clearer guidelines than those which [had] existed up to the present. Consequently the formulation of suitable provincial guidelines, built upon considerable experience gained in the interim, were long overdue....The Guidelines for Resort Development in the Western Cape (2005) was applicable when the Municipal approval in 2005 and when the Municipality approved the establishment of DBCE in 2008. Only holiday accommodation, conservation usage and private open space were primary uses and ALL associated uses (namely tourist facilities, conference facilities [presently call function venue], holiday housing and hotels were to be listed as consent uses).

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2. For more than 25 years the Municipality, having been involved in the *'approvals [that] were granted on condition that the rural character be preserved.'* [Planserv pg25] and setting the conditions for the establishment of a country lifestyle estate such as the DBCE would not want such a situation (mentioned above in 1) to exist in which unreasonable development may potentially take place by people taking advantage of the absence of clear restrictions and disregard the conditions to preserve and protect heritage agricultural environment. To prevent such action and enforce cohesion the Municipality insisted in the approval letter of 2008 *'A home owners' association must be established prior to the entire development, to which all the owners of the Single Residential plots, as well as the Remainder, must belong'*. Thus all 8 members of the DBCE (including the owner of RE 5227) are obligated to be HOA members with a Constitution.
3. Recently in 2022, under the new 2018 By-laws of the Integrated Zoning Scheme the Municipality reclassified the previous zoning of RE 5227 from Agriculture/Special Zone 1 to the most compatible new zoning. Special Zone 1 was translated to Resort Zone.

The schedule 1 Uses Table description of Resort zone :

The objective of this zone is to promote tourist and holiday facilities in areas with special environmental or recreational attributes, and to encourage general public access to these facilities. At the same time, care should be exercised to minimise potential negative impacts of development on fragile environments. The guiding principle should be that a resort must not detract from the amenity that attracted the holiday facilities in the first place, nor should it cause a public nuisance for other people living and working in the vicinity. This zone should only be used in exceptional cases and is normally applicable to tourist developments outside established, built-up areas.

- *'care should be exercised to minimise potential negative impacts of development on fragile environments'*. The DBCE Constitution and its Rules ensures this with the protection of the agricultural character ensuring a country feel is maintained. Adding 118 additional parking bays (to total over 150) does not.
- *'the guiding principal should be that a resort must not detract from the amenity that attracted the holiday facilities in the first place'*. The estate was set up as a unique, quiet and tranquil environment for homeowners with a guest farm that accommodated a limited amount of temporary holiday guests. Entertaining hoards of people at large commercial events does not reflect that.
- *'nor should it cause a public nuisance for other people living and working in the vicinity. This zone should only be used in exceptional cases...'*. The Constitution governance ensures responsibility to the whole and each member. RE 5227 has an obligation NOT to cause nuisance for people living and working within his same estate , let alone the general neighbourhood.

4. The above reasons are exactly why ONLY the primary uses of Tourist accommodation and Smallholding are mentioned on the new zoning certificate. Because they fulfil the needs of RE 5227 within the confines of De Bos Country Estate.
5. The proposed additional consent uses associated with Resort zone are NOT consent uses of Agriculture 2. They are not consistent with retaining the agricultural zoning and character of the land, nor do they preserving historic land-use pattern and density of development. Function venue is NOT a consent use of Agriculture 2
6. And for the record, the Southern Portion which is currently deemed to ***“remain agricultural”*** (See Constitution Annexure “B”) cannot be used for camping because RE 5227 doesn’t NOT have Agriculture-1 zoning (which does allow camping as a consent use). Let it be clear, that RE 5227 ONLY has Agriculture-2 and camping is NOT a primary or consent use of AGZII. And the current approved Resort activities are very much restricted to the tourist accommodation on the northern and (small strip of the central area near the new swimming pool).

Noise and disturbance

7. A formal noise complaint was made to the council in January (19/01/23) as a result of excessively loud music coming from a wedding reception that the De Bos Guest Farm hosted (without forewarning, consultation or HOA approval). The residents dwelling in the property (Erf 5305) adjacent the field could feel vibrations from the noise because it was so loud. Although there was an apology for the disruption, no responsibility was taken by the owner who blamed the manager in control of the function. *‘I personally cannot vouch for the noise levels, our manager was in control of the function, not that is an excuse’*. When contemplating such Planserv’s application for potential noisy and large-scale events, expos, and festivities, this is not encouraging conduct. Furthermore, this sort of development cannot be expected to be acceptable to property owners who were sold the DBCE as a tranquil rural environment in which to live.
8. Although previous noisy events (a live music jazz festival) were likewise loud and upsetting, no formal complaints were made in order to maintain peace amongst the members. These are but a few instances of how Erf5227’s owner disregards the governance documentation set forth in the DBCE Constitution and consequently should therefore NOT be given carte blanche to develop without limitations.
9. As it is, noise and live music events from the Padstal can already be heard despite the fact that the Padstal is located considerably further away in Long St. It is however, disingenuous to claim that holding large commercial functions and celebratory social events entertaining hundreds of people (where over 100 parking bays are required) within close proximity to the residents homes will not cause a disturbance.

10. On the other hand, when the owner recently acted in accordance with the Constitution's rules and approached the HOA to request permission to host a biker rally in November, making it clear in a letter that there would be no disturbance, loud music, or revving of bikes, the HOA members showed willingness to engage and to cooperate; and all members approved the event under those conditions.

Ultimately, there is no need for RE 5227 to be granted additional consent uses since the De Bos Guest Farm can apply, with HOA approval, for a temporary permit to hold smaller, more evenly spaced-out and well managed events that will avoid the destruction of the unique and tranquil character of the DBCE.

CONCLUSION

1. We reiterate that the current approved Municipal Zoning and primary uses are accepted and there exists no intention to "discriminate" against the current zoning of Erf 5227 or to prescribe or curtail or limit the usage of the property of Agama Mountain Products CC, except to the extent limited or restricted by the Conduct Rules and Design Guidelines.

1.1 The intention is simply to hold the owner of the Remainder of Erf 5227 accountable to the express and/or implied provisions of the governance documents of the HOA as expressly and/or impliedly set out in the Constitution in conjunction with Annexure "A" and Annexure "B" thereto.

1.2 In 2015 (December), the property owner of RE 5227 bought into a country lifestyle (DBCE) estate in 2015 (December), knowing full well that she/he would become a member of the HOA with legal obligations and responsibilities to a Constitution with governance and management guidelines that uphold the country feel and character of the estate. It is unacceptable for him/her to now attempt to capitalise and commercialise his/her portion of the DBCE by changing the said character of the estate for all members and introducing foreign land-use patterns of development that will negatively impact other members whilst ignoring the due legal process required by the Constitution. (That is, not receiving the necessary HOA permission)

2. The Municipality is also reminded that any planning application, pending or not, by the owner of Remainder of Erf 5227 which proposes to interfere or infringe upon in any way with the said usage rights of the owners of the residential erven, must be accompanied by a unanimous resolution by all the members of the HOA:

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- 2.1 In the case of any development (camping) on the Southern Portion several clauses of Annexure "B" must either be deleted or substantially amended.
 - 2.2 In the case of adding consent uses to the current zoning, the previous municipal approvals granted on condition that the rural character be preserved would need to be revoked together AND the first paragraph of Annexure "A" must either be deleted or substantially amended.
 - 2.3 In the case of removing an amendment [Condition(a) of the Council Decision taken in 1995 (Item 276/95)], it would be unlawful for a member to unilaterally apply to amend a condition that originally limited the scope and use as indicated in an application / site plan that had previously been approved by the HOA.
3. Kindly acknowledge receipt.

MR SB DE WET

Erf 5305, De Bos Country Estate, Montagu

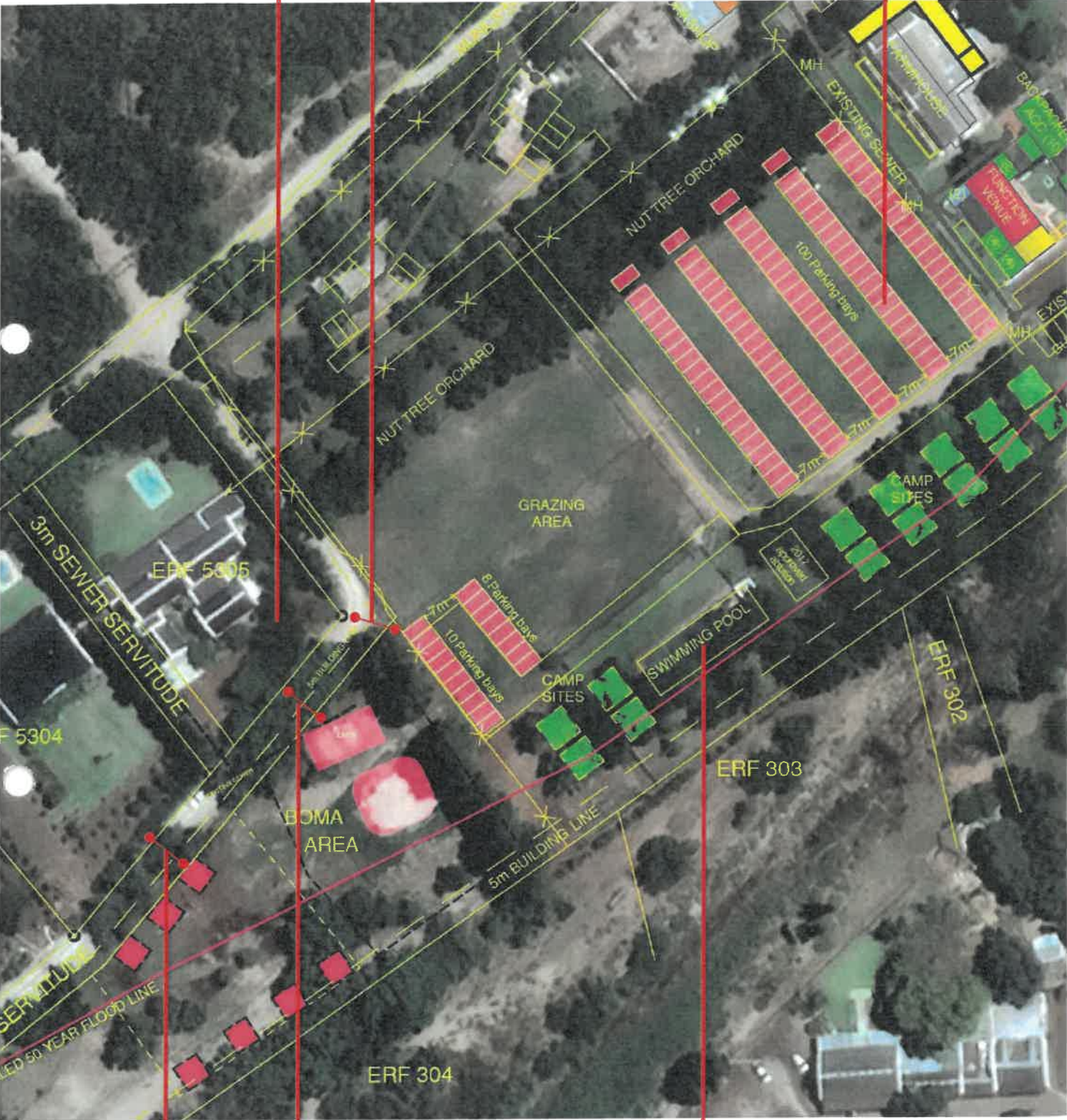
DE WET - ANNEXURE A Aerial view

A

NOT thick vegetation. This is an aerial view of a tree canopy. From the ground there is not much screening - visual or noise.

Less than 10m between boundary and proposed parking bays

One hundred! (100) additional parking bays. Noise, pollution, security issues and destruction to nature.



Less than 10m between boundary and proposed lapa/kitchen/scullery/ablutions and the very nearby entertainment boma

Already noisy from existing services of swimming pool and campers.

Less than 10m between boundary and campsites (with braais, bins, noise, tents, equipment etc)

110

A1

B

B₁



B REËRIVIER WYNLAND REEDE RIVER WINELANDS MUNISIPALITEIT ~ MUNICIPALITY ~ MASIPALA

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~ MONTAGU ~

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Isalathiso Sethu

15/2/2/92

Mnr J van Zyl

Navras / Enquiries
Imibuzo

7 Mei 2008

Umsiza Planning
Posbus 459
BONNIEVALE
6730

Meneer/Me

PROPOSED SUBDIVISION, REZONING AND PERMITTED USE OF PLOTS 307, 308, 309 AND 310, MONTAGU

VOORGESTELDE ONDERVERDELING, HERSONERING EN VERGUNNINGSGEBRUIK VAN ERWE 307, 308, 309 EN 310, MONTAGU

Your application regarding the above matter relates.

U aansoek insake bogenoemde aangeleentheid het betrekking.

Die Direkteur : Infrastruktuur Ontwikkeling het uit hoofde van sy gedelegeerde bevoegdhede die volgende besluit: The Director: Infrastructure Development made the following decision by virtue of his delegated powers:

1. Dat die hersonering van erwe 307 – 310, Montagu vanaf Landbousone/Spesiale sone I (Vakansieoord) na Onderverdelingsgebied goedgekeur word ingevolge Artikel 16 van Ordonnansie 15 van 1985. That the rezoning of plots 307 - 310, Montagu from Agricultural Zone/Special zone I (Yakansie District) to Subdivision Area be approved in terms of Section 16 of Ordinance 15 of 1985.
2. Dat die onderverdeling van die Onderverdelingsgebied in 1. hierbo in 11 Enkel Residensiële sone erwe en restant (Landbousone/Spesiale sone 1) nie goedgekeur word nie om die volgende rede:

The Montagu Scheme Regulations include the application property in the Long Street urban conservation area with the aim of protecting its agricultural character. The permitted density for subdivision of Agricultural land in the scheme regulations is one unit per 0.86ha, which will be exceeded by 12 units in this case and which will therefore be inconsistent with the purpose of the planning area and with the agricultural character of the concerned area....

- 2.1 Die Montagu Skemaregulasies sluit die aansoek-eiendom in by die Langstraat stedelike bewaringsgebied met die doel om die landboukarakter daarvan te beskerm. Die toegelate digtheid vir onderverdeling van Landbougrond in die skemaregulasies is een eenheid per 0.86ha, wat oorskry sal word deur 12 eenhede in hierdie geval en wat dus teenstrydig sal wees met die doelwitte van die bewaringsgebied en met die landboukarakter van die betrokke gebied..

3. Dat die onderverdeling van die Onderverdelingsgebied in 1. hierbo in 7 Enkelresidensiële erwe en Restant (Landbousone/Spesiale sone 1) goedgekeur word, onderhewig aan die volgende voorwaardes:

- 3.1 Die aansoeker moet 'n finale onderverdelingsplan voorlê waarop die 7 nuwe Enkel Residensiële sone erwe en die Restant aangetoon word, met sonerings.

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The applicant must submit a final subdivision plan on which the 7 new Single Residential Zones and the Remainder are shown, with zonings.

The applicant must have the 1:50 year flood line determined by a competent person and submit the result to the Town Planning Department of the Municipal Corporation for acceptance before endorsing the plan in terms of Section 25 and before alienating any plots. No buildings may be erected below the flood line

The existing 50mm Ø pipeline or a section of Middelstraat which connects to a 50mm pipeline in Kloofstraat will be upgraded to a 75 mm Ø pipeline.

Access to the plots is from Middle Street, which will not be upgraded by this municipality in this development, capturing the current dirt street.

Bulk charge for electricity bill of R20 400.00 must also be paid by the applicant.

A home owners' association must be established prior to the entire development, to which all the owners of the Single Residential plots, as well as the Remainder, must belong. The applicant must draw up a constitution for the Homeowners' Association, in which further provision is made for the operation of the Remainder and the 7 new plots as an "equestrian estate", as well as architectural and other management guidelines to ensure that the development maintain an agricultural character and form a visual unity. The constitution and architectural guidelines must be presented to the Manager: City Planning before the subdivision plan in terms of Article 25 of Ordinance 15 of 1985 will not be filed.

3.2

Geen verdere onderverdelings van die nuwe sewe (7) enkelresidensiële erwe sal toegelaat word nie. Hierdie voorwaarde moet in die Huielenaarsvereniging se grondwet verval word en in alle transportaktes soos van toepassing.

3.3

Die aansoeker moet die 1:50 jaar vloedlyn bepaal deur 'n bevoegde persoon en die resultaat aan die Stadsbeplanningsafdeling van die Munisipaliteit voorleë vir aanvaarding voordat die plan ingevolge Artikel 25 endosseer word en voordat enige erwe vervreem mag word. Geen geboue mag onder dié vloedlyn opgerig word nie.

3.4

Die bestaande 50mm Ø pyplyn oor 'n gedeelte van Middelstraat wat aansluit by 'n 50 mm pyplyn in Kloofstraat moet opgradeer word na 'n 75 mm Ø pyplyn.

3.5

'n Nuwe rioollyn moet geïnstalleer word, aan beide kante van die bestaande rioollyn afkomstig vanaf Montagu Wes oor erf 307. Detail planne moet aan die Bestuurder : Siviele Ingenieursdienste (Oos) voorgelê word vir goedkeuring alvorens konstruksie mag begin.

3.6

Toegang tot die erwe is vanaf Middelstraat wat nie deur die munisipaliteit opgradeer sal word in hierdie ontwikkeling vang die huidige grondstraat nie.

3.7

'n 11kV Elektriese toevoerlyn moet op koste van die aansoeker vanaf Kloofstraat geïnstalleer word asook 'n 100kVA transformator, laagspanningsnetwerk en aansluitings tot by die erfrens van die voorgestelde gedeeltes 1 tot 9. Die voorgestelde gedeeltes 10 en 11 kan aangesluit word vanaf die bestaande netwerk in Greystraat teen die tarief wat van toepassing is.

3.8

Grootmaatheffing vir elektrisiteit van R20 400.00 moet ook deur die aansoeker betaal word.

3.9

Daar moet 'n huielenaarsvereniging vir die hele ontwikkeling gestig word, waaraan al die elenaars van die Enkelresidensiële erwe, sowel as die Restant moet behoort. Die aansoeker moet 'n grondwet vir die Huielenaarsvereniging opstel, waarin onder meer voorsiening gemaak word vir die bedryf van die Restant en die 7 nuwe erwe as 'n "perdry landgoed", sowel as argitektoniese- en ander bestuursriglyne om te verseker dat die ontwikkeling 'n landboukarakter handhaaf en 'n visuele eenheid vorm. Die grondwet en argitektoniese riglyne moet aan die Bestuurder : Stadsbeplanning voorgelê word voordat die onderverdelingsplan ingevolge Artikel 25 van Ordonnansie 15 van 1985 geëndosseer sal word.

3.10

Regulasies 3.5.1 en 3.5.2 van die Regulasies uitgevaardig kragtens Artikel 9(2) van die Ordonnansie 15 van 1985, ter aanvulling van die Montagu Skemaregulasies (PK 1047/1988 van 5 Desember 1988) geld ten opsigte van die onderverdeling.

3.11

Artikels 26 – 28 van Ordonnansie 15 van 1985 is van toepassing op die onderverdeling, wat daarop neerkom dat minstens een van die nuwe erwe in die onderverdeling apart registreer moet word binne 5 jaar na datum van hierdie goedkeuring, waarsonder die goedkeuring sal verval, ongeag of 'n erfdiagram reeds deur die Landmeter-generaal goedgekeur is.

A new sewer line must be installed on both sides of the existing sewer line coming from Montagu West across Erf 307. Detailed plans must be submitted to the Manager: Civil Engineering Serv (East) for approval before construction may begin.

An 11kV Elektriese supply line must be installed at the applicant's expense from Kloofstraat as well as a 100kVA transformer low voltage network and connections up to the property boundary of the proposed sections 1 to 9. The proposed sections 10 and 11 can be connected from the existing network in Gray Street at the rate that is applicable.

Regulations 3.5.1 and 3.5.2 of the Regulations issued under Article 9(2) of Ordinance 15 of 1985, to supplement the Montagu Scheme Regulations (PK 1047/1988 of 5 December 1988) apply in respect of the subdivision

If any structural changes, both internal and external, are made to any existing buildings or if a new building is to be erected or buildings are demolished, a formal application must be made to this Council's Building Department for approval.

- 3.12 Indien daar enige strukturele veranderinge, intern sowel as ekstern gedoen word aan enige bestaande geboue of indien daar nuwe geboue aangebring sou word of geboue gesloop word, moet daar formeel by hierdie Raad se Bou-afdeling aansoek gedoen word vir goedkeuring.

A development charge of R4 560.00 per additional erf must be paid.

- 3.13 'n Ontwikkelingsheffing van R4 560.00 per addisionele erf moet betaal word.
- 3.14 Endossering van die onderverdelingsplan ingevolge Artikel 25 van Ordonnansie 15 van 1985 sal slegs geskied nadat:

Endorsement of the subdivision plan in terms of Section 25 of Ordinance 15 of 1985 shall only take place after:

- a) die aansoeker hierdie voorwaardes skriftelik aanvaar het by wyse van die standaard ooreenkoms;

the applicant has accepted these conditions in writing by way of the standard agreement

draft erf diagrams with the new erf number(s) have been submitted by the relevant surveyor to the Municipal Department of Planning and Economic Development and

- b) konsep erfdiagramme met die nuwe erfnummer(s) daarop deur die betrokke landmeter by die Munisipale Departement Beplanning en Ekonomiese Ontwikkeling ingedien is en

- c) skriftelik bewys gelewer is dat daar aan voorwaardes 3.1, 3.3, 3.4, 3.5, 3.7, 3.8, 3.9 en 3.13 voldoen is tot die bevrediging van die verantwoordelike munisipale departement.

written proof has been provided that conditions 3.1, 3.3, 3.4, 3.5, 3.7, 3.8 have been met. 3.9 and 3.13 have been met to the satisfaction of the responsible municipal department

Indien daar enige verdere navrae is, is u welkom om met mnr Jack van Zyl (023 – 6148000) in verbinding te tree.

Die uwe


SA MOKWENI
MUNISIPALE BESTUURDER
RF/H

M THERON Attorney and Conveyancer
11 Kohler Street
MONTAGU
6720



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**CONSTITUTION OF THE DE BOS COUNTRY ESTATE
HOME OWNERS' ASSOCIATION**

ATTACHED AS ANNEXURE 2
OF PLANNING
EVALUATION
REPORT

114
B

D.

**Design guidelines
for
De Bos Country Estate
"Country Lifestyle in a Country Town"**

The guidelines set out below are not intended to restrict development into a single style or to create a stereotype lifestyle. The guidelines are purely there to ensure that home owners and prospective home owners have the guarantee that development will not change the country feel of the Estate and that development is carried out in such a way that the character thereof is maintained.

The development within the estate falls under the development guidelines for the Van Riebeeck-/Long-/Bath Street Conservation area as laid out in the Montagu Zoning Scheme Regulations. The prescribed building style and character is broadly described hereafter and needs to be taken into consideration in all building plans (also see clause 25.2 and 25.4 of the Constitution of Home Owner's Association in this regard).

Specific guidelines for the De Bos Country Estate development are listed below and also give a broad description of limitations and requirements.

The Montagu Aesthetics Committee and the Home Owners Association have the final say to the more detailed points that might arise if not defined closely enough in the guidelines at hand.

1. All dwellings should be of a Cape Cottage or Karoo Farm house style.
2. The dwellings are to be single story only. A loft may be created in the roof space with wooden sash windows or mock sash in the roof, but no doors are allowed in the roof leading to any patios or verandas. The maximum size of the aforesaid roof windows are 1 500mm in length and 1 000mm in width. The maximum height prescribed for pitched roofs are 6 500mm, and the maximum height up to the wall plate is 3 000mm
3. Exterior walls are to be plastered with a smooth or cottage style plaster and painted either white, off white, beige or light sand colors.
4. The roof of the house should have a 35 - 45 degree pitch and the garage may have a flat or pitched roof in keeping with the design of the house.
5. The roof materials must be in keeping with the character of the house and must be either corrugated iron or a thatch roof, and in the case of corrugated iron roofing be painted either in 'heritage green', 'dove gray' or 'charcoal'.
6. All windows are to be wooden sash or wooden mock sash windows and must match the character of the house. All exterior doors are to be wooden doors and also must match the character of the house.

7. Burglar bars and security doors must be inside and of a suitable material and character.
 8. Garages must be in character with the house and may have wooden- or metal doors. In the instance of metal garage doors, the colour must match the roof or the walls. In the case of a thatch roof, metal garage doors must be either black or white.
 9. The outside boundary along Middle street, should be a diamond mesh fence no higher than 1.8m fixed to wooden poles and lined with a hedge. A uniform low boundary fence on the river side of the property will be erected, this will be a pole fence in a typical equestrian style, not painted.
 10. Property owners are however encouraged to allow for an open feel to the development and requested to only erect fencing between properties or on the river side boundary if absolutely necessary, once again diamond mesh and hedge or just a hedge is recommended. The visibility of washing lines must also be considered.
 11. The wind breaks between the properties may not be cut down. Controlled trimming to encourage growth or fullness may be done.
 12. The respective drive way gates at each of the entrances to Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 Montagu should be in keeping with the character of the house and country feeling. A plastered brick pillar is permissible for the anchoring of the gates and they should be painted white. The owners of the aforesaid erven will at their own cost be responsible for the installation and maintenance of his own gate.
 13. Any deviation from these design guidelines must, prior to commencement of building, first be approved by the Trustee Committee of the De Bos Country Estate Home Owner's Association at a special general meeting or annual general meeting as specified in clauses 8.2, 8.3, 11, 12, 13, 14, 15, 16 and 17 of the Constitution of the said Home Owner's Association. Thereafter the owner must also obtain the Langeberg Municipality's approval of the aforesaid deviation, who will first consult with the Montagu Aesthetics Committee. If any of the owners of erven in the De Bos Country Estate fails to comply with these guidelines and once such property is sold, the said Trustee Committee may in terms of clause 4.7.2 of the Constitution, withhold their consent to transfer until such deviation has been rectified by the owner.
-



INTEGRATED ZONING SCHEME

**MONTAGU
URBAN CONSERVATION AREA
OVERLAY ZONE (MCAOZ)**

AREA A:
Van Riebeeck Street / Long Street /
Bath Street MCAOZ

AREA B:
Upper Montagu MCAOZ

AREA C:
Montagu West MCAOZ

DATE: 15/06/2017
DRAWN BY: A. F. J. P.
CHECKED BY: A. F. J. P.
DATE: 15/06/2017
SCALE: 1:500
PROJECT: LANGE BERG
MUNICIPALITY



DRAFT

Orange Street

Orange Street
Bath Street
Van Riebeeck Street
Long Street
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3.3 Montagu Urban Conservation Area Overlay Zone Specific Conservation Areas

3.3.1 Within Montagu the three areas listed below, each with specific characteristics, have been identified and mapped (Plan 1) as being conservation worthy which collectively forms the MCAOZ purposed at the protection and preservation of the historical and architectural character of the town, namely:

- (a) **MCAOZ Area A:** Van Riebeeck Street/Long Street/Bath Street Conservation Area, with the specific aims for conservation:
 - (i) to retain the characters of the vistas that are presently available on arrival in the town through Cogmanskloof;
 - (ii) to retain the agricultural zoning of the land between Long Street and Van Riebeeck Street;
 - (iii) to maintain and enhance features of the old "water-erwe";
 - (iv) to enhance the present Long Street environment by a tree planting programme to replace the trees that were lost when the road was widened; and
 - (v) to preserve the land-use pattern and density of development, especially the northern side of Long Street and between the Kingna River and Long Street.
- (b) **MCAOZ Area B:** Upper Montagu Conservation Area with the aims for conservation;
 - (i) to protect all reasonably well preserved buildings in the area which are conservation worthy but which are not monuments; and
 - (ii) to preserve the character of the "droë erwe" area by controlling the scale of new buildings and the building materials which may be used in new buildings and in alterations.
- (c) **MCAOZ Area C:** Montagu West Conservation Area with the specific aims for conservation;
 - (i) to protect all reasonably well preserved buildings in the area which are conservation worthy, but which are not monuments;
 - (ii) to preserve the character of the area by controlling the scale of new buildings and the building materials which may be used in new buildings and alterations, and
 - (iii) to protect the natural setting of the area, particularly the surrounding mountainside and the kloof of the Bath River.

3.4 Development parameters

3.4.1 Notwithstanding the fact that a particular use zoning attaches to an erf, group of erven or erven in a particular locality in terms of this By-law, or if such a particular zoning has not been determined as yet, the Council may declare such erf, group of erven or locality as a special area if the Council is of the opinion that, for particular reasons, any form of development on that erf, group of erven or in that locality should be specially controlled, irrespective of the normal development restrictions prescribed elsewhere in this zoning scheme.

3.4.2 The Council may prescribe, as a restriction of the normal development rules or parameters, additional requirements or conditions as far as they concern:

- (a) the street elevation of buildings;
- (b) the maintenance of buildings;
- (c) the maintenance of trees along the streets;
- (d) the provision of parking facilities on sites;
- (e) coverage;
- (f) the height of buildings;
- (g) floor factor;
- (h) buildings lines;
- (i) the display of advertisements and the erection of advertising boards and signs;
- (j) historic garden walls and fences;
- (k) streetlights;
- (l) old postboxes;

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- (m) irrigation furrows; and
- (n) any other aspect which the Council may deem necessary in a particular case.

3.4.3 Any person who lodges an application for the approval of a building plan for any erf in the MCAOZ, may be required by the Council to furnish evidence to its satisfaction, that the construction project contemplated will not be in conflict with the intent of these rules, having due regard generally to the character of the street in which the erf is located as a whole, and more specifically to the particular locality in which the structure is to be erected.

3.4.4 The expression "building construction work" includes the erection of new buildings, and the extension, renovation, or alteration of existing buildings.

3.4.5 No building construction work shall be permitted in the MCAOZ unless the external architectural design and style, colour scheme, facing material and general appearance of the building have been referred to the Aesthetics Committee and approved by the Council.

3.4.6 In an attempt to manage the MCAOZ, the following general parameters apply:

- (a) piping or guttering must be painted in the same colour as the background;
- (b) outside woodwork, if painted, should preferably be in green, brown or black, or any colour the Council considers to be suitable;
- (c) plastered walls should be white or off-white in finish; or any colour the Council considers to be suitable;
- (d) face bricks for the street facade of the building may not be used;
- (e) for residential or office buildings, the proportion of wall space to windows and doors should be specially approved by the Council;
- (f) roofing, if possible, should preferably be black; or any colour the Council considers to be suitable;
- (g) the removal of old doors and windows should be discouraged where possible, or replaced with replicas;
- (h) roof pitches or historic roofing elements such as gutters or ridge trims should not be altered;
- (i) the appearance of a stoep is critical to the appearance of a house. Old stoeps, even if they are not as old as the house itself, should be retained. Proposed stoeps should reflect sympathetic variations and appropriate materials;
- (j) garages should be placed in such a way that they do not intrude visually on the facade of old buildings, garden walls or trees;
- (k) plate-glass windows in shops and similar buildings should be in such sections interrupted by wall structures as the Council may require;
- (l) the following is prohibited as external visible architectural features:
 - (i) English-style thatch roof;
 - (ii) cement tile roof;
 - (iii) clay tile roof;
 - (iv) IBR roof;
 - (v) fibre cement roof sheeting;
 - (vi) unplastered concrete blocks;
 - (vii) natural or artificial stone or slate wall finishes of all kinds, except in plinths;
 - (viii) horizontally proportioned windows;
 - (ix) original mill finished aluminium windows;
 - (x) precast cement; and
 - (xi) exposed concrete of all kinds.

3.4.7 In the case of an existing building which is to be altered/extended, the existing building line should be maintained as far as possible, subject to such exceptions as the Council may specially approve.

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- 3.4.8 In the case of new building construction work to be undertaken on a vacant site/portion of a vacant site, or the replacement of an existing building, the Council may prescribe a building line in order to protect trees within the street boundaries and the building line generally observed in the vicinity.
- 3.4.9 Consent may be withheld for any alteration or extension of a building resulting in an increased height of the structure or if such increased height, in the opinion of the Council, would interfere with the growth of any tree within the street boundaries, or if it would necessitate the pruning/removal of any portion of the tree/branches may be withhold.
- 3.4.10 Any proposed parking area and the points of access and exit must be shown on a plan to be submitted to the Council which could be approved or disapproved or further conditions, as it may deem fit, can be prescribed.
- 3.4.11 Projections over street boundaries, except for advertising signs approved by the Council, shall be limited to minor architectural features.
- 3.4.12 An Aesthetics Committee composed of representatives from Council and other experts, as an advisory body, may make recommendations on the request of Council and may assist in the control and management of all development/redevelopment and building work. This includes the assessment of rezoning and subdivision applications, advertising signs and all other ancillary aspects to development, and control in the demarcated Montagu Urban Conservation Overlay Zone.
- 3.4.13 No permission for demolition or alteration or use change to buildings worthy of preservation and older than sixty years shall be granted without prior input from SAHRA.
- 3.4.14 Any signage must be in accordance with the Council's signage guidelines.
- 3.4.15 Educational programmes should encourage individual owners of historical buildings, which have been unsympathetically altered, to modify them by plastering and painting the buildings white and by planting trees to hide their worst features.
- 3.4.16 Historic street furniture such as street lamps should be retained as far as possible.
- 3.4.17 Existing trees should be retained and tree-planting programmes should be initiated.
- 3.4.18 With respect to new development within/adjacent to the MCOAZ, the following shall apply:
- (a) The layout should be consistent with the historic pattern of the town and should not introduce foreign patterns of development.
 - (b) The established pattern is a simple grid with buildings aligned along the streets.
 - (c) New buildings should be located close to the street to define the street edge around the block.
 - (d) New buildings should be aligned parallel to the geometry of the existing streets.
 - (e) The scale and texture of new buildings must be compatible with that of the adjacent special area(s).
 - (f) Appropriate densification should be allowed.
 - (g) Building height should be sympathetic to the surrounding scale of the built form.
 - (h) Sympathetic roof pitches should be maintained.
 - (i) Relationships between buildings and public spaces should be established by encouraging the use of stoeps and low garden walls.
 - (j) Tree-planting programmes should be established.
 - (k) Inner-block development may be permitted subject to the following:
 - (i) The site planning of inner-block development should not impact on the existing streetscape and be screened off with tree planting or with existing buildings.
 - (ii) The ingress/egress points should be designed in such a way that it forms part of the existing streetscape and should not create traffic congestions.

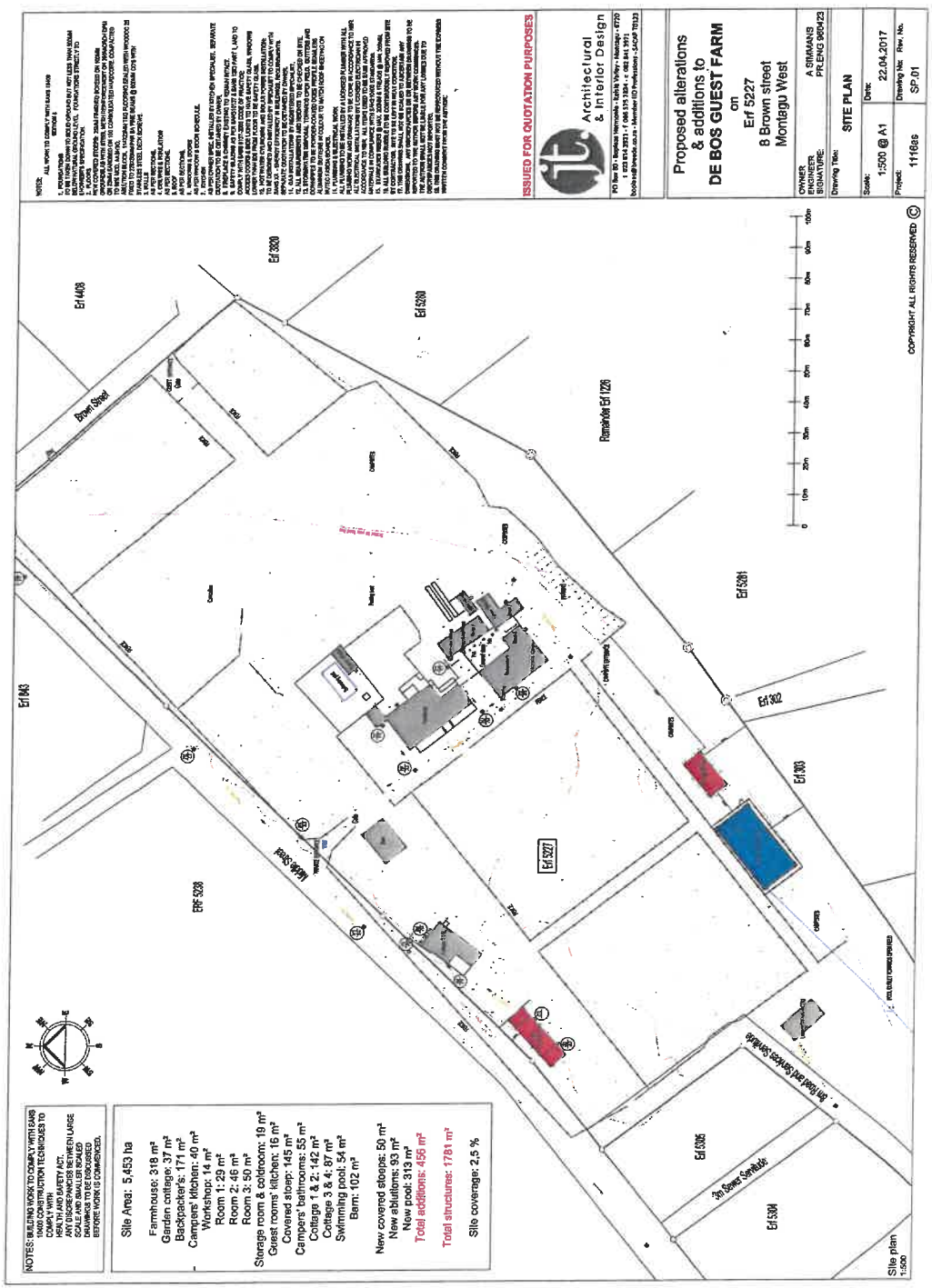
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**Conduct Rules
for
De Bos Country Estate
"Country Lifestyle in a Country Town"**

1. The area between Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 in the De Bos Country Estate and the river, situated on the Remainder of Erf 5227 Montagu, is not for common usage and remains part of De Bos Guest Farm and it will also keep its agricultural nature. The aforesaid owners of Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 will have no grazing rights for their horses or for any other animals on the Remainder of Erf 5227 Montagu.
2. Usage of the area between the residential erven and the river by the said owners of Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 is restricted to walking, riding horses, cycling, sitting on the benches and general enjoyment of the peaceful nature around the pond and along the river. Picnics or any other use of the area would require consent from the owner of the Remainder of Erf 5227 Montagu.
3. General consideration for the other members in the estate should be practiced when using the area referred to in clause 2 above and no screaming or shouting will be allowed. Like wise, members should also allow for usage of this area within reason (children riding bikes, running or riding horses, talking and laughing), this creating a healthy family environment.
4. The keeping of pets on the property should be of such nature that the neighbors are not disturbed. A limit of two dogs and the barking of the dogs should be strictly controlled. The plots are zoned residential so the keeping of fowl and other farm animals is limited.
5. A general consideration and respect for the spirit in which the estate was created will be maintained. Amendments and additions to this document can be made at the first meeting of the Trustee Committee as specified in clause 8 of the Constitution of the De Bos Country Estate Home Owner's Association.

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Timeline of Site plan (SP) / Site development plan (SDP) for De Bos Guest Farm

2017

- 22.04.2017 Site Plan [2017] issued for QUOTATION (Drawing SP.01/22.04.2017)
- 19.05.2017 Site Plan [2017] issued for COUNCIL APPROVAL (Drawing SP.01 Rev A/19.05.2017)
- 07.06.2017 **Municipal approval no. (148/17)** on Drawing SP.01 Rev A/19.05.2017

2018

- 01.06.2018 Site Development Plan [2018] issued for QUOTATION (Drawing SP.01/01.06.2018)
- Site Development Plan [2018] issued for COUNCIL APPROVAL (Drawing SP.01/01.06.2018)
- 09.08.2018 Meeting HOA Chairman KK & AS discuss 2017 building plans De Bos 'Improvements & Repairs'
- ? AS (Remainder Erf 5227) supplies KK with files? (likely the 11th)
- 12.08.2018 Email from Chairman KK to HOA members with details of meeting above (9th). Attached is site plan AS supplied (Drawing SP.01/22.04.2017), together with highly cropped image (IMG-20180811-W004.jpg) of a section drawing (Drawing SE.04/19.05.2017) with **Municipal approval no. 148/17 of 07-06-2017**.
- 15.08.2018 **FORMAL APPROVAL** given by HOA on 2017 'Improvement & Repair plans'. Email from Chairman (KK) to Secretary (BW) & AS with official HOA approval of Site Plan for QUOTATION Drawing SP.01/22.04.2017 with **Municipal approval no. 148/17 of 07-06-2017**
- 21.11.2018 **Municipal approval no. (413/18)** on Site Development Plan (Drawing SP.01/01.06.2018)

2022

- 11.11.22 **Zoning Certificate** issued for Erf 5227. Completely unknown to HOA members at this date.
- 28.11.22 HOA Meeting. New (verbal) information received.
- 29.11.22 Email from AS to HOA with SDP 2018 (SP.01/01.06/18) and **Zoning Certificate**. This SDP [2018] and Zoning certificate is seen by HOA members for the FIRST time ever. No approval requested. No approval given.
- 29.11.22 4pm. Meeting in person between JvZ (Town planner) and de Wets (Erf 5305). First time a property owner in DBCE to become aware of another municipal-approved SDP (Drawing SP.01/01.06.2018)
- 06.11.22 Email from JvZ to VDW and ACZ with two stamped building plans:
De Bos SDP 2017.jpg (SP.01 Rev A/19.05.17) **Municipal approval no. (148/17) of 7-6-2017**
De Bos SP 2018.jpg (SP.01/01.06.2018) **Municipal approval (413/18) of 21-11-2018**

2022 Zoning certificate issued on a site plan that was out of date (2018) and NOT approved by HOA. Erf number given as Erf 5227 (entire DBCE, old farm) - not Remainder Erf 5227?

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6 March 2023

Subject: De Bos Country Estate site plans and permissions

Dear Andy,

DBCE approval of building plans by the Home Owner's Association

Clause 25.2 of the De Bos Country Estate HOA Constitution states that an owner requires the PRIOR formal approval of the HOA to lodge any plans with the Municipality. *See Appendix A.*

2023 Site Development Plan

Thank you for approaching the HOA on 24 February 2023 with SDP Drawing "NH202302/SDP Rev" for approval. After a meeting and consideration of the drawing, please be advised the site plan has not been approved; see the legal support documentation for Usage and Conduct Rules in the Southern Portion. Note that the site plan instructs reading it "with the rest of the application and motivation letter". This documentation was requested but has not been forthcoming. *See Appendix B.*

Recently (December 2022), it came to the HOA's attention that the De Bos Guest Farm has lodged several previous plans since the 2017 SP without informing or pursuing HOA approval as required by the Constitution. The HOA would like to advise you of the current status in order to get the records up to date and encourage the DB Guest Farm to pursue the process for HOA approval in EVERY building application or planning permission. The Municipality has also been advised of the current situation.

The 2017 Site Plan does have approval

HOA approval was not sought for the DB Guest Farm's 2017 building application before lodging the application with the Municipality. However, more than a year after municipal approval was given (07.06.2017), the Guest Farm did seek HOA approval retrospectively, and on 15 August 2018, formal approval was given in good faith by the HOA for the Guest Farm's building plans for "Improvements and Repairs" (Drawing 'SP.01 Rev A/19.05.2017'). *See Appendix C.*

The 2018 Site Development Plan does NOT have approval

The Site Development Plan "SP.01/01.06.2018" with municipal approval no. 413/18 of 21-11-2018 was NEVER presented for consideration or approval to the HOA. This SDP does NOT have the approval of the HOA.

Furthermore, it has become apparent in a meeting on 10 February 2023, between the HOA chairman and Mr Van Zyl of the Municipality that these 2018 plans had in fact expired, as a property owner had one year from filing approval to commence the build. *See Appendix D.*

The 2022 Site Plan does NOT have approval

Likewise, the HOA was made aware by the Attorney, Mr du Bois, that another site plan, "NH202203 / 1001 Rev.01," of the De Bos Guest Farm is with the Municipality and currently under discussion with the Committee of the Heritage of the Western Cape. Please be advised that once again this application has not been presented to the HOA and does NOT have HOA approval; hence once again the owner of Remainder Erf 5227 has again NOT complied with Clause 25.2. Please take the corrective action in order to follow the due process. All documentation associated with the application needs to be submitted to the HOA. *See Appendix E.*

Land use rights

The De Bos Guest Farm has only these Primary use rights: "Tourist Accommodation" and "Smallholding /Agriculture". There are currently NO Consent, Departures or Non-Conforming uses approved. This denotes no

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use as a Function Venue (a consent use) as well as any type of temporary rezoning. Please see attached the email from Du Bois to advise on ANY planning departure:

'Be that as it may, any planning departure, whether permanent or temporary, and any rezoning application or consent use application, must be formally launched in terms of Section 15 of the Land Use Planning By-Law, and the relevant interested and affected parties must be notified of such an application in terms of the By-Law.'

Together, 8 members make up the De Bos Country Estate: the De Bos Guest Farm and 7 residential homes. The 7 residential erven share a boundary with the Guest Farm's Remainder Erf 5227. Consequently, notice for interested and affected parties would pertain to ALL members of the HOA and is of particular importance in a RESIDENTIAL area. Such a notice must be served on each person whose rights or legitimate expectations will be affected by the approval of the application AND on every owner of land adjoining the land concerned. See Appendix F.

Thus the HOA would like to place on record and for absolute clarity that NO building plan or application (which includes any temporary consent, departure, non-conforming uses or rezoning applications) from any property owner of De Bos Country Estate may be approved by the Municipality without the express written approval of the HOA accompanying it.

Kind regards,
David Olivier
Chairman of De Bos Country Estate

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APPENDIX A - Constitution

1. De Bos Country Estate Constitution's Clause 25.2

APPENDIX B - Site Development Plan 2023

1. SDP 2023 Drawing 'NH202302 / SDP Rev'
2. Minutes of meeting - HOA approval NOT given
3. Map of 'The Southern Portion'
4. Attorney's letter dated 13.12.2022 (6 pages)
5. Attorney's letter dated 11.01.2023 (7 pages)

APPENDIX C - Site Plan 2017

1. Email 15 August 2018 - Formal approval 'Improvements and Repairs'
2. Documents supplied by AS for approval
 - Site plan for quotation SP.01/22.04.2017
 - Cropped image of a Section Drawing 'SE.04/19.05.2017'

APPENDIX D - Site Development Plan 2018

1. No approval by HOA

APPENDIX E - Site Plan 2022

1. No approval by HOA

APPENDIX F - Permission deviations

1. Structure of De Bos Country Estate
2. Attorney's legal advice

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- 24.4 The following common access servitude will be registered in the title deeds of all properties forming part of the De Bos Country Estate, namely:

Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 Montagu will be entitled to a Road- and Services servitude, 8 metres wide, along the north western boundary of the Remainder of Erf 5227 Montagu, as indicated on Diagram SG No. 4211/2009.

25. **BUILDING RULES**

- 25.1 All building plans and finishes of prospective homes on the Remainder of Erf 5227 and Erven 5228, 5229, 5301, 5302, 5303, 5304, 5305 Montagu forming part of the De Bos Country Estate, must comply with the Design Guidelines for the De Bos Country Estate, as approved by the Langeberg Municipality (previously known as the Breede River / Winelands Municipality, and the said Design Guidelines for the De Bos Country Estate will be deemed to form part of this constitution of the De Bos Country Estate Home Owners' Association, attached hereto marked as "Annexure A".

- 25.2 No owner of any of the erven referred to in clause 25.1 shall be entitled to commence building on his property unless he/she, prior to lodgement of his/her building plans with the local municipality for approval, obtains written approval of the building plans from the Trust Committee of the De Bos Country Estate Home Owner's Association or its authorised representative. When obtaining the approval of the building plans at the local municipality, the owner must lodge the aforesaid approval of the Home Owner's Association together with the owner's building plans at the local municipality.

- 25.3 No owner of any erf shall be entitled to alter or vary the exterior and/ or façade (including the texture or colour thereof) of his building, dwelling or improvements as already constructed, without the prior written approval of the Trust Committee. Thereafter the owner must also obtain the Langeberg Municipality's approval of the aforesaid alteration, who will first consult with the Montagu Aesthetics Committee.

- 25.4 The owners of Erven 5228, 5229 and 5301 Montagu may not erect any buildings below the 1:50 year flood line, as determined by the Langeberg

MINUTES OF A MEETING HELD AT 16H00 ON 01 MARCH 2023 AT NO 15 MIDDLE STREET, DE BOS COUNTRY ESTATE, MONTAGU

PRESENT

David Olivier (DO)
 BA Wilmot (BW)
 Kevin Knight (KK)
 Sandy Knight (SK)
 Andre Coetzer (AcZ)
 Linda Herbert (LH)
 Trevor Herbert (TH)
 Vanessa de Wet (VdW) Via Whatsapp call
 Steven de Wet (SdW) Via Whatsapp call
 Simon Harper (SH) Via Whatsapp call
 Nicky Harper (NH) Via Whatsapp call

• **Welcome**

DO in his capacity as Co-ordinator of the meeting, welcomed everyone present, in person and the members that dialled in for the meeting via Whatsapp calls.

DO stated that the purpose of the meeting was to discuss the email that was sent to all members by Andy Simmans (AS) on the 24 February 2023, regarding the proposed Site Development Plan A (SDP) Drawing Number NH202302 / SDP Rev Page A1, dated 23 February 2023.

• **Discussions and Outcome**

DO enquired if anyone would approve AS's proposal, based on the motivation regarding the three components to the proposed SDP, which was included in the email dated 24 February 2023.

It was discussed and unanimously agreed by all, that irrespective of not having had sight of the application documentation and motivation letter, which is required to be read in conjunction with the SDP, those present would have reached the same conclusion.

Each member was asked to vote individually whether they were For or Against AS's proposal and the votes were as follows :

No 17 Olivier	Against
No 15 Knight	Against
No 13 Harper	Against
No 11 Herbert	Against
No 09 Wilmot	Against
No 07 Coetzer	Against
No 05 De Wet	Against

It is therefore a unanimous decision by above members that the HOA did not approve the proposed SDP as submitted by AS on 24 February 2023.

The meeting adjourned at 17h00.

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MINUTES OF THE SPECIAL MEETING OF THE DE BOS COUNTRY ESTATE HOMEOWNERS' ASSOCIATION HELD AT 10H00 ON 25 OCTOBER 2022 AT NO. 15 MIDDLE STREET, DE BOS COUNTRY ESTATE, MONTAGU

PRESENT David Olivier (DO) (Chairman)
 BA Wilmot (BW) (Secretary)
 Kevin Knight (KK)
 Andy Simmans (AS)

APOLOGIES None

1. Welcome

DO in his capacity as Chairman, welcomed all, in person and or proxy, to the Special General Meeting (SGM) of the De Bos Homeowners' Association (HOA). DO confirmed that notice was given in terms of Clause 12 of the Rules of the Homeowners Association, on Monday 3 October 2022

2. Apologies

The Secretary confirmed that there were no apologies received from any of the HOA members.

3. Proxies

In a response to a question from the Chairman, the Secretary stated that she had received the following proxies:

Andrew Simmans proxy for Agama Mountain Products CC
Kevin Knight proxy for Steven de Wet No 5
Kevin Knight proxy for Andre Coetzer No 7
Kevin Knight proxy for Emma Riddell No 11
Kevin Knight proxy for Nicolette Harper No 13
David Olivier proxy for Juanita Olivier No 17

4. Quorum

In a response to a question from the Chairman, the Secretary stated that in terms of clause 12 of our Constitution, a quorum is at least 7 out of 8 members, where 8 members are entitled to vote and that requirement, with those present in person and in proxy, has been met.

5. Resolutions

The Chairman stated that four resolutions were circulated along with the agenda on Monday, 3 October 2022 and that they would now be voted on by a show of hands.

AS asked the question if all members' levies were paid up to date and BW confirmed that all members' were indeed paid up.

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Resolution Number 1:

Proposed that Clauses 1,2 & 3 of Annexure B of the Conduct Rules for De Bos Country Estate be deleted from Annexure B of the Conduct Rules for De Bos Country Estate.

Proposed by: Agama Mountain Products (AS)

Seconded by: No seconder

The Chairman confirmed that as per Clause 17.5 of the Constitution of the De Bos Country Estate Homeowners' Association, as there is no seconder for Resolution 1, the resolution will not be voted on by the members at the meeting.

Resolution Number 2:

Proposed that guideline #9 of Annexure A of the Constitution of the De Bos Country Estate Homeowners' Association be amended as circulated.

Proposed by: Kevin Knight

Seconded by: K Knight PP Nicolette Harper

Vote by show of hands:

Those in favour: 7 Those against: 1 (Agama Mountain Products) Those that abstain: Nil

Resolution Number 3:

Proposed that guideline #10 of Annexure a of the Constitution of the De Bos Country Estate Homeowners' Association be amended as circulated.

Proposed by: Kevin Knight

Seconded by: K Knight PP Andre Coetzer

Vote by show of hands:

Those in favour: 7 Those against: 1 (Agama Mountain Products) Those that abstain: Nil

Resolution Number 4:

Proposed that Clause 17.7 of the Constitution of the De Bos Country Estate Homeowners' Association be amended as circulated.

Proposed by: K Knight PP Steven De Wet

Seconded by: BA Wilmot

Vote by show of hands:

Those in favour: 7 Those against: 1 (Agama Mountain Products) Those that abstain: Nil

6. Closure of Meeting

There being no further business, the Chairman thanked those present for their attendance and the meeting was adjourned at 10h13.

Good morning all,

A Special General Meeting of the De Bos Homeowners' Association has been called for on Tuesday, 27th October 2022.

To this end, please see below the details of the Special General Meeting.

Notice of Meeting

Notice is hereby given in terms of Clause 12 of the Constitution of the De Bos Home Owners' Association that the Special General Meeting will take place as follows:-

Date : Tuesday 27th October 2022

Time : 10h00

Venue : 15 Middle Street, De Bos Estate

2. Should you not be able to attend the Special General Meeting, kindly appoint a proxy to act on your behalf. Please notify the chosen person in writing via email of your wish to appoint him / her as your proxy and to vote on your behalf on the three resolutions and forward a copy of the said proxy to the Secretary at wilmotba@gmail.com
3. Documents attached:
Agenda
Proposed resolutions

PLEASE ACKNOWLEDGE RECEIPT OF THIS COMMUNICATION VIA EMAIL TO THE SECRETARY AT wilmotba@gmail.com

Regards

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De Bos Homeowners' Association

Special General Meeting to be held on Tuesday 25th October 2022

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at 15 Middle Street, De Bos Estate at 10h00

Agenda

- | | |
|--|-----------|
| 1) Welcome | Chairman |
| 2) Apologies | Secretary |
| 3) Quorum | Chairman |
| 4) Proxies | Chairman |
| 5) Resolutions: | All |
| a) Proposed that guideline #9 of Annexure A of the Constitution of the De Bos Country Estate Homeowners' Association be amended as circulated. See attached document for details | |
| b) Proposed that guideline #10 of Annexure A of the Constitution of the De Bos Country Estate Homeowners' Association be amended as circulated. . See attached document for details | |
| c) Proposed that Clauses 1, 2 & 3 of Annexure B of the Conduct Rules for De Bos Country Estate be deleted from Annexure B of the Conduct Rules for De Bos Country Estate – See attached document for details | |
| d) Proposed that Clause 17.7 of the Constitution of the De Bos Country Estate Homeowners' Association be amended as circulated. See attached document for details | |
| 5. Closure of meeting. | Chairman |

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Resolution 1:

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DE BOS COUNTRY ESTATE – HOMEOWNERS’ ASSOCIATION

**AMENDMENTS TO ANNEXURE “A” OF THE CONSTITUTION
OF THE DE BOS COUNTRY ESTATE:**

Design guidelines for De Bos Country Estate

It is resolved by the undersigned, the trustees of the De Bos Country Estate Homeowners’ Association, that the following amendments to the **house design guidelines** be approved and accepted, **subject to approval of the Langeberg Municipality:**

GUIDELINE # 9

“The outside boundary along Middle Street, should be a fence no higher than 1.8m, fixed to wooden poles and lined with a hedge. The fence shall be Diamond Mesh, Bonnox or Veldspan design. The uniform low boundary fence on the river side of the property will be erected, this will be pole fence in a typical equestrian style, not painted.

The guideline shall be changed to read as follows:

The following types of fencing are permitted on the outside boundary along Middle Street:

- Welded mesh, clear view/ weld mesh type, diamond mesh, bonnox, veldspan design, electrified fencing and or barbed wire. Types of fences specifically excluded are brick walls higher than 1.2m, vibracrete / precast walling and razor wire.

Fencing includes electrified fencing, cameras and beams or other monitoring devices, which must be maintained by the individual owner.

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CONFIRMED AND ACCEPTED BY THE TRUSTEES:

- | | |
|---|-------------------|
| 1. OWNERS NAME: Agama Mountain Products CC | SIGNATURE: |
| ERF NO: Rem of Erf 5227 | DATE: |
| 2. OWNERS NAME: Olivier | SIGNATURE: |
| ERF NO: Erf 5228 | DATE: |
| 3. OWNERS NAME: Knight | SIGNATURE: |
| ERF NO: Erf 5229 | DATE: |
| 4. OWNERS NAME: Harper | SIGNATURE: |
| ERF NO: Erf 5301 | DATE: |
| 5. OWNERS NAME: Riddell | SIGNATURE: |
| ERF NO: Erf 5302 | DATE: |
| 6. OWNERS NAME: Wilmot | SIGNATURE: |
| ERF NO: Erf 5304 | DATE: |
| 7. OWNERS NAME: Coetzer | SIGNATURE: |
| ERF NO: Erf 5304 | DATE: |
| 8. OWNERS NAME: De Wet | SIGNATURE: |
| ERF NO: Erf 5305 | DATE: |

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Resolution 2:

DE BOS COUNTRY ESTATE – HOMEOWNERS’ ASSOCIATION

**AMENDMENTS TO ANNEXURE “A” OF THE CONSTITUTION
OF THE DE BOS COUNTRY ESTATE:**

Design guidelines for De Bos Country Estate

It is resolved by the undersigned, the trustees of the De Bos Country Estate Homeowners’ Association, that the following amendments to the **house design guidelines** be approved and accepted, **subject to approval of the Langeberg Municipality:**

GUIDELINE # 10

“Property owners are however encouraged to allow for an open feel to the development and requested to only erect fencing between properties or on the river side boundary if absolutely necessary, once again **Diamond Mesh, Bonnox or Veldspan fencing** and hedge or just a hedge is recommended. The visibility of washing lines must also be considered.”

The guideline shall be changed to read as follows:

The following types of fencing are permitted between properties or on the river side boundary:

- Welded mesh, clear view/ weld mesh type, diamond mesh, bonnox, veldspan design, electrified fencing and or barbed wire. Types of fences specifically excluded are brick walls higher than 1.2m, vibracrete / precast walling and razor wire.

Fencing includes electrified fencing, cameras and beams or other monitoring devices, which must be maintained by the individual owner.

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CONFIRMED AND ACCEPTED BY THE TRUSTEES:

- | | |
|---|-------------------|
| 1. OWNERS NAME: Agama Mountain Products CC | SIGNATURE: |
| ERF NO: Rem of Erf 5227 | DATE: |
| 2. OWNERS NAME: Olivier | SIGNATURE: |
| ERF NO: Erf 5228 | DATE: |
| 3. OWNERS NAME: Knight | SIGNATURE: |
| ERF NO: Erf 5229 | DATE: |
| 4. OWNERS NAME: Harper | SIGNATURE: |
| ERF NO: Erf 5301 | DATE: |
| 5. OWNERS NAME: Riddell | SIGNATURE: |
| ERF NO: Erf 5302 | DATE: |
| 6. OWNERS NAME: Wilmot | SIGNATURE: |
| ERF NO: Erf 5304 | DATE: |
| 7. OWNERS NAME: Coetzer | SIGNATURE: |
| ERF NO: Erf 5304 | DATE: |
| 8. OWNERS NAME: De Wet | SIGNATURE: |
| ERF NO: Erf 5305 | DATE: |

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Resolution 3:

DE BOS COUNTRY ESTATE – HOMEOWNERS’ ASSOCIATION

**AMENDMENTS TO ANNEXURE “B” OF THE CONSTITUTION
OF THE DE BOS COUNTRY ESTATE:**

Conduct Rules for De Bos Country Estate

It is resolved by the undersigned, the trustees of the De Bos Country Estate Homeowners’ Association, that the following clauses be deleted from the **conduct rules** and the deletion thereof be approved and accepted, **subject to approval of the Langeberg Municipality:**

CLAUSE # 1

“The area between Erven 5228,5229,5301,5302,5303,5304 and 5305 in the De Bos Country Estate and the river, situated on the Remainder of Erf 5227 Montagu, is not for common usage and remains part of De Bos Guest Farm and it will also keep its agricultural nature. The aforesaid owners of Erven 5228,5229,5301,5302,5303,5304 and 5305 will have no grazing rights for their horses or for any other animals on the Remainder of Erf 5227 Montagu.”

CLAUSE # 2

“Usage of the area between the residential erven and the river by the said owners of Erven 5228,5229,5301,5302,5303,5304 and 5305 is restricted to walking, riding horses, cycling, sitting on the benches and general enjoyment of the peaceful nature around the pond and along the river. Picnics or any other use of the area would require consent from the owner of the Remainder of Erf 5227 Montagu.”

CLAUSE # 3

“General consideration for the other members in the estate should be practiced when using the area referred to in clause 2 above and no screaming or shouting will be allowed. Ike wise, members should also allow for the usage of this area within reason (children riding bikes, running or riding horses, talking and laughing), this creating a healthy family environment.”

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CONFIRMED AND ACCEPTED BY THE TRUSTEES:

- | | |
|---|-------------------|
| 1. OWNERS NAME: Agama Mountain Products CC | SIGNATURE: |
| ERF NO: Rem of Erf 5227 | DATE: |
| 2. OWNERS NAME: Olivier | SIGNATURE: |
| ERF NO: Erf 5228 | DATE: |
| 3. OWNERS NAME: Knight | SIGNATURE: |
| ERF NO: Erf 5229 | DATE: |
| 4. OWNERS NAME: Harper | SIGNATURE: |
| ERF NO: Erf 5301 | DATE: |
| 5. OWNERS NAME: Riddell | SIGNATURE: |
| ERF NO: Erf 5302 | DATE: |
| 6. OWNERS NAME: Wilmot | SIGNATURE: |
| ERF NO: Erf 5304 | DATE: |
| 7. OWNERS NAME: Coetzer | SIGNATURE: |
| ERF NO: Erf 5304 | DATE: |
| 8. OWNERS NAME: De Wet | SIGNATURE: |
| ERF NO: Erf 5305 | DATE: |

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Resolution 4:

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DE BOS COUNTRY ESTATE – HOMEOWNERS ASSOCIATION

**AMENDMENT TO THE CONSTITUTION
OF THE DE BOS COUNTRY ESTATE:**

Design guidelines for De Bos Country Estate

It is resolved by the undersigned, the trustees of the De Bos Country Estate Homeowners' Association, that the following amendment to the Constitution of the De Bos Country Estate be approved and accepted, **subject to approval of the Langeberg Municipality:**

CLAUSE 17.7

“Notwithstanding anything contained in this Constitution, any resolution or the amendment of a resolution, which would have the effect of adding to or amending or repealing any part of this constitution, shall require the support of all members entitled to vote before the resolution may be passed, which shall be known as a special resolution.”

The clause shall be changed to read as follows:

“Notwithstanding anything contained in this Constitution, any resolution or the amendment of a resolution, which would have the effect of adding to or amending or repealing any part of this constitution, shall require the support of at least **75%** of the members entitled to vote before the resolution may be passed, which shall be known as a special resolution.”

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CONFIRMED AND ACCEPTED BY THE TRUSTEES:

- | | |
|---|-------------------|
| 1. OWNERS NAME: Agama Mountain Products CC | SIGNATURE: |
| ERF NO: Rem of Erf 5227 | DATE: |
| 2. OWNERS NAME: Olivier | SIGNATURE: |
| ERF NO: Erf 5228 | DATE: |
| 3. OWNERS NAME: Knight | SIGNATURE: |
| ERF NO: Erf 5229 | DATE: |
| 4. OWNERS NAME: Harper | SIGNATURE: |
| ERF NO: Erf 5301 | DATE: |
| 5. OWNERS NAME: Riddell | SIGNATURE: |
| ERF NO: Erf 5302 | DATE: |
| 6. OWNERS NAME: Wilmot | SIGNATURE: |
| ERF NO: Erf 5304 | DATE: |
| 7. OWNERS NAME: Coetzer | SIGNATURE: |
| ERF NO: Erf 5304 | DATE: |
| 8. OWNERS NAME: De Wet | SIGNATURE: |
| ERF NO: Erf 5305 | DATE: |

AREA referred to in ANNEXURE B of the Constitution

The area between Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 in the De Bos Country Estate and the river, situated on the Remainder of Erf 5227 Montagu, is not for common usage and remains part of De Bos Guest Farm and it will also keep its agricultural nature. The aforesaid owners of Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 will have no grazing rights for their horses or for any other animals on the Remainder of Erf 5227 Montagu.

SKETSPLAN

VAN

ERWE 5228, 5229, 5301-5305 (Gedeeltes van ERF 5227)

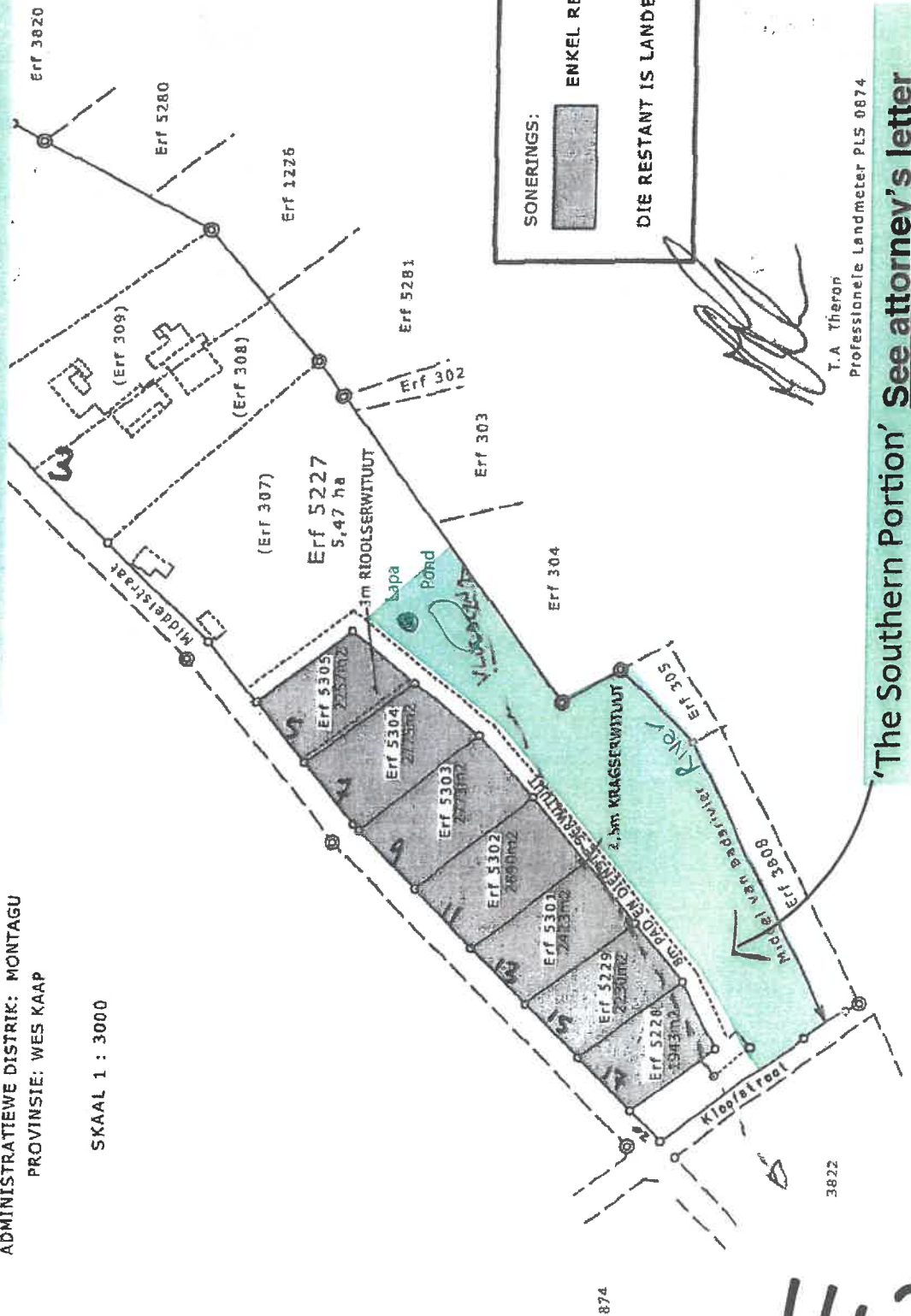
MONTAGU

BREEKIVIER/ WYNLAND MUNISIPALITEIT

ADMINISTRATIEWE DISTRIK: MONTAGU

PROVINSIE: WES KAAP

SKAAL 1 : 3000



'The Southern Portion' See attorney's letter

T.A. Theron
Professionele Landmeter PLS 0874

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Since 1984

PROKUREURS/ ATTORNEYS AKTEBESORGER /
CONVEYANCERS

OUR REF : JPDUB/af/HD0411

DATE : 13 DECEMBER 2022

MR ANDREW SIMMANS
MONTAGU

E-mail: asimmans@gmail.com

Dear Sirs

DE BOS COUNTRY ESTATE: USAGE AND CONDUCT RULES

1. We act on behalf of two of the owners of the subdivided properties being Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305, all being members of the De Bos Home Owners Association ("HOA"). The two owners are the owners of Erven 5304 and 5305 hereinafter referred to as De Wet/Coetzer.
2. The owners of the seven subdivided Erven mentioned above, are hereinafter referred to jointly as the subdivided owners.
3. We were provided with voluminous documents pertaining to the history of this matter, the most important of which referred to the following aspects of the De Bos Country Estate:
 - 3.1 Annexure "A" to the Constitution: Design Guidelines;
 - 3.2 Annexure "B" to the Constitution: Conduct Rules;
 - 3.3 The Constitution of the De Bos Country Estate Home Owners Association;

POSBUS 466 P O BOX
KERKSTRAAT 23 CHURCH STREET
23 MED-LAW HOUSE
MED-LAW
HOUSE
ROBERTSO ROBERTSON
N
6705 6705
TELEFOO +27 23 626- TELEPHONE
N 6523/4
NA URE +27 23 347- AFTER
4693 HOURS
FAXS +27 23 626- FAX
JOHANNES PETRUS DU
BOIS (B.A. LL.B.)
Assisted by:
ANDREA COETZEE
(LL.B.)

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- 3.4 Zoning Certificate for Erf 5227 (3 Middle Street, Montagu) issued on 11 November 2022;
 - 3.5 Email by Mr Jack van Zyl of the Langeberg Municipality dated 6 December 2022;
 - 3.6 Email by yourself (Andrew Simmans) dated 29 November 2022 addressed to the subdivided owners;
 - 3.7 Emails by Mr Kevin Knight (one of the subdivided owners) dated 12 August 2018 and 29 November 2022, respectively and addressed to the subdivided owners.
1. An Agenda of the HOA for a Special General Meeting to be held on 25 October 2022 at which meeting 4 Resolutions were tabled for consideration and voting upon.
 5. It is our understanding that Resolution 1 was not voted upon and the other Resolutions did not pass at the said meeting.
 6. However, our instructions are rather to concentrate in this letter not on the Resolutions that did not carry at the said meeting (and the reasons for that), but only on the question of the usage of the property as described by Mr Knight in his email of 29 November 2022 as *"below the beef wood trees on the south-western aspect of the De Bos property i.e. a straight line from our entrance road past the De Wets boundary towards Long Street."* (hereinafter "the southern portion")
 7. Our legal advice was requested with regard to the right of the owner of the Remainder of Erf 5227 (yourself) to use that portion of the property for, as you advised Mr Jack van Zyl and we quote from his email of 6 December 2022: *"Mr Simmans confirmed that he agrees with the above with the understanding that the lapa area at the southern end of the SDP provides ablutions and entertainment area for campers"*. This aspect is of grave concern to the subdivided owners with specific reference to De Wet/Coetzer and for obvious reasons as the lapa is located right next to their properties.
 8. The lapa is located on the southern portion just across the service and servitude road from Erf 5305 (De Wet property).

The Law pertaining to the Constitution and its annexures of the De Bos Country Estate:

9. To advise regarding the primary use rights of the members of the HOA, one must first and foremost have regard to the Constitution and its annexures, including Annexure "A" and specifically Annexure "B" (Conduct Rules).
10. The Zoning Certificate of the property as a whole (Remainder of Erf 5227) provides for zoning of the property as Resort Zone/Agricultural Zone II with certain primary use rights including tourist accommodation.
11. The primary use rights should be read in conjunction with the Conduct Rules which have, as stated above, been incorporated in the Constitution.
12. The Constitution itself only refers to building rules which concerns the development of the property pursuant to the rezoning of the property. See clause 25.
13. Our advice however does not concern the development of the property as such as that aspect takes place almost exclusively on the northern portion of the Remainder of Erf 5227. That development was already approved by the subdivided owners in 2018.

The object and purpose of the De Bos Country Estate:

14. The object of the HOA is to promote, advance and protect the interests of its members relative to their ownership of Erven in the De Bos Country Estate. See clause 3.1 of the Constitution.
15. However, the Conduct Rules provide detailed prescribed guidelines (clause 1 to 3 of Annexure "B") as to the usage of the southern portion of the property. The usage of this area is restricted to walking, riding horses, cycling, sitting on the benches and general enjoyment of the peaceful nature around the pond and along the river. Picnics or any other use of the area would require consent of the owner of the Remainder of Erf 5227. This usage is however restricted to the

subdivided owners and not to anyone else. This usage is further curtailed in clause 3 and we quote from that clause: *"General consideration for the other members in the estate should be practiced when using the area referred to in clause 2 above and no screaming or shouting will be allowed. Likewise, members should also allow for usage of this area within reason (children riding bikes, running or riding horses, talking and laughing) this creating a healthy family environment."*

16. From the above it is patently clear what the expressed common intention of the HOA and its members were (and still are) as envisaged when the De Bos Country Estate was established.
17. The Conduct Rules therefore confirm the object and common purpose and intention of clause 3.1 of the Constitution.
18. Furthermore, it curtails/restricts the zoning status of the property and its primary use rights for tourist accommodation in the following manner, notwithstanding the definition of tourist accommodation:
 - 18.1 Only members of the HOA will have the usage of the area between the residential Erven and the river and that usage is described in the above Conduct Rules (southern portion).
 - 18.2 By definition no members of the general public being campers or visitors to the Bos Country Estate, will have the right to use, for any purpose whatsoever, the said portion between the residential area and the river (southern portion).
 - 18.3 By definition further, no campers or members of the public renting a chalet or mobile home park, will have access for whatever purpose to that area.
19. From the above it is patently clear that the lapa located on the southern portion, will only be accessible to the members of the HOA and nobody else.
20. That this has been the common intention and agreement of the HOA can clearly be gleaned from an email by Kevin Knight dated 12 August 2018. In that email he referred to a phase 3 of the proposed improvements and repairs to certain buildings located mainly on the northern portion of the property and we quote

with regard to the lapa: "refurbished lapa – which is adjacent to the service road – for use of Simmans family and HOA members on request."

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Conclusion:

21. From the above the grave concerns harboured by our clients pertaining to the intended use of the lapa area to provide ablutions and entertainment for campers, are contrary to the Constitution in terms of the Conduct Rules.
22. The only way campers or other members of the public may have access to the southern portion of the property, is if and when the Conduct Rules have been amended or deleted to allow for that usage by any campers or members of the public. It is telling that the proposed special meeting of 25 October 2022 was scheduled for exactly that purpose, but the Resolution to delete clauses 1 to 3 of Annexure "B" did not carry.
23. We further understand that a fence which existed where the southern portion of the property begins, preventing campers to have access to the southern portion, has since been removed. That fence was indicated in the 2017 SDP, but for some reason or other not in the 2018 SDP consented to by the Langeberg Municipality. Be that as it may, and the fact that the said fence was removed from the SDP as well as physically, does not and cannot provide any indication that access to the southern portion has now been granted to the campers by the subdivided owners.
24. Our instructions therefore are to advise that our clients will not allow any usage in whatever form, be it entertainment, ablutions provided at the lapa or on any part of the southern portion to the campers or members of the general public.
25. As you will have noted, Mr Jack van Zyl addressed a letter to our clients on 6 December 2022. He has thus been copied into this letter and his response on behalf of the Langeberg Municipality, will be appreciated.
26. Kindly acknowledge receipt.

Yours Faithfully
DU BOIS ATTORNEYS
Per

JP DU BOIS
DIRECT E-MAIL : hannes@jpdubois.co.za

BRFHOOOF/DU BOIS/af/5

145(B)

CC: Mr Jack Van Zyl – JvZyl@langeberg.gov.za / Mrs Vanessa De Wet – vanessadewet@gmail.com / Mr Kevin Knight – kevin.knight03@outlook.com



PROKUREURS/ ATTORNEYS AKTEBESORERS /
CONVEYANCERS

OUR REF : JPDUB/af/HD0411

DATE : 11 JANUARY 2023

MR A SIMMANS
MONTAGU

E-mail: asimmans@gmail.com

Dear Sir

DE BOS COUNTRY ESTATE: USAGE AND CONDUCT RULES

1. We acknowledge receipt of your email of 2 January 2023, which came to our attention when our offices reopened on 10 January 2023.
2. We still act on behalf of two of the owners of the subdivided properties being Erven 5304 and 5305.
3. Upon instructions of our clients we first and foremost intend to address certain fallacies contained in your email.
4. As can be gleaned from your email you seem to be under the mistaken impression that the gist of our letter of 13 December 2022 is:
 - 4.1 to discriminate against the zoning of Erf 5227;
 - 4.2 an attempt to unilaterally prescribe to you the extent of the usage of your property being the Remainder of Erf 5227;
 - 4.3 contrary to the De Bos Country Estate Home Owners Constitution;

POSBUS 466 P O BOX
KERKSTRAAT 23 CHURCH STREET
23 MED-LAW HOUSE
MED-LAW HOUSE
ROBERTSON ROBERTSON
N
6705 6705
TELEFOON +27 23 626- TELEPHONE
N 6523/4
NA URE +27 23 347- AFTER
4693 HOURS
FAXES +27 23 626- FAX
JOHANNES PETRUS DU
BOIS (B.A. LL.B.)
Assisted by:
ANDREA COETZEE
(LL.B.)

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4.4 an infringement upon your legal rights of ownership.

5. It is patently clear from the above concerns raised by yourself in your email, that you perceive the Constitution (including Annexures "A" and "B" thereto), to confirm those concerns. This is not so.
6. The above concerns raised by you are based on a misconception of the provisions of the Governance Documentation of a Home Owners Association being its Constitution and Rules. We will now illustrate *infra* that your submissions in your email in this regard, is fundamentally flawed.

THE CONSTITUTION AND RULES:

7. The De Bos Country Estate Home Owners Association ("HOA") was incorporated as a common law association as opposed to a non-profit company, which is governed by the Company Act.
8. Thus, the Constitution and Rules of the HOA is the governance documentation to ensure that all members are legally liable to make contributions towards the HOA and to abide by the content of the Constitution and its Rules.
9. The Constitution and its Rules therefore constitute a contract that binds every member of the HOA.
10. It would appear from your email that you refer to our clients' interpretation of the Constitution and the Rules as an irrational supposition simply due to the fact that it "*stems from the fact that the conduct rules may be changed by a simple majority vote*".
11. Firstly, the conduct rules cannot be changed/amended by a simple majority vote. The voting percentage necessary to pass a resolution which would have the effect of adding to or amending or repealing any part of the Constitution (including the Conduct Rules which forms an integral part of the Constitution), shall require the support of all members (thus unanimously) entitled to vote before the resolution may be passed which shall be known as a special resolution, as opposed to an ordinary resolution. We refer you in this regard to clause 8.2 read with clause 17.7 of the Constitution. Thus, your reference to

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clauses 30 and 31 of the Constitution as supportive of your contention that it may be amended by a simple majority rule, is patently incorrect.

12. However, notwithstanding the voting percentage needed to amend or add to the existing conduct rules, those rules remain applicable and binding on all members as long as it is not so amended, repealed or added to pursuant to clause 17.7 of the Constitution.
13. We have referred in our letter of 13 December 2022 (in paragraphs 4, 5 and 6 thereof) to the fact that an attempt was made during October 2022 to repeal clauses 1 to 3 of the Conduct Rules for that very purpose, which resolutions did however not carry. Thus, the existing Conduct Rules remain in place and are still binding on the members.
14. Furthermore, the mere fact that the Conduct Rules may be changed, amended, repealed or added to by means of a voting process, does not support the notion, which you appear to harbour, that the usage of your property, being the Remainder of Erf 5227, cannot be restricted, curtailed or in any way prescribed to simply due to your rights of ownership to the property. To the contrary, the effect of the governance documentation of the HOA (Constitution and Rules), is exactly for that purpose, namely to restrict the usage of the individual properties of the members pursuant to what is stated and agreed to in those governance documents. The Conduct Rules were in all probability incorporated in the Constitution as an incentive for potential buyers of the of the residential erven. The existence of the Rules warranting the peaceful and undisturbed nature of the area between the erven and the river, in all probability will have motivated a higher initial selling price of the erven. It was probably incorporated into the Constitution by the developer for that very purpose.
15. Thus, the crux of this matter is to interpret the effect of clauses 1 to 3 of the Conduct Rules taking into consideration the wording thereof in conjunction with the express and/or implied intention of the members when the HOA was established.
16. The express intention of the establishment of the HOA is, inter alia, set out in clause 3 of the Constitution which is to promote, advance and protect the interests of its members. This intention must be read in conjunction with clauses 1 to 3 of the Conduct Rules.

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17. Although the area between the subdivided erven in the De Bos Country Estate and the river is not for common usage and remains part of the De Bos Guest Farm, it will keep its agricultural nature. See clause 1 of the Conduct Rules.
18. Clause 1 must however not be read in isolation and must be considered in conjunction with clauses 2 and 3 of the Conduct Rules.
19. Clause 2 indeed restricts the usage of the area between the residential erven and the river by the owners of the subdivided erven *"to walking, riding horses, cycling, sitting on the benches and general enjoyment of the peaceful nature around the pond and along the river. Picnics or any other use of the area would require consent from the owner of the Remainder of Erf 5227"*. Those usage rights, albeit limited, still constitute legal rights which may only be taken away by means of an unanimous resolution by the trustees. This further means that the real right of ownership by the owner of the Remainder of Erf 5227, is indeed restricted akin to a right of servitude of use, to the extent of those limited contractual rights of usage by the owners of the residential erven.
20. It follows that any action by yourself as the owner of the Remainder of Erf 5227, which may jeopardize, restrict, undermine, curb or detrimentally affect the said usage of the owners of the subdivided Erven in any way whatsoever, would be unlawful and contrary to the express intention and usages of those members, as set out in the Conduct Rules.
21. This entails that the owner may not and/or may not allow any member of the public, guests of the De Bos Guest Farm or the campers of the existing camping area, to disturb the general enjoyment of the peaceful nature around the pond and along the river and may not allow anyone to increase the noise level on that area to unreasonable parameters. That this is the express intention of the Conduct Rules can be gleaned from Conduct Rule 3. It goes without saying that this also entails that no development in the form of inter alia camping and entertainment in the lapa etc., be allowed on that area as this will inevitably have the effect of disturbing the peaceful nature of the area guaranteed to the members by the Conduct Rules.
22. Therefore, as stated above, unless the Conduct Rules have been amended or repealed by due and proper process prescribed in clause 17.7 of the Constitution, those rules must be adhered to by all members of the HOA, including the owner of the Remainder of Erf 5227, which is Agama Mountain Products CC of which Tracy Brenda Simmans is the sole member.

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23. We assume that you are formally representing your aforesaid wife in these proceedings.

CONCLUSION:

24. Apropos of the above, your contentions that our clients' submissions are based on irrational suppositions, is clearly without any merit and fatally flawed.
25. We reiterate that there exists no intention by our clients to "discriminate" against the zoning of Erf 5227 or to prescribe or curtail or limit the usage of the property of Agama Mountain Products CC, except to the extent limited or restricted by the Conduct Rules.
26. Our clients' intention is simply to hold the owner of the Remainder of Erf 5227 accountable to the express and/or implied provisions of the governance documents of the HOA as expressly and/or impliedly set out in the Constitution in conjunction with Annexure "B" thereto.
27. Thus, our clients have the contractual right to prevent the owner of the Remainder of Erf 5227 to use the said area between the residential erven and the river, for any purpose which may interfere, restrict, inhibit, curtail or infringe upon, in any manner whatsoever, the express usages afforded to the owners of the said Erven by virtue of the Conduct Rules.
28. Therefore, as long as the owner of the Remainder of Erf 5227 use and enjoy the said area by strictly adhering to and respecting the usage rights of the owners of the residential erven and not infringe upon those usage rights, it may of course do so.
29. Your perception, however, that you may use and enjoy the said area in an unrestricted manner as you may deem fit, solely by virtue of your alleged proprietary rights and without taking into consideration the contractual rights of the residential erven, is without legal foundation and thus fatally flawed as it runs contrary to the Constitution.
30. The current zoning of Erf 5227 being Resort Zone/Agricultural Zone II, includes as primary use rights, tourist accommodation and small holding. The definition of primary use rights does not derogate in any way from the usage rights, albeit limited, of the owners of the residential erven, derived from the Constitution and the Rules by the members of the HOA. After all, it is trite law that the relevant

zoning of Erf 5227 as tourist accommodation and small holding and the extent of the primary use rights derived thereunder, must equally be regarded in conjunction with the Constitution and the Conduct Rules. We assume that the Municipality *mero motu* after the date of commencement of the Integrated Zoning Scheme By-Law 2018 and in terms of Section 7 of the said By-Law translated or reclassified the previous zoning of Agriculture/Special Zone I to the most compatible zoning of Resort Zone/Agricultural Zone II.

31. Thus, our clients indeed have the legal authority to impose on the owner of the Remainder of Erf 5227 strict compliance with the Conduct Rules, failing which the owner of Remainder of Erf 5227 may be held accountable by means of legal process to refrain from doing anything on that area which may reasonably interfere with, or restrict the usages awarded to the said owners by virtue of the Constitution.
32. Any planning application which intends to interfere/restrict or infringe upon the Conduct Rules as stated above, will be unlawful and will be considered an unilateral amendment of the Constitution and its Rules contrary to clause 17.7 of the Constitution. Such actions shall consequently be of no force and effect pursuant to clause 10.5 of the Constitution. The southern portion of the Remainder of Erf 5227 must therefore be utilised strictly in accordance with what has been stated and agreed to in the Conduct Rules. No other business may be operated on the southern portion which would undermine the usage rights of our clients or for that matter any of the owners of the residential erven.
33. The Municipality is copied in this letter for the specific purpose that they must bear in mind that any planning application, pending or not, by the owner of Remainder of Erf 5227 which proposes to interfere or infringe upon in any way with the said usage rights of the owners of the residential erven, must be accompanied by a unanimous resolution by all the members of the HOA by which clauses 1 to 3 of Annexure "B" must either be deleted or substantially amended. A failure to attach such unanimous resolution, will render such a planning application of no force and effect and should not be entertained by the Municipality.
34. If you intend to launch a planning/rezoning application in terms of the Langeberg Municipality: Integrated Zoning Scheme By-Law 2018 (as we suspect you have already done or is in the process of submitting such a planning application) in respect of the area between the residential erven and the river for any purpose

that may reasonably be expected to infringe upon the usage rights of the owners of residential erven in the manner stated above, please advise immediately.

35. If there is currently a pending planning/rezoning application in terms of the Langeberg Municipality: Integrated Zoning Scheme By-Law 2018 before the local Municipality, a copy of such application is requested immediately in order for our clients to peruse the purpose and extent of such planning/rezoning application.
36. The Municipality is thus duly forewarned to keep this in mind when considering any such proposed or pending planning/rezoning application.
37. Our clients' rights remain strictly reserved.
38. Kindly acknowledge receipt.

Yours Faithfully
DU BOIS ATTORNEYS
Per

JP DU BOIS
 DIRECT E-MAIL : hannes@jpdubois.co.za

CC: Mr Jack Van Zyl – JvZyl@langeberg.gov.za / Mrs Vanessa De Wet – vanessadewet@gmail.com / Mr Kevin Knight – kevin.knight03@outlook.com

From: Kevin Knight <kevin.knight03@outlook.com>
 Sent: Wednesday, 15 August 2018 09:42
 To: Andrew Simmans <asimmans@gmail.com>; Mr Andy Simmans <atsimmans@gmail.com>
 Cc: Kevin Knight <kevin.knight03@outlook.com>; BA Wilmot <wilmotba@gmail.com>
 Subject: FW: Improvements and Repairs - De Bos Guest Farm

I33

Good morning Andy,

Further to the email I sent out on Sunday 12th August 2018 – copy attached – herewith formal approval by the De Bos HOA of the improvements and repairs as laid out in the email below and the attached documents.

Regards
 Kevin

Hi BA,
 Please keep a copy of this approval for De Bos HOA record purposes.
 Regards
 Kevin

From: Kevin Knight
 Sent: Sunday, 12 August 2018 10:34 AM
 To: Sandy Knight <sandra.knight@outlook.com>; Annelise Carstens <annelise.carstens@gmail.com>; Andre Coetzer <andre.coetzer@lancs.net>; Simon and Nicky Harper <harperx5@gmail.com>; Steve de Wet <stevendewet@coocolemail.com>; Iain & Mo Riddell <riddellmaureen09@gmail.com>; Emma Riddell <em.iane27@gmail.com>; HMS & BA Wilmot <wilmotba@gmail.com>; Pierre and Cory de Wet <pierreandcory@r62net.co.za>
 Cc: 'Kevin Knight' <kevin.knight03@outlook.com>; 'Andrew Simmans' <asimmans@gmail.com>; 'Mr Andy Simmans' <atsimmans@gmail.com>
 Subject: FW: Improvements and Repairs - De Bos Guest Farm

Good morning all,

met with Andy on Thursday 9th August to go over the plans of the improvements and repairs that he and Tracy are making to their property. I have summarised our meeting below:

- Please find attached a site plan as drawn up on the 22nd April 2017 and approved by the council on 7th June 2017
- The improvements, whilst approved as a site plan, will be implemented on a phased approach as time and money allows
- Structures with dark shaded areas on the plan are improvements or additions and those light shaded structures are existing buildings
- Phase 1: Completed
 - Refurbishment of the cottages along Middel Street – in the main cottages 3 & 4
- Phase 2: Currently in progress – South Eastern boundary
 - New swimming pool and camper ablutions – 1 male and 1 female – hope to be completed for December season
 - Camper kitchen
 - Re-lining the existing dam
 - Re-do fence on the South Eastern boundary
 - Low level shrubbery to be planted on the North Western boundary of the swimming pool ie the side of the pool that is visible from the service road
 - Plant orchard consisting of fruit and olive trees in the open area between the De Wets and the service road
- Phase 3: To commence when cash and time allow
 - Refurbish camper's kitchen in existing barn
 - 2 / 3 windows and doors to be created on South West wall of back packer's barn
 - Refurbish lapa – which is adjacent to the service road – for use of Simmans family and HOA members on request
 - Clean up area – in flood plain North East of existing dam – to allow for walks, bike rides etc
- Other Phases: As time and money allow

Whilst I am by no means an expert, it is my opinion that based on the drawings and explanations given to me, that the improvements and repairs that have been, are currently and will be carried out I Andy and Tracy, are within the HOA Building Guidelines. For any further questions or information, please contact Andy or myself.

Regards
 Kevin

1. Site plan.pdf
 2002K

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 C1

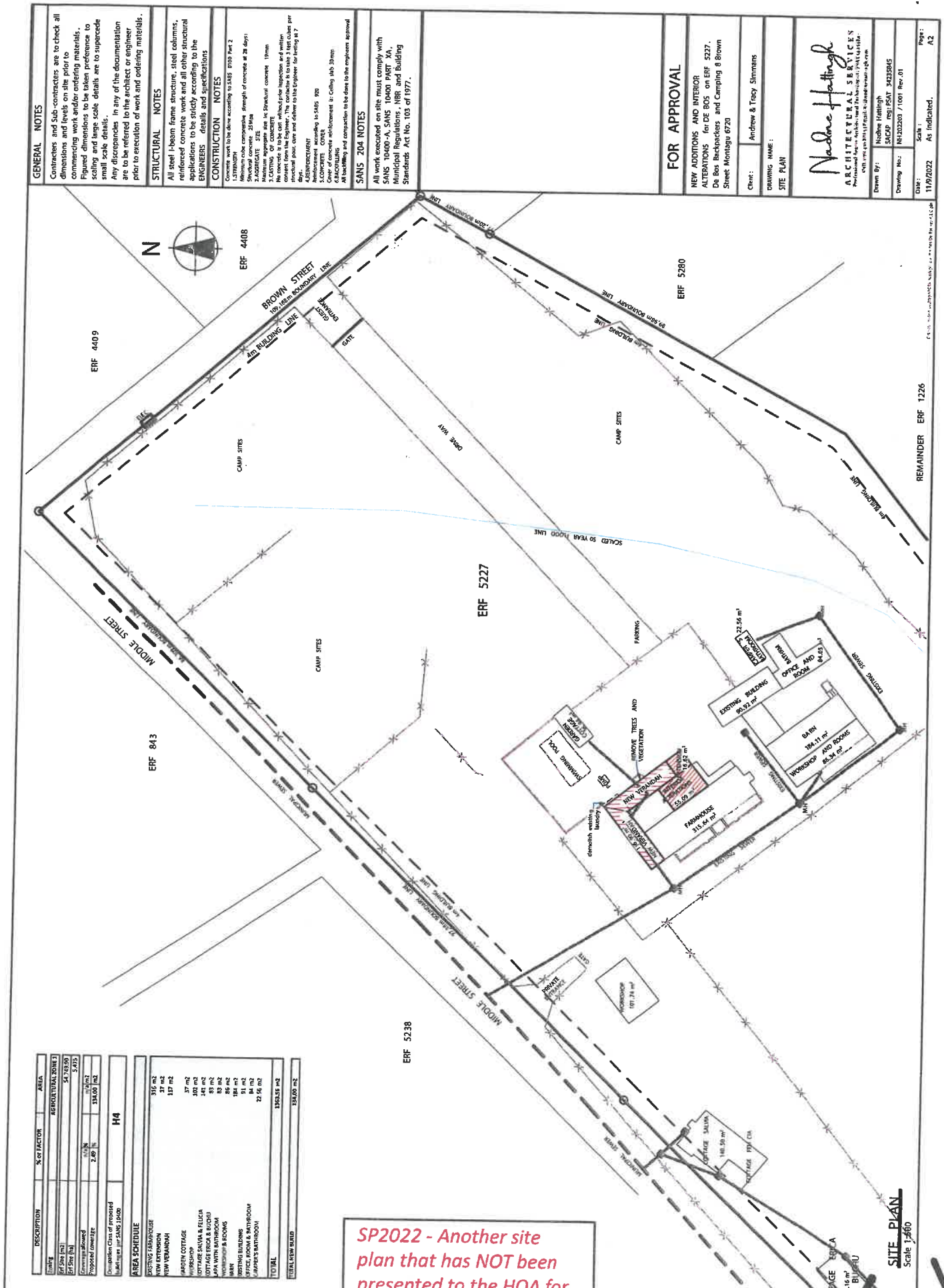
*Cropped image of Section Drawing
'SE.04/19.05.2017' with Municipal
approval no. 148/17 of 07-06-2017.*

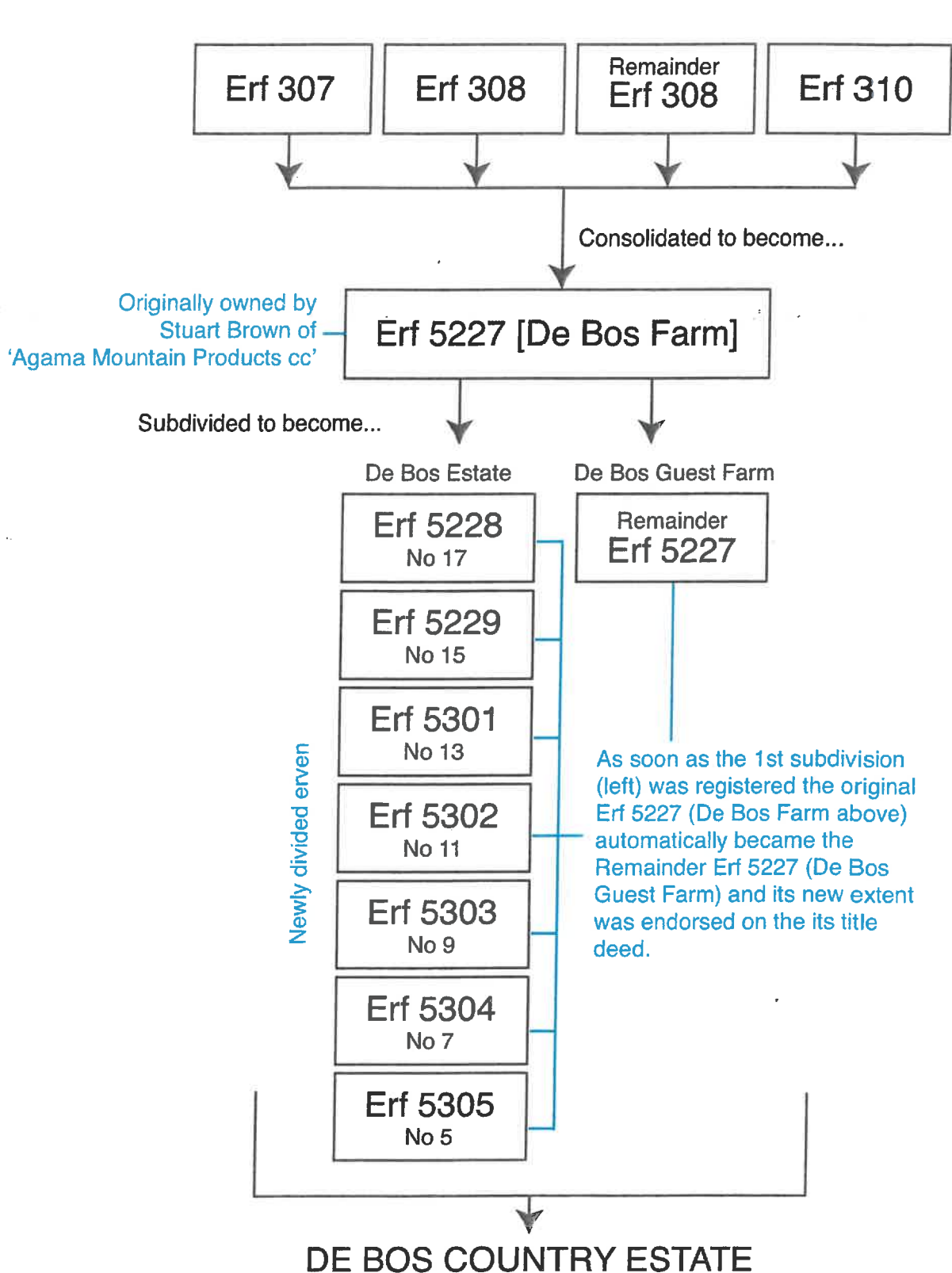


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145 (M)
(D) at





The Langeberg Municipality approved Agama's development of the original farm subject to certain conditions, the most relevant being the establishment of a Homeowner's Association. Together the De Bos Estate + the De Bos Guest Farm make the De Bos Country Estate of which there are 8 HOA members.

145(0)



Vanessa de Wet <vanessadewet@gmail.com>

De Bos Guest Farm - site plan permissions

Hannes du Bois <hannes@jpdubois.co.za>
To: Vanessa de Wet <vanessadewet@gmail.com>
Cc: David Olivier <hrdavidolivier@gmail.com>

15 February 2023 at 12:03

Dear Vanessa

I refer to your email below.

I will not reply to each and every response contained in your said letter as it appears that we are ad idem as to the way forward and you only need advice as to the so-called temporary/consent/departure/non-conforming use or "temporary permit".

To answer these questions I attach hereto the following documents:

1. Extracts from the Integrated Zoning Scheme By-Law 2018 of the Langeberg Municipality.

As you know the Zoning Certificate refers to Erf 5227 as zoned for: Resort Zone/Agricultural Zone II. From the extract you can see the definition of Resort Zone and Agricultural Zone II as well as the primary uses and consent uses of both.

2. I also attach an extract from Sections 15 and 18 to 19 of the Land Use Planning By-Law 2015 of Langeberg Municipality.

You will note from that extract that a full application must be made to the Municipality in terms of Section 15(2) of the Land Use Planning By-Law to utilise land on a temporary basis for a purpose not permitted in terms of the primary rights of the zoning applicable to the land for a period not exceeding 5 years. Also have regard to Section 18(5) of that extract.

In terms of Section 19 an applicant must also apply in terms of Section 15(2) for a consent use contemplated in the zoning scheme. In terms of Section 19(3) a consent use may be approved permanently or for a period specified in the conditions of approval.

As alluded to in the extracts attached, a departure or a consent use must therefore be applied for formally in terms of Section 15(2) of the Land Use Planning By-Law. In that regard you will have to be notified as interested parties in terms of Sections 45 to 47 of the Land Use Planning By-Law (it will be a useful exercise if you could have regard to the entire Land Use Planning By-Law of 2015 and peruse all the relevant Sections, if you have not done so already).

With regard to your question pertaining to the "temporary permit" which Mr Simmans refers to in his public notice, I am of the opinion that he rather refers to a temporary liquor license for such a huge function.

There exists no such thing as a temporary permit in terms of the Land Use Planning By-Laws and Acts.

145(P)

It also makes sense that he refers any interested party who may hire the whole area for a function that a temporary liquor permit must be obtained if they should sell liquor on any other place than from the registered liquor license of De Bos at the relevant point where liquor may be sold to the public.

139

Be that as it may, any planning departure whether permanent or temporary and any rezoning application or consent use application, must be formally launched in terms of Section 15 of the Land Use Planning By-Law and the relevant interested and affected parties must be notified of such an application in terms of the By-Law.

It would therefore be impossible for Mr Simmans to apply for any rezoning, temporary departure or consent use behind your back without you being notified of such a proposed application.

Please advise whether you have any further questions and/or queries.

Kind Regards

[Quoted text hidden]



EXTRACTS15022023_0001.pdf
568K

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Apply for

14

Agricultural Zone II (AZII)

The objective of this zone is to accommodate larger residential properties, which may be used for limited agriculture, but primarily serve as places of residence for people who seek a rural lifestyle.

Primary use

- Smallholding
- Agriculture

Consent uses

- Agricultural industry
- Animal care centre
- Aqua-culture
- Farm shop
- Farmer's market
- Freestanding base telecommunication station
- Guest house
- Intensive horticulture
- Plant nursery
- Renewable energy structure
- Riding school
- Rooftop base telecommunication station
- Second dwelling
- Tourist facilities
- Utility service

5 year
Jan
Jan

Single Residential Zone I (SRZI)

The objective of this zone is to provide for residential development where the predominant type of accommodation is a dwelling house for a single family, where each dwelling has its own land unit, and adequate outdoor space. Limited employment and additional accommodation opportunities are possible as primary or consent uses, provided that the dominant use of the property remains residential, and impacts of employment and additional accommodation uses do not adversely affect the quality and character of the surrounding residential environment.

Primary use

- Dwelling house

Consent uses

- Crèche
- Guest house
- Home care facility
- House shop
- Rooftop base telecommunication station
- Self-catering accommodation
- Second dwelling

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Community Zone III (CZIII)

The objective of this zone is to provide for a wide range of health facilities.

Primary use

- Institution

Consent uses

- Correctional facility
- Rooftop base telecommunication station
- Freestanding base telecommunication system

Resort Zone (RZ)

The objective of this zone is to promote tourist and holiday facilities in areas with special environmental or recreational attributes, and to encourage general public access to these facilities. At the same time, care should be exercised to minimise potential negative impacts of development on fragile environments. The guiding principle should be that a resort must not detract from the amenity that attracted the holiday facilities in the first place, nor should it cause a public nuisance for other people living and working in the vicinity. This zone should only be used in exceptional cases and is normally applicable to tourist developments outside established, built-up areas.

Primary use

- Tourist accommodation

Consent uses

- Freestanding base telecommunication station
- Function venue
- Hotel
- Off-road trail
- Rooftop base telecommunication station
- Tourist facilities

must apply for

OPEN SPACE ZONE I (OSZI)

The objective of this zone is to provide for active and passive recreational areas on public land, in order to promote recreation, and enhance the aesthetic appearance of an area.

Primary use

- Public open space

Consent uses

- Air and underground rights
- Cemetery
- Environmental facilities
- Farmer's market
- Informal trading
- Tourist facilities
- Urban agriculture
- Utility service

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- (2) An owner contemplated in subsection (1) must apply to the Municipality in the form determined by the Municipality and must—
 - (a) submit written proof of the lawful land use rights; and
 - (b) indicate the correct zoning that should be allocated.
- (3) The onus of proving that the zoning is incorrectly indicated on the zoning scheme map is on the owner.
- (4) The owner is exempted from paying application fees.
- (5) If the zoning of a land unit is incorrectly indicated on the zoning scheme map, the Municipality must amend the zoning scheme map to reflect the correct zoning.
- (6) If the correct zoning of a land unit cannot be ascertained from the information submitted to the Municipality or the records of the Municipality, the zoning must be determined in terms of the Planning By-law and the zoning as determined must be recorded on the zoning scheme map.

Zoning scheme register

9. The Municipality—
 - (a) must record all departures, consent uses or other permissions granted and non-conforming uses in the register;
 - (b) may keep the register from the date of commencement of the zoning scheme in an electronic format; and
 - (c) must make the register available to members of the public for viewing.

Primary uses

10. Primary uses of land permitted in each use zone, without the Municipality's consent, are listed in the corresponding part of column 2 of the table set out in Schedule 1.

Consent uses

11. Consent uses of land permitted in each use zone, with the Municipality's prior consent in terms of the Planning By-law, is listed in the corresponding part of column 3 of the table set out in Schedule 1.

Occasional uses

- 12.(1) The Municipality must record the relevant information relating to occasional uses applicable to a land unit in the register.
- (2) Approval of a use right as a temporary departure for an occasional use in terms of the Planning By-law must at least be subject to the development parameters applicable to the use right as stipulated in this By-law.

Non-conforming uses

- 13.(1) A non-conforming use does not constitute an offence in terms of this By-law.
- (2) A non-conforming use may continue as long as it remains otherwise lawful.
- (3) No additions or extensions to a non-conforming use is permitted.

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Departures

18. (1) An applicant may apply to the Municipality in terms of section 15(2)—
- (a) for a departure from the development parameters of a zoning or an overlay zone; or
 - (b) to utilise land on a temporary basis for a purpose not permitted in terms of the primary rights of the zoning applicable to the land for a period not exceeding five years.
- (2) A departure contemplated in subsection (1)(a) lapses after the applicable period from the date that the approval comes into operation if, within that period—
- (a) the departure is not utilised in accordance with the approval; or
 - (b) the following requirements have not been met:
 - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved departure; and
 - (ii) commencement of the construction of the building contemplated in subparagraph (i).
- (3) The Municipality may approve a departure contemplated in subsection (1)(b) for a period shorter than five years but, if a shorter period is approved, the period together with any extension approved in accordance with section 67 may not exceed five years;
- (4) A temporary departure contemplated in subsection (1)(b) may not be approved more than once in respect of a particular use on a specific land unit.
- (5) A temporary departure contemplated in subsection (1)(b) may include an improvement of land only if—
- (a) the improvement is temporary in nature; and
 - (b) the land can, without further construction or demolition, revert to its previous lawful use upon the expiry of the use right.

Consent uses

19. (1) An applicant may apply to the Municipality in terms of section 15(2) for a consent use contemplated in the zoning scheme.
- (2) If the development parameters for the consent use that is being applied for are not defined in the zoning scheme, the Municipality must determine the development parameters that apply to the

145 (4)



Since 1984

PROKUREURS/ ATTORNEYS AKTEBESORGERS / CONVEYANCERS

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SEL 082 8214 337 CEL
E-POS hannes@jpdubois.co.za E-MAIL
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OUR REF : JPDUB/af/HD0411

DATE : 11 JANUARY 2023

MR A SIMMANS
MONTAGU

E-mail: asimmans@gmail.com

Dear Sir

DE BOS COUNTRY ESTATE: USAGE AND CONDUCT RULES

1. We acknowledge receipt of your email of 2 January 2023, which came to our attention when our offices reopened on 10 January 2023.
2. We still act on behalf of two of the owners of the subdivided properties being Erven 5304 and 5305.
3. Upon instructions of our clients we first and foremost intend to address certain fallacies contained in your email.
4. As can be gleaned from your email you seem to be under the mistaken impression that the gist of our letter of 13 December 2022 is:

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- 4.1 to discriminate against the zoning of Erf 5227;
 - 4.2 an attempt to unilaterally prescribe to you the extent of the usage of your property being the Remainder of Erf 5227;
 - 4.3 contrary to the De Bos Country Estate Home Owners Constitution;
 - 4.4 an infringement upon your legal rights of ownership.
5. It is patently clear from the above concerns raised by yourself in your email, that you perceive the Constitution (including Annexures "A" and "B" thereto), to confirm those concerns. This is not so.
 6. The above concerns raised by you are based on a misconception of the provisions of the Governance Documentation of a Home Owners Association being its Constitution and Rules. We will now illustrate *infra* that your submissions in your email in this regard, is fundamentally flawed.

THE CONSTITUTION AND RULES:

7. The De Bos Country Estate Home Owners Association ("HOA") was incorporated as a common law association as opposed to a non-profit company, which is governed by the Company Act.
8. Thus, the Constitution and Rules of the HOA is the governance documentation to ensure that all members are legally liable to make contributions towards the HOA and to abide by the content of the Constitution and its Rules.
9. The Constitution and its Rules therefore constitute a contract that binds every member of the HOA.
10. It would appear from your email that you refer to our clients' interpretation of the Constitution and the Rules as an irrational supposition simply due to the fact that

it "stems from the fact that the conduct rules may be changed by a simple majority vote".

11. Firstly, the conduct rules cannot be changed/amended by a simple majority vote. The voting percentage necessary to pass a resolution which would have the effect of adding to or amending or repealing any part of the Constitution (including the Conduct Rules which forms an integral part of the Constitution), shall require the support of all members (thus unanimously) entitled to vote before the resolution may be passed which shall be known as a special resolution, as opposed to an ordinary resolution. We refer you in this regard to clause 8.2 read with clause 17.7 of the Constitution. Thus, your reference to clauses 30 and 31 of the Constitution as supportive of your contention that it may be amended by a simple majority rule, is patently incorrect.
12. However, notwithstanding the voting percentage needed to amend or add to the existing conduct rules, those rules remain applicable and binding on all members as long as it is not so amended, repealed or added to pursuant to clause 17.7 of the Constitution.
13. We have referred in our letter of 13 December 2022 (in paragraphs 4, 5 and 6 thereof) to the fact that it is telling that an attempt was made by you during October 2022 to table a resolution to repeal clauses 1 to 3 of the Conduct Rules for that very purpose, which resolutions did however not carry. Thus, the existing Conduct Rules remain in place and are still binding on the members. In your email of 2 January 2023 you state the following: *"Thus, contrary to what your clients pretend, clause 2 does not place any restrictions upon erf 5227"* and *"The Conduct Rules may not be used by your clients to restrict De Bos Guest Farm usage of the southern portion of Erf 5227 or any part of Erf 5227"* and again *"The Conduct Rules are merely what the title suggest, a guide to promote harmonious co-existence between residence and De Bos Guest Farm and should be read with that intention."* If this is your honest contention, the question then immediately arise why you even bothered to go through a cumbersome voting process in terms of the Constitution to repeal/delete those Conduct Rules, which according to you

Ty

does not, in any event, have any effect or place any restriction on the development of your property on any portion of the Remainder of Erf 5227?

14. Furthermore, the mere fact that the Conduct Rules may be changed, amended, repealed or added to by means of a voting process, does not support the notion, which you appear to harbour, that the usage of your property, being the Remainder of Erf 5227, cannot be restricted, curtailed or in any way prescribed to simply due to your rights of ownership to the property. To the contrary, the effect of the governance documentation of the HOA (Constitution and Rules), is exactly for that purpose, namely to restrict the usage of the individual properties of the members pursuant to what is stated and agreed to in those governance documents. The Conduct Rules were in all probability incorporated in the Constitution as an incentive for potential buyers of the residential erven. The existence of the Rules warranting the peaceful and undisturbed nature of the area between the erven and the river, in all probability will have motivated a higher initial selling price of the erven. It was probably incorporated into the Constitution by the developer for that very purpose.
15. Thus, the crux of this matter is to interpret the effect of clauses 1 to 3 of the Conduct Rules taking into consideration the wording thereof in conjunction with the express and/or implied intention of the members when the HOA was established.
16. The express intention of the establishment of the HOA is, inter alia, set out in clause 3 of the Constitution which is to promote, advance and protect the interests of its members. This intention must be read in conjunction with clauses 1 to 3 of the Conduct Rules.
17. Although the area between the subdivided erven in the De Bos Country Estate and the river is not for common usage and remains part of the De Bos Guest Farm, it will keep its agricultural nature. See clause 1 of the Conduct Rules.
18. Clause 1 must however not be read in isolation and must be considered in conjunction with clauses 2 and 3 of the Conduct Rules.

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19. Clause 2 indeed restricts the usage of the area between the residential erven and the river by the owners of the subdivided erven *"to walking, riding horses, cycling, sitting on the benches and general enjoyment of the peaceful nature around the pond and along the river. Picnics or any other use of the area would require consent from the owner of the Remainder of Erf 5227"*. Those usage rights, albeit limited, still constitute legal rights which may only be taken away by means of an unanimous resolution by the trustees. This further means that the real right of ownership by the owner of the Remainder of Erf 5227, is indeed restricted akin to a right of servitude of use, to the extent of those limited contractual rights of usage by the owners of the residential erven.
20. It follows that any action by yourself as the owner of the Remainder of Erf 5227, which may jeopardize, restrict, undermine, curb or detrimentally affect the said usage of the owners of the subdivided Erven in any way whatsoever, would be unlawful and contrary to the express intention and usages of those members, as set out in the Conduct Rules.
21. This entails that the owner may not and/or may not allow any member of the public, guests of the De Bos Guest Farm or the campers of the existing camping area, to disturb the general enjoyment of the peaceful nature around the pond and along the river and may not allow anyone to increase the noise level on that area to unreasonable parameters. That this is the express intention of the Conduct Rules can be gleaned from Conduct Rule 3. It goes without saying that this also entails that no development in the form of inter alia camping and entertainment in the lapa etc., be allowed on that area as this will inevitably have the effect of disturbing the peaceful nature of the area guaranteed to the members by the Conduct Rules.
22. Therefore, as stated above, unless the Conduct Rules have been amended or repealed by due and proper process prescribed in clause 17.7 of the Constitution, those rules must be adhered to by all members of the HOA, including the owner of the Remainder of Erf 5227, which is Agama Mountain Products CC of which Tracy Brenda Simmans is the sole member.

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23. We assume that you are formally representing your aforesaid wife in these proceedings.

CONCLUSION:

24. Apropos of the above, your contentions that our clients' submissions are based on irrational suppositions, is clearly without any merit and legal foundation.
25. We reiterate that there exists no intention by our clients to "discriminate" against the zoning of Erf 5227 or to prescribe or curtail or limit the usage of the property of Agama Mountain Products CC, except to the extent limited or restricted by the Conduct Rules.
26. Our clients' intention is simply to hold the owner of the Remainder of Erf 5227 accountable to the express and/or implied provisions of the governance documents of the HOA as expressly and/or impliedly set out in the Constitution in conjunction with Annexure "B" thereto.
27. Thus, our clients have the contractual right to prevent the owner of the Remainder of Erf 5227 to use the said area between the residential erven and the river, for any purpose which may interfere, restrict, inhibit, curtail or infringe upon, in any manner whatsoever, the express usages afforded to the owners of the said Erven by virtue of the Conduct Rules.
28. Therefore, as long as the owner of the Remainder of Erf 5227 use and enjoy the said area by strictly adhering to and respecting the usage rights of the owners of the residential erven and not infringe upon those usage rights, it may of course do so.
29. Your perception, however, that you may use and enjoy the said area in an unrestricted manner as you may deem fit, solely by virtue of your alleged proprietary rights and without taking into consideration the contractual rights of the residential erven, is without legal foundation and thus fatally flawed as it runs contrary to the Constitution.

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30. The current zoning of Erf 5227 being Resort Zone/Agricultural Zone II, includes as primary use rights, tourist accommodation and small holding. The definition of primary use rights does not derogate in any way from the usage rights, albeit limited, of the owners of the residential erven, derived from the Constitution and the Rules by the members of the HOA. After all, it is trite law that the relevant zoning of Erf 5227 as tourist accommodation and small holding and the extent of the primary use rights derived thereunder, must equally be regarded and considered in conjunction with the Constitution and the Conduct Rules. We assume that the Municipality *mero motu* after the date of commencement of the Integrated Zoning Scheme By-Law 2018 and in terms of Section 7 of that By-Law translated or reclassified the previous zoning of Agriculture/Special Zone I (the latter zone which does not exist anymore) to the most compatible zoning of Resort Zone/Agricultural Zone II.
31. Thus, our clients indeed have the legal authority to impose on the owner of the Remainder of Erf 5227 strict compliance with the Conduct Rules, failing which the owner of Remainder of Erf 5227 may be held accountable by means of legal process to refrain from doing anything on that area which may reasonably interfere with, or restrict the usages awarded to the said owners by virtue of the Constitution.
32. Any planning application which intends to interfere/restrict or infringe upon the Conduct Rules as stated above, will be unlawful and will be considered an unilateral amendment of the Constitution and its Rules contrary to clause 17.7 of the Constitution. Such actions shall consequently be of no force and effect pursuant to clause 10.5 of the Constitution. The southern portion of the Remainder of Erf 5227 must therefore be utilised strictly in accordance with what has been stated and agreed to in the Conduct Rules. No other business may be operated on the southern portion which would undermine the usage rights of our clients or for that matter any of the owners of the residential erven.
33. The Municipality is copied in this letter for the specific purpose that they must bear in mind that any planning application, pending or not, by the owner of Remainder of Erf 5227 which proposes to interfere or infringe upon in any way with the said

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usage rights of the owners of the residential erven, must be accompanied by a unanimous resolution by all the members of the HOA by which clauses 1 to 3 of Annexure "B" must either be deleted or substantially amended. A failure to attach such unanimous resolution, will render such a planning application of no force and effect and should not be entertained by the Municipality.

34. If you intend to launch a planning/rezoning application in terms of the Langeberg Municipality: Integrated Zoning Scheme By-Law 2018 (as we suspect you have already done or is in the process of submitting such a planning application) in respect of the area between the residential erven and the river for any purpose that may reasonably be expected to infringe upon the usage rights of the owners of residential erven in the manner stated above, please advise immediately.
35. If there is currently a pending planning/rezoning application in terms of the Langeberg Municipality: Integrated Zoning Scheme By-Law 2018 before the local Municipality, a copy of such application is requested immediately in order for our clients to peruse the purpose and extent of such planning/rezoning application.
36. The Municipality is thus duly forewarned to keep this in mind when considering any such proposed or pending planning/rezoning application.
37. Kindly be advised to consult an attorney in this matter.
38. Our clients' rights remain strictly reserved.
39. Kindly acknowledge receipt.

Yours Faithfully
DU BOIS ATTORNEYS
Per


JP DU BOIS
DIRECT E-MAIL : hannes@dpdubois.co.za

CC: Mr Jack Van Zyl – JvZyl@langeberg.gov.za / Mrs Vanessa De Wet – vanessadewet@gmail.com / Mr Kevin Knight – kevin.knight03@outlook.com

145 (AC)

SKETSPLAN

ERWE 5228, 5229, 5301-5305 (Gedeeltes van ERF 5227)

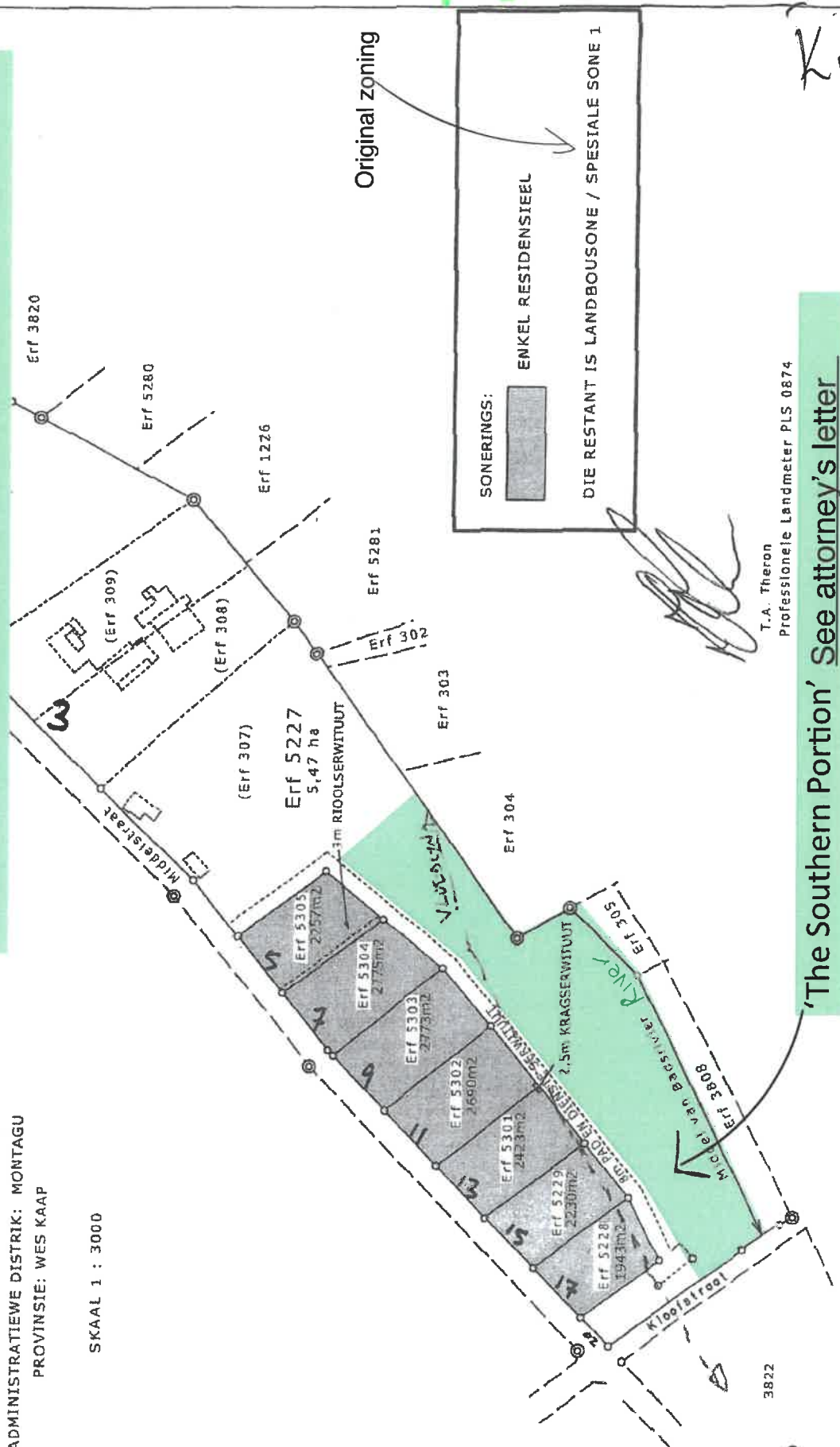
MONTAGU

BREERIVIER/ WYNLAND MUNISIPALITEIT
ADMINISTRATIEWE DISTRIK: MONTAGU
PROVINSIE: WES KAAP

SKAAL 1 : 3000

AREA referred to in ANNEXURE B of the Constitution

The area between Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 in the De Bos Country Estate and the river, situated on the Remainder of Erf 5227 Montagu, is not for common usage and remains part of De Bos Guest Farm and it will also keep its agricultural nature. The aforesaid owners of Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 will have no grazing rights for their horses or for any other animals on the Remainder of Erf 5227 Montagu.



T.A. Theron
Professionele Landmeter PLS 0874

'The Southern Portion' See attorney's letter



Vanessa de Wet <vanessadewet@gmail.com>

History of the subdivision of DBCE to print

1 message

Vanessa de Wet <vanessadewet@gmail.com>
To: Vanessa de Wet <vanessadewet@gmail.com>

5 April 2023 at 19:38

----- Forwarded message -----

From: **Anna-Christa Redelinghuys** <annachris@mweb.co.za>
Date: Thu, 23 Mar 2023 at 12:24
Subject: RE: History of the subdivision of the De Bos Country Estate
To: Vanessa de Wet <vanessadewet@gmail.com>, Arnold Theron Landmeters <diagram@mweb.co.za>
Cc: Steven de Wet <stevendewet@gmail.com>

Hi

See below in red.

Hope it helps.

Kind regards

Anna-Christa Redelinghuys

UMSIZA Planning

PrPlan A/1076/1998

Box 649 ROBERTSON, 6705

No 2 Rosegate, ROBERTSON

Tel: (023) 626 1506

Cell: 082 825 9891

From: Vanessa de Wet [mailto:vanessadewet@gmail.com]
Sent: Monday, 20 March 2023 12:14
To: annachris@mweb.co.za; Arnold Theron Landmeters
Cc: Steven de Wet
Subject: History of the subdivision of the De Bos Country Estate

Dear Anna and Arnold,

Please find our conveyancer Michele Theron's recommendation in the email below; she gave me your contact information. I am writing to you as someone acquainted with the subdivision of the original De Bos Farm and the subsequent formation of the De Bos Country Estate. I would respectfully like to ask you for some details regarding the

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L2

zoning of the De Bos Country Estate at that time. Arnold, when we purchased our Erf 5305 (in 2013), you also completed our survey; thank you. Recently, we met twice in person briefly with Jack Van Zyl, who has certainly been helpful, but he informed us that he was not involved in the original subdivision process at the time and thus could not enlighten us on some of the details I am attempting to clarify.

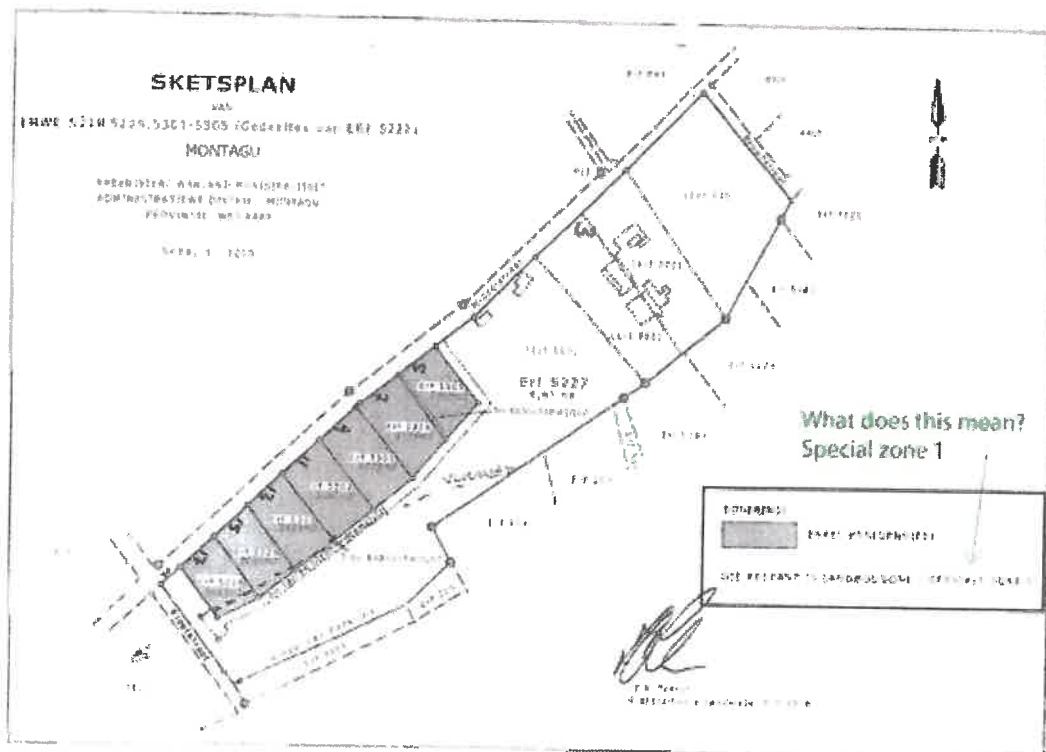
We recently discovered some 'irregularities' in the zoning and planning/land use applications for parts of our DB Country Estate. A couple of months ago (Dec. '22), we were issued a new zoning certificate without any prior notice (by the de Bos Guest Farm, an HOA member of the DBCE). Nobody, not even the municipality, gave any notice of this change to zoning status. We sought legal advice on this matter from our attorney (H Du Bois of Robertson), who advised that 'We assume that the Municipality *mero motu* after the date of commencement of the Integrated Zoning Scheme By-Law 2018 and in terms of Section 7 of the said By-Law translated or reclassified the previous zoning of Agriculture/Special Zone I to the most compatible zoning of Resort Zone/Agricultural Zone II.' **Yes, that is correct.**

To be clear, we are not challenging the municipality's rezoning. However, as property owners, we must understand what has taken place, how the property rights within the estate have changed, and what the previous primary and consent use rights were. **No change of rights, just another zoning to meet the definitions of the latest bylaws.**

It would thus be greatly appreciated if you, as someone who was present at the time the Constitution was drafted, could perhaps shed some light on the following:

THE HOA CONSTITUTION DOCUMENT

On page 25 of the Constitution, seven erven are zoned Single Residential (as they were smaller than 0,865 ha), and Remainder Erf 5227 (Guest Farm) is/was zoned 'LANDBOUESONE/SPEIALE SONE 1', according to the HOA's Constitution. **As I can recall, the previous scheme made only provision for Agric Zone. New bylaw provides for smallholdings within urban edge. The Mun would have given "special zoning" for uses that were not included in the old scheme. New bylaw makes provision for "resort".**



1. What were the primary and consent uses of 'Special Zone 1'? I can't seem to find this information anywhere. **See above – use that was not included in Scheme, but is similar to "Resort" zone in latest scheme.**

2. Do you know whether or not this zone option is still available? **No**

3. Is page 25 of the Constitution which documents the 'Sketsplan' and zoning of each erf considered part of the Constitution?

For example, a new property owner would receive this HOA document as part of their purchase and from page 25 be informed of the zoning status of each erf within the estate...which follows that any **changes to the zoning of** any erf within the Estate would necessitate an update to the Constitution? We need to address this because now the information in the Constitution document appears to be incorrect - despite

145 (AF)

23

Erf 308 en 309 (1,1680 ha gesamentlik)

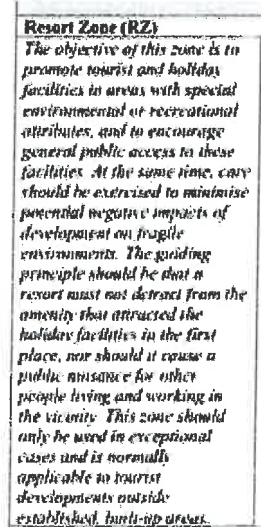
- hoofwoning en stoor
- oord met tuinwoonstel, woonstelle, slaapsaal, kampeerterein en –kombuis, swembad, perdestalle en perde-arena.

Erf 310 (1,0238 ha)

- 90 amandel- en pekannneutbome

4. Was the choice of a Resort zone in a historical conservation area within a residential estate really the ONLY option available? existing uses that meet the definition of resort the best.

The primary use of 'Tourist accommodation' is appropriate on the surface, but difficult for the said property to truly comply with the Resort description. Security concerns, noise disturbances, and so on, and it is not located outside of town (in an area like the Avalon Spring resort), the DBCE is located in an established, historical, and built-up/residential area of Montagu. No expansions allowed without approval – see above



If you could answer even a few of the above questions, that would be greatly appreciated. I'm also waiting for Lucrecia at the council to give me the contact information for Heritage Western Cape; they might be able to shed some light on this as well.

Many thanks for your time and we look forward to hearing from you.

Kindest regards,

Mr & Mrs de Wet

Erf 5305 of De Bos Country Estate

145 (AG)

L4
JSS

the fact that NONE of the 7 residential erven were made aware that such a change would occur. Moreover, in order to update the document, a vote must be held, and we as members must understand what we are voting on. (We know the new primary use rights of Agricultural 2/Resort - we don't know what they were before which was Special zone 1). **No changes in land use rights, old zoning were just adjusted to meet the latest bylaws. Therefore no change in zonings.**

ZONING CERTIFICATE

Furthermore, during a meeting with the HOA Chairman and Mr. J van Zyl, it was revealed that the SDP used by the Municipality to approve the new Resort zoning was both EXPIRED and UNAPPROVED by the HOA at the time (all building plans require HOA approval before being lodged as stated in Clause 25.2 of the Constitution). **Do not understand?**

Second, another inconsistency is that the zoning certificate is issued to Erf 5227, which technically does not exist any more. There is no such erf today; only 'Remainder Erf 5227' exists. Before any subdivision, Erf 5227 was the original plot, which included all seven residential erven. **I think that is just a small mistake, if so....the Surveyor also refers to it as Erf 5227 on Plan below, although it is registered as the Remainder.**



1. Is this acceptable?

Both points above strike me as rather extraordinary. None of the foregoing is the result of HOA error, as the HOA was unaware that such an event was taking place.

2. What was the original intent with regard to land use areas (zoning) in the formation of the DBCE? It was just a subdivision application. Small plots are Res I (smaller than 0,856 ha) and Remainder a Small Holding with Resort rights.

3. And where exactly were the usage areas set out for the campers? The detail was not included in the SDP, as it were existing uses with no need for approval. It was only a subdivision application.

The issue we face is that the entire erf (Remainder 5227) is zoned BOTH Agricultural-II and Resort, with no areas specifically designated for either... I'm intrigued because I understood the camping area to be originally limited to the area north of the main farmhouse, with the few self-catering cottages and agricultural area to the south... but this is no longer the case, with tourist accommodations and facilities rapidly encroaching very close to the seven residential units. **Only Remainder/5227 is Agric II (small holding) and resort – see plan below.**

The smaller erven have other erf numbers with Single Res zoning – and other zoning certificates.

The area to the south of the small erven are agriculture and cannot be developed due to the floodline.

If the resort buildings are expanded, then an application for expansion of the resort will be required.

Existing uses at the time of the approval:

Erf 307 (4,9591 ha)

- 2 kothuise/gastehuise
- lapa
- 200 pekanneutbome

145 (AH)

145

----- Forwarded message -----

From: **Michele Theron** <michele@mtheron.co.za>
Date: Thu, 12 Jan 2023 at 09:09
Subject: RE: Zoning within De Bos Estate
To: Vanessa de Wet <vanessadewet@gmail.com>
Cc: Steven de Wet <stevendewet@gmail.com>

Dear Vanessa

Also best wishes for you and your family for 2023.

Zoning of properties is a town planning matter and is not dealt with by the Deeds Office. According to land surveyor, Arnold Theron, who attended the approval of the subdivision diagrams, town planner Anna-Christa Redelinghuys of Robertson attended to the zoning applications and approval of the subdivisions at the municipality's town planning dept.

Best to contact her regarding your questions below: annachris@mweb.co.za

Best regards

Michele Theron

145 (AI)

RESORT ZONES

Resort Zone (RZ)

The objective of this zone is to promote tourist and holiday facilities in areas with special environmental or recreational attributes, and to encourage general public access to these facilities. At the same time, care should be exercised to minimise potential negative impacts of development on fragile environments. The guiding principle should be that a resort must not detract from the amenity that attracted the holiday facilities in the first place, nor should it cause a public nuisance for other people living and working in the vicinity. This zone should only be used in exceptional cases and is normally applicable to tourist developments outside established, built-up areas.

Primary use

- Tourist accommodation

Consent uses

- Freestanding base telecommunication station
- Function venue
- Hotel
- Off-road trail
- Rooftop base telecommunication station
- Tourist facilities

1	2	3
Zoning	Primary use	Consent use
Agricultural Zone II (AZII) <i>The objective of this zone is to accommodate larger residential properties, which may be used for limited agriculture, but primarily serve as places of residence for people who seek a rural lifestyle.</i>	Primary use <ul style="list-style-type: none"> • Smallholding • Agriculture 	Consent uses <ul style="list-style-type: none"> • Agricultural industry • Animal care centre • Aqua-culture • Farm shop • Farmer's market • Freestanding base telecommunication station • Guest house • Intensive horticulture • Plant nursery • Renewable energy structure • Riding school • Rooftop base telecommunication station • Second dwelling • Tourist facilities • Utility service

145 (AI)



Vanessa de Wet <vanessadewet@gmail.com>

Fwd: Improvements and Repairs - De Bos Guest Farm

2 messages

Steven de Wet <slevendewet@googlemail.com>
To: vanessadewet@gmail.com

13 August 2018 at 11

Sent from my iPhone

Begin forwarded message:

From: andre.coetzer@lanlic.net
Date: 13 August 2018 at 15:47:00 GMT+2
To: Kevin Knight <kevin.knight03@outlook.com>
Cc: Sandy Knight <sandra.knight@outlook.com>; Annalise Carstens <annalise.carstens@gmail.com>; Simon and Nicky Harper <siapen5@gmail.com>; Steve de Wet <slevendewet@googlemail.com>; Iain & Mo Riddell <riddellmaureen09@gmail.com>; Erma Riddell <erm.ridde27@gmail.com>; Pierre and Corry de Wet <pieraandcorry@f2net.co.za>; Andrew Simmans <asimmans@gmail.com>; Mr Andy Simmans <asimmans@gmail.com>
Subject: Re: FW: Improvements and Repairs - De Bos Guest Farm

Hi all

Looks 100% perfect to me. Just one concern however. The intended abutment, where the sheep kraal is currently situated, will join the main sewer right in the service road. In front of the de Wets house. If the road has to be dug up for the connection it has to be done in such a way that we still have access and with the least inconvenience for the residents

regards

Andre

On 2018-08-12 10:34, Kevin Knight wrote:

Good morning all,

I met with Andy on Thursday 9th August to go over the plans of the improvements and repairs that he and Tracy are making to their property. I have summarised our meeting below:

- Please find attached a site plan as drawn up on the 22nd April 2017 and approved by the council on 7th June 2017
- The improvements, whilst approved as a single plan, will be implemented on a phased approach as time and money allows
- Structures with dark shaded areas on the plan are improvements or additions and those light shaded structures are existing buildings
- Phase 1: Completed
 - Refurbishment of the cottages along Middel Street – in the main cottages 3 & 4
- Phase 2: Currently in progress – South Eastern boundary
 - New swimming pool and camper ablutions – 1 male and 1 female – hope to be completed for December season
 - Camper kitchen
 - Re-lining the existing dam
 - Re-do fence on the South Eastern boundary
- Low level shrubbery to be planted on the North Western boundary of the swimming pool is the side of the pool that is visible from the service road
- Plant orchard consisting of fruit and olive trees in the open area between the De Wets and the service road
- Phase 3: To commence when cash and time allow
 - Refurbish camper's kitchen in existing barn
 - 2/3 windows and doors to be created on South West wall of back packer's barn
 - Refurbish tapa – which is adjacent to the service road – for use of Simmans family and HOA members on request
 - Clean up area – in flood plain North East of existing dam – to allow for walks, bike rides etc
- Other Phases: As time and money allow

Whilst I am by no means an expert, it is my opinion that based on the drawings and explanations given to me, that the improvements and repairs that have been, are currently and will be carried out by Andy and Tracy, are within the HOA Building Guidelines. For any further questions or information, please contact Andy or myself.

Regards
Kevin

145(AJ)

M

M

Janelle Vermeulen <jvermeulen@langeberg.gov.za>
to Jack, me ▾



Mon, Aug 28, 3:54 PM (3 days ago)



Good day, Mr. De Wet

Please find Plan No. 3 that is referred to in the approval letter of 2005 however Mr. Van Zyl confirms that the plan was superseded by the approval of 2010.

Vriendelike groete/Kind Regards

...

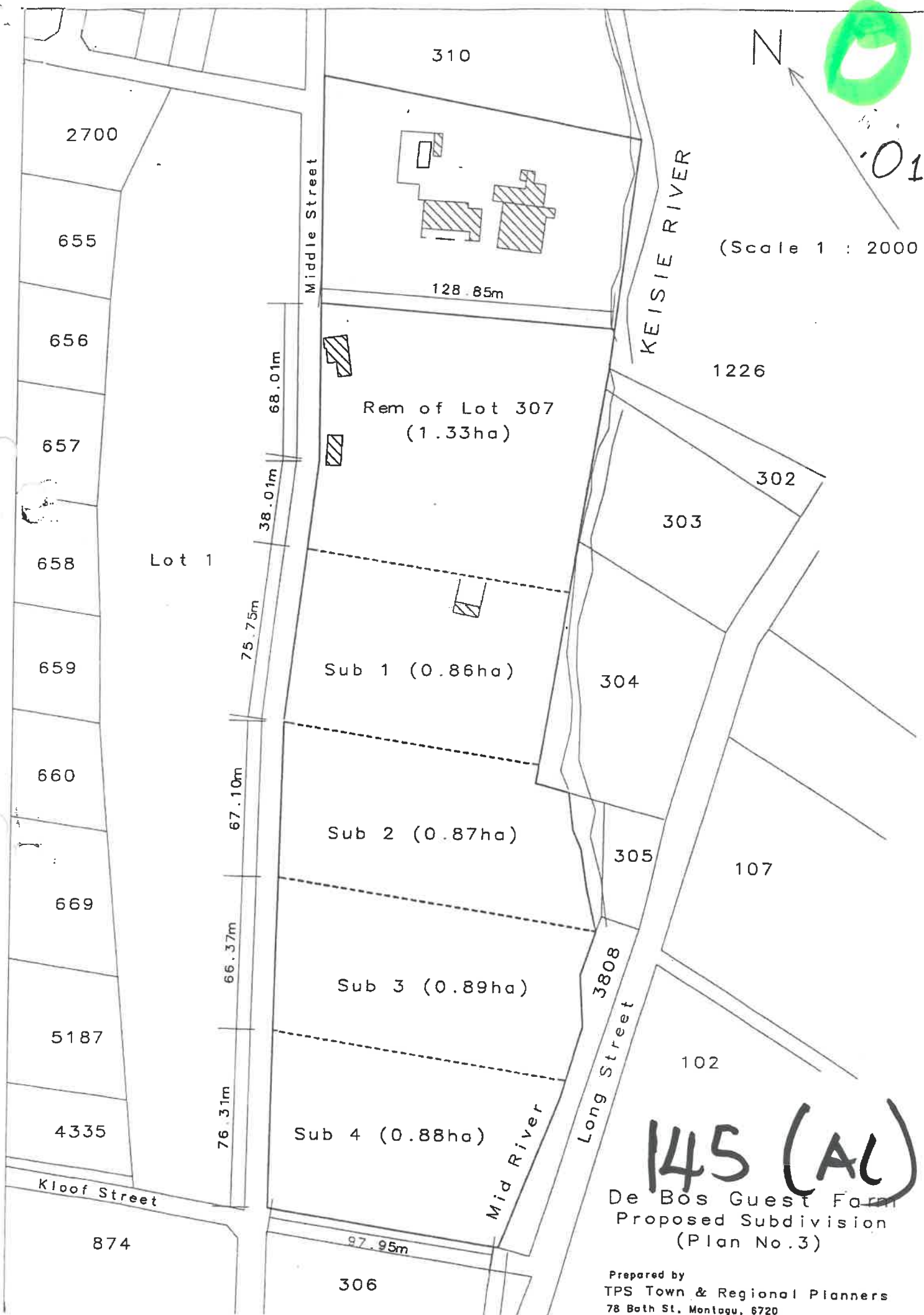
One attachment • Scanned by Gmail ⓘ



145(AK)

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N₁



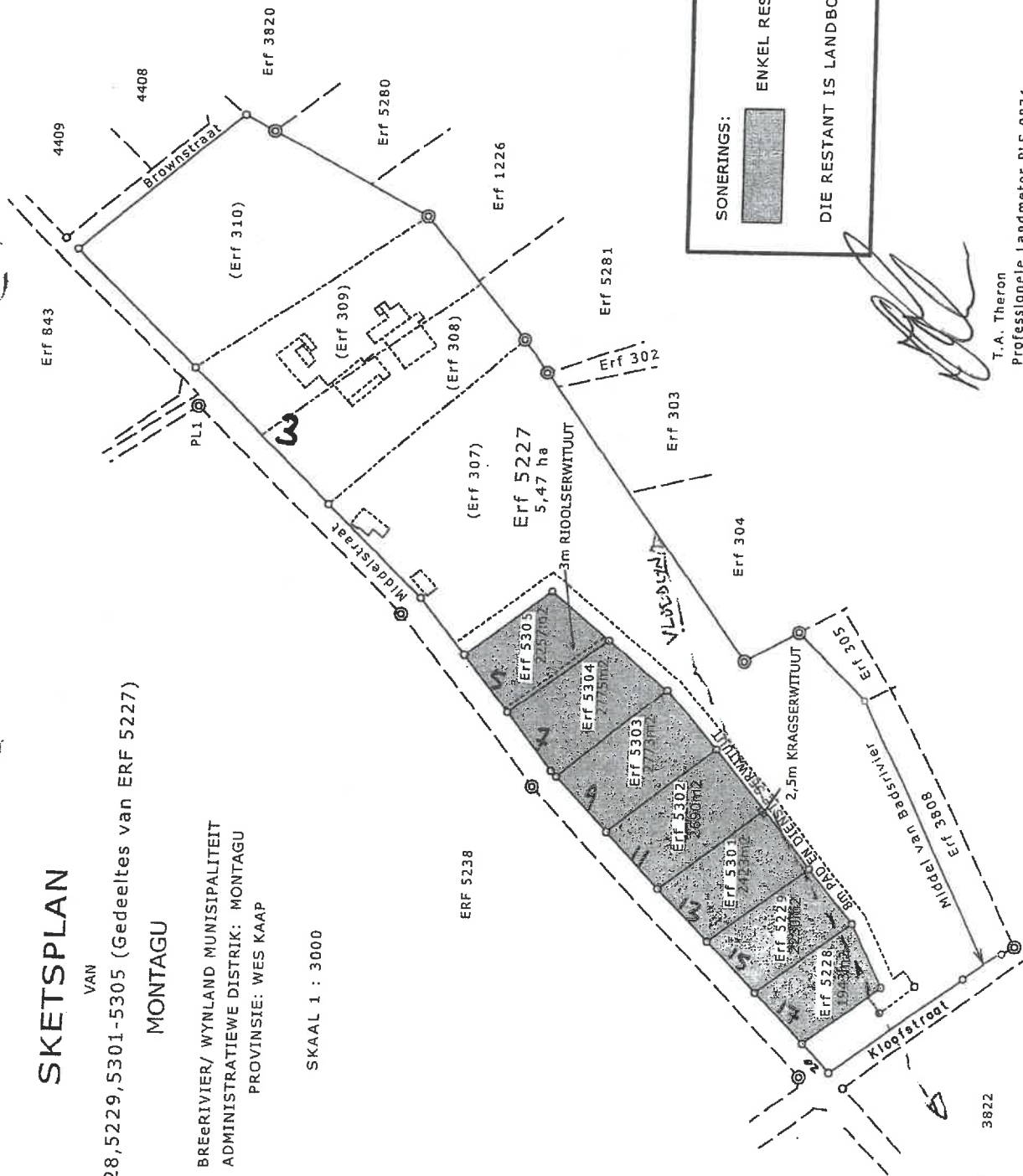
SKETSPLAN

ERWE 5228, 5229, 5301-5305 (Gedeeltes van ERF 5227)

VAN

BREERIVIER/ WYNLAND MUNISIPALITEIT
ADMINISTRATIEWE DISTRIK: MONTAGU
PROVINSIE: WES KAAP

SKAAL 1 : 3000



T.A. Theron
Professionele Landmeter PLS 0874

145 (AM)

Beswaar 3

Kevin and Sandy Knight
Erf 5229, De Bos Country Estate,
No 15 Middel St, Montagu, 6720



FAO: Langeberg Municipality,
The Manager, Town Planning,
3 Retief St, Montagu, 6720

DATE: 11 September 2023

REF: 15/4/1/1&5 (RE 5227 PLANNING APPLICATION) Dated 16 August 2023

Dear Sir,

**OBJECTION TO APPLICATION BY ERF 5227 FOR PROPOSED CONSENT USE(S)
AND AMENDMENT OF CONDITION**

1. We acknowledge receipt of your letter dated 16 August 2023 regarding the planning proposal of Remainder Erf 5227, 8 Brown Street, Montagu.
2. We have examined the application and plans presented by Planserv on behalf of Agama Mountain Products CC, owner of RE 5227. We are fully au fait with the site as we are the owners of Erf 5229 and a member of the De Bos Country Estate (DBCE), of which the applicant's client is also a member.

OBJECTIONS

3. We hereby to object to the following:
 - 3.1 any amendment of the condition referred to in the application: viz.
Condition(a) of the Council Decision taken in 1995 (Item 276/95). The condition is binding and 'all development is limited to the scope and use as indicated in that application.' Furthermore, only the SDP 2017 (with its own restrictions and conditions) that is approved and recognised by the HOA.
 - 3.2 the proposed consent use for a 'Function venue'
 - 3.3 the proposed consent use for 'Tourist facilities'

Currently RE 5227 has only Primary use rights 'Tourist accommodation' and 'Smallholding'. There are NO Consent, Departures or Non-Conforming uses approved for RE 5227, nor any recognised historical land use rights. Any change would require approval by De Bos Country Estate HOA.

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S & K Knight (ERF 5229)

With the inflow of guests, and the infrastructures that will be needed to accommodate them, the proposal seeks to not only increase the frequency and number of commercial activities, but also to change the very definition of the country lifestyle of the estate that we bought into. Proposed infrastructure includes parking bays for an additional 118 vehicles, an entertainment boma, a kitchen, scullery, and ablutions, as well as eighteen new camp sites that would be situated directly adjacent to our residential property. To add to this the owner wants to disperse braais, bins and temporary toilets throughout the estate to service the crowds; this is not what was envisioned in the establishment or purchase into the DBCE. The proposal does not consider the noise, traffic, disturbance, and security issues to which us, and the other HOA members within the same estate will be subjected to. We therefore strongly object to the proposal and assert that the planning application has not been objectively compiled with due regard for other HOA members.

REASONS FOR OBJECTIONS

1. The Constitution and its Rules are binding to ALL PARTIES TO THE CONSTITUTION

The owner of Remainder Erf 5227 is a member of The De Bos Country Estate (DBCE) and is contractually bound to uphold the Constitution and Rules of the DBCE.

The De Bos Country Estate is NOT a mass tourist attraction, nor is RE 5227 a separate rural property that can act independently without obligation. The DBCE is a country lifestyle estate of which the owner of RE 5227 is a legal part. The protection of the development's agricultural / rural character has been an enduring condition for approval by the Municipality on the consolidation / subdivisions of the original erven and is currently upheld/underwritten in the DBCE HOA's Constitution (Governance Documentation).

Creating a homeowner's association was an important condition imposed by the Municipality in 2008 when they approved the consolidation and subdivision of the original De Bos farm. The De Bos Country Estate (DBCE) consists of eight members: The owner of the Remainder Erf 5227 and the owners of the 7 Single Residential plots 5228–29, 5301- are all legally required to be members of the De Bos Home Owners Association (HOA). See Clause 4.1 on Membership of the Constitution. EFR 5227 is also presently referred to in the Constitution as 'The De Bos Guest Farm'.

Protecting the agricultural character of DBCE

From the outset, the Municipality stipulated conditions to protect the agricultural character of the development. In the approval letter of 2008, Stuart Brown, the applicant/developer at the time, was required to create a constitution that made provision for the operation of the estate that ensured the agricultural character was preserved going forward:

1. Approval letter 2008 Clause 2.1 states:

*[Translated]: The Montagu Scheme Regulations include the application property in the Long Street urban conservation area with the **aim of protecting the agricultural character of it.***

2. Approval letter 2008 Clause 3.9 states:

*[Translated]: The applicant must draw up a constitution for the Homeowners' Association, in which further provision is made for the operation of the Remainder and the 7 new plots as an 'equestrian estate,' as well as architectural and other management guidelines **to ensure that the development maintain[s] an agricultural character..***

These conditions are formalised in the Constitution and its Rules, and are part of the management guidelines of the DBCE described as 'A Country Lifestyle in a Country Town':

3. Annexure "A" of the Constitution states:

*The guidelines are purely there to ensure that home owners and prospective home owners have the **guarantee that development will not change the country feel of the Estate and that development is carried out in such a way that the character thereof is maintained.***

4. Annexure "B" of the Constitution states:

*The area between Erven 5228, 5229, 5301, 5301, 5303, 5304 and 5305 in the DBCE and the river, situated on the Remainder of Erf 5227 Montagu, is not for common usage and remains part of the De Bos Guest Farm and **will also keep its agricultural nature.***

5. The effect of the Governance Documentation of the HOA (the Constitution and Rules) is exactly for this purpose: to guide, and restrict if necessary, the development and usage of the individual properties of the members pursuant to what is stated and agreed to in those governance documents.

6. Property owners buy/bought into the De Bos Country Estate under the conditions set out above, confident that the Constitution and its Rules will legally safeguard this intent (an estate that maintains an agricultural character) and that any future development will not change the country feel of the estate without a unanimous vote.

7. Since the inception of DBCE, the De Bos Guest Farm has provided tourist accommodation (guest cottages, camping/caravan, backpackers) in a quiet rural/agricultural setting together with seven single residential plots situated beside the river within an agricultural area.

8. Importantly, in 2022, the Municipality confirmed this arrangement by issuing ONLY Primary use rights of 'Tourist Accommodation' and 'Smallholding' to RE 5227 when the Municipality mero motu after the date of commencement of the Integrated Zoning Scheme By-Law 2018 and in terms of Section 7 of the said By-Law translated or reclassified the previous zoning of Agriculture/Special Zone I to the most compatible zoning of Agricultural Zone II/Resort Zone. HOA MUST approve planning proposals.
9. The Constitution and its Rules state that all building plans must comply with Annexure "A" and be approved by the HOA before any such planning application is lodged with Municipality. Constitution in clause 2.5 as all the consolidated erven in the Consequently, the country feel/character of the estate is secured and all members comply (unless a modification is approved by a unanimous vote). Furthermore, this prevents the potential for those unscrupulous developers who may exploit the lack of clear guidelines; thus the legal procedure upholds the Municipality's conditions at DBCE's establishment to protect the rural/agricultural character of the both the estate and Montagu Urban Conservation Area A.
10. In the application (page 8 last paragraph), Planserv suggests no consent or approval is required by the HOA when submitting a land-use planning application. However, the applicant would be under the mistaken impression that this may be the case as it is patently clear that:
 1. Remainder Erf 5227 is not a standalone property, but a subdivision within the De Bos Country Estate, and as such the owner (a member of the HOA) is bound to the governance documentation of the Constitution which includes the obligation and responsibility of present planning applications to the HOA for approval.
 2. Annexure "A" is in place to ensure home owners and prospective home owners have a guarantee that development will not change the character of the estate without due process (unanimous vote), and that any development is carried out in such a way that the country feel/rural character thereof is maintained.

Much of the language used throughout the application suggests there would be no 'expected' effect/change to the character of the development with phrases such as: *'it is expected that the non-agricultural land use will not detract from the rural character of the property.'*

Proposing an additional 118 parking bays, noisy entertainment bomas, kitchen and scullery areas, braais, ablutions, rubbish and temporary toilets within sight and sound of residential homes within an estate and then to use wording such as 'expected' and 'assume' to convince the audience it will have no effect is highly questionable. An 'expectation' or 'assumption' in this instance is NOT ever acceptable. Only a unanimous vote by HOA members for change is acceptable.

Part of this application from Planserv includes a similar, but more extensive and escalated proposal with development extending onto the same area (the Southern Portion) in front of the residential erven. Planserv's perception that the owner of Erf 5227 may use and enjoy the said area (Southern Portion) in an unrestricted manner as he/she may deem fit, solely by virtue of his/her alleged proprietary rights and without taking into consideration the contractual rights of the residential erven, is without legal foundation and thus fatally flawed as it runs contrary to the Constitution. The planning application disregards both the Constitution's regulations and the need to protect the estate's rural character. Such an application cannot proceed without compliance with the express and/or implied intentions and conditions outlined in the governance documentation, as well as the HOA's mandatory application.

2. Re ERF 5227 has NO historical land use rights

The Municipality set binding conditions for the establishment of the DBCE:

- Condition(a) in 1995 (276/95)
- The approval letters of 2005 and 2008
- The DBCE Constitution and Rules

The proposal does NOT take cognizance of the above conditions, the historical land use nor the previous approvals.

Remainder Erf 5227 has NO historical land use rights other than what the Municipality has confirmed in the new zoning certificate of 2022. No departures (additional consent uses) were approved by the HOA and without such approval, the application should not have been lodged with the Municipality in the first instance.

1. The only lawful land use rights RE 5227 has are:
 - Primary use rights of 'Smallholding' under Zoning Agriculture 2(AZII)
 - Primary use rights of 'Tourist accommodation' under Zoning Resort (RZ).
2. As per the original town planner, Anna-Christa Redelinghuys of Robertson, who handled the zoning applications and also approved the subdivisions at the municipality's town planning department, iro the Municipality's rezoning in 2022, there was no change in land use rights, and the old zoning(s) were simply adjusted to meet the latest by-laws. Further, there were no changes in land use rights, the old zonings were just adjusted to meet the latest by-laws. Therefore, no changes in zoning.
3. Therefore, any of the suggested or assumed historical or ancillary uses presented in the application is without foundation.

3. Noise and disturbance

The proposed additional consent uses (under resort zoning) will have a highly negative impact: the noise, disturbance and security issues will disrupt the tranquil and peaceful character established on the estate since inception, and also derogate much from the properties of the single erven within the estate. Furthermore, the new consent uses, introduce a foreign land-use pattern which is specifically warned against for the Montagu Conservation Area, in which the DBCE is located.

The Guidelines for Resort Development in the Western Cape (2005) was applicable when the Municipal approval was granted in 2005 and when the Municipality approved the establishment of DBCE in 2008. Only holiday accommodation, conservation usage and private open space were primary uses and ALL associated uses (namely tourist facilities, conference facilities [presently call function venue], holiday housing and hotels were to be listed as consent uses).

Recently in 2022, under the new 2018 By-laws of the Integrated Zoning Scheme the Municipality reclassified the previous zoning of RE 5227 from Agriculture/Special Zone I to the most compatible new zoning. Special Zone 1 was adjusted to Resort Zone.

The schedule 1 Uses Table description of Resort zone :

The objective of this zone is to promote tourist and holiday facilities in areas with special environmental or recreational attributes, and to encourage general public access to these facilities. At the same time, care should be exercised to minimise potential negative impacts of development on fragile environments. The guiding principle should be that a resort must not detract from the amenity that attracted the holiday facilities in the first place, nor should it cause a public nuisance for other people living and working in the vicinity. This zone should only be used in exceptional cases and is normally applicable to tourist developments outside established, built-up areas.

- ‘care should be exercised to minimise potential negative impacts of development on fragile environments.’ The DBCE Constitution and its Rules ensures this with the protection of the agricultural character ensuring a country feel is maintained. Adding 118 additional parking bays (to total over 150) does not.
- ‘the guiding principle should be that a resort must not detract from the amenity that attracted the holiday facilities in the first place.’ The estate was set up as a unique, quiet, and tranquil environment for homeowners with a guest farm that accommodated a limited amount of temporary holiday guests. Entertaining of people at large commercial events does not reflect that.

– ‘nor should it cause a public nuisance for other people living and working in the vicinity. This zone should only be used in exceptional cases...’. The Constitution governance ensures responsibility to the whole and each member. RE 5227 has an obligation NOT to cause nuisance for people living and working within his same estate, let alone the general neighbourhood.

The above reasons are exactly why ONLY the primary uses of Tourist accommodation and Smallholding are mentioned on the new zoning certificate. Because they fulfil the needs of RE 5227 within the confines of De Bos Country Estate.

The proposed additional consent uses associated with Resort zone are NOT consent uses of Agriculture 2. They are not consistent with retaining the agricultural zoning and character of the land, nor do they preserve historic land-use pattern and density of development. Function venue is NOT a consent use of Agriculture 2

And for the record, the Southern Portion which is currently deemed to **“remain agricultural”** (See Constitution Annexure “B”) cannot be used for camping because RE 5227 does not have Agriculture-1 zoning (which does allow camping as a consent use). For the avoidance of doubt, it must be remembered that RE 5227 ONLY has Agriculture-2 and camping is NOT a primary or consent use of AGZII, and the current approved Resort activities are very much restricted to the tourist accommodation on the northern and (small strip of the central area near the new swimming pool).

As a matter of interest and as a show of good faith, when the owner of Erf 5227 recently complied with the Constitution’s rules and approached the HOA to request permission to host a biker rally in November, making it clear in a letter that there would be no disturbance, loud music, or revving of bikes, the HOA members showed willingness to engage and to cooperate; and all members approved the event under those conditions.

There is no need for RE 5227 to be granted additional consent uses since the De Bos Guest Farm can apply, with HOA approval, for a temporary permit to hold well managed events that will avoid the destruction of the unique and tranquil character of the DBCE.

CONCLUSION

1. We reiterate that the current approved Municipal Zoning and primary uses are accepted and there exists no intention to “discriminate” against the current zoning of Erf 5227 or to prescribe or curtail or limit the usage of the property of Agama Mountain Products CC, except to the extent limited or restricted by the Conduct Rules and Design Guidelines.

2. The intention is simply to hold the owner of the Remainder of Erf 5227 accountable to the express and/or implied provisions of the governance

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documents of the HOA as expressly and/or impliedly set out in the Constitution in conjunction with Annexure "A" and Annexure "B" thereto.

3. In 2015 (December), the property owner of RE 5227 bought into a country lifestyle (DBCE) estate in 2015 (December), knowing full well that they would become a member of the HOA with legal obligations and responsibilities to a Constitution with governance and management guidelines that uphold the country feel and character of the estate. It is unacceptable for them to now attempt to capitalise and commercialise his/her portion of the DBCE by changing the said character of the estate for all members and introducing foreign land-use patterns of development that will negatively impact other members whilst ignoring the due legal process required by the Constitution. (That is, not receiving the necessary HOA permission)
4. The Municipality is also reminded that any planning application, pending or not, by the owner of Remainder of Erf 5227 which proposes to interfere or infringe upon in any way with the said usage rights of the owners of the residential erven, must be accompanied by a unanimous resolution by all the members of the HOA.
5. Kindly acknowledge receipt of this document.

MR K and Mrs S Knight

Erf 5229, De Bos Country Estate
15 Middle Street
Montagu
6720

Beswaar 4

De Bos Country Estate
No 9 Middel Street
Montagu
6720
11 September 2023

Langeberg Municipality
The Manager
Town Planning
3 Retief Street
Montagu
6720

Ref (Re 5227 Planning Application)

Dear Sir

**OBJECTION TO APPLICATION BY RE5227 FOR PROPOSED CONSENT USE(S) AND
AMENDMENT OF CONDITION**

I hereby acknowledge receipt of your letter which was emailed to me on 16 August 2023 from Janelle Vermeulen and the Annexures which I received on 28 August 2023.

I have examined the application and plans presented by Planserve on behalf of Agama Mountain Products cc.

I wish to **object** to

1. The proposed 2023 SDP
2. The proposed consent use for a Function Venue
3. The proposed consent use for Tourist facilities

The De Bos Country Estate made up of the 7 erfs, as well as the remainder of Erf 5227, being Agama Mountain Products cc form part of the De Bos Home Owners Association. On 24th February 2023, we received an email from Andrew Simmans advising us that they were busy finalising an application of the SDP to the Municipality and seeked a response from us and the other members of the HOA. A meeting was held on the 1 March 2023 whereby all 7 members were against the proposal of the following:

1. Renovation of existing Lapa/Boma area which would contain a kitchen, ablutions, covered area and a pond.
2. Camping area south and adjacent to the Lapa/Boma.
3. Camping area on the shaded banks of the Keisie River

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108/42507

As per the constitution, any proposed plans have to be approved by the HOA and I know that the 2017 site plan does have approval, but the 2018 and 2022 site plans DO NOT have approval and the 2023 site plan, regarding the camping and additional Lapa/Boma DOES NOT have approval from the HOA.

I purchased this property because of the quiet, country\farm lifestyle and my guarantee that it stays this way, is the DBCE HOA Constitution Document. (See Attached) Annexures A and B cannot be changed\amended without a special resolution and shall require the support/vote of all members of the HOA.

As per the zoning certificate, it is clear that RE5227 only have the primary use rights of Smallholding under Zoning Agriculture 2(AZII) and primary use rights of Tourist accommodation, under Zoning Resort (RZ)

With this in mind, it is clear that Camping is not a primary or consent use of AGZII and as per the constitution, the southern portion which is currently to remain agricultural, cannot just be changed.

The Tourist accommodation as it currently is, is fine, I object to having campers a stone throw away from my home.

With regards to the consent use for a function venue, in my opinion, this is not needed, as RE5227 can continue in the way they have been holding functions in the past, by sending out a notice advising the members and getting the HOA approval.

Kindly acknowledge receipt of this letter

Yours faithfully
HMS & BA Wilmot

Beswaar 5

Juanita Olivier,
Erf 5228,
De Bos Country Estate,
No 17 Middel St,
Montagu, 6720

FAO: Langeberg Municipality,
The Manager: Town Planning,
3 Piet Retief St, Montagu, 6720

DATE: 13 SEPTEMBER 2023

REF: 15/4/1/1&5 (RE 5227 PLANNING APPLICATION)

Dear Sir,

**OBJECTION TO APPLICATION BY RE 5227 FOR PROPOSED CONSENT USE(S)
AND AMENDMENT OF CONDITION**

1. I acknowledge receipt of your letter dated 7 August 2023 (received by email on the 16th) regarding the planning proposal of Remainder Erf 5227 (8 Brown St).
2. I have examined the application and plans presented by Planserv on behalf of Agama Mountain Products CC, owner of RE 5227.
3. **OBJECTIONS**
4. I wish to strongly object to:
 - 4.1 any amendment of the condition referred to in the application; namely Condition (a) of the Council Decision taken in 1995 (Item 276/95). The condition is binding and 'all development is limited to the scope and use as indicated in that application'. Furthermore, only the SDP 2017 (with its own restrictions and conditions) has been approved and recognized by the HOA.
 - 4.2 – the proposed consent use for a 'Function venue'
– the proposed consent use for 'Tourist facilities'

Currently RE 5227 only has Primary use rights 'Tourist accommodation' and 'Smallholding'. There are NO Consent, Departures or Non-Conforming uses approved for RE 5227, nor any recognised historical land use rights. Any change would require approval by De Bos Country Estate HOA.

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REASONS FOR OBJECTIONS

1. The Constitution and its Rules are binding

The owner of Remainder Erf 5227 is a member of The De Bos Country Estate (DBCE) and is contractually bound to uphold the Constitution and Rules of the DBCE.

The De Bos Country Estate is NOT a mass tourist attraction, nor is RE 5227 a separate rural property that can act independently without obligation. The DBCE is a country lifestyle estate of which the owner of RE 5227 is a legal part. The protection of the development's agricultural / rural character has been an enduring condition for approval by the Municipality on the consolidation / subdivisions of the original erven and is currently upheld/underwritten in the DBCE HOA's Constitution (Governance Documentation).

○ The planning application disregards both the Constitution's regulations and the need to protect the estate's rural character. Such an application cannot proceed without compliance with the express and/or implied intentions and conditions outlined in the governance documentation, as well as the HOA's mandatory approval.

RE ERF 5227 IS A MEMBER OF THE DBCE BOUND BY THE HOA CONSTITUTION AND RULES

The Constitution and its Rules

1. Creating a homeowners association was an important condition imposed by the Municipality in 2008 when they approved the consolidation and subdivision of the original De Bos farm.
 - 1.1 In approval letter of 2008 Clause 3.9 states:
[Translated] A home owners' association must be established prior to the entire development, to which all the owners of the Single Residential plots, as well as the Remainder, must belong.
2. The De Bos Country Estate (DBCE) was established when the original De Bos Farm (Erf 307-310) was consolidated (to become Erf 5227) and then subdivided:
 - 2.1 Clause 2.5 of the Constitution states:
'Development Area' means the country estate development established on consolidated Erf 5227 Montagu and included newly subdivided Erven 5228, 5229, 5301, 5302, 5303, 5304, 5305 Montagu and also includes the Remainder of Erf 5227 Montagu.
 - 2.2 As soon as the 1st subdivision was registered, the original Erf 5227 (De Bos Farm) automatically became the Remainder Erf 5227 (De Bos Guest Farm) and its new extent was endorsed on its title deed.
3. The De Bos Country Estate (DBCE) consists of 8 members: The owner of the Remainder Erf 5227 and the owners of the 7 Single Residential plots 5228-29, 5301-5305. All 8 are legally required to be members of the De Bos Home Owners Association (HOA). See Clause 4.1 on Membership of the Constitution.
4. The De Bos Country Estate Home Owners Association ("HOA") was incorporated as a common law association as opposed to a non-profit company, which is governed by the Company Act. Thus, the Constitution and Rules of the HOA is the **Governance Documentation** to ensure that all members are legally liable to make contributions towards the HOA and to abide by the content of the Constitution and its Rules. It is important to note that the DBCE Constitution and its Rules constitute a contract that binds EVERY member of the HOA, including the owner of RE 5227.

RE 5227 is also presently referred to in the Constitution as 'The De Bos Guest Farm'.

Protecting the agricultural character of DBCE

From the outset, the Municipality stipulated conditions to protect the agricultural character of the development. In the approval letter of 2008, Stuart Brown, the applicant/developer at the time, was required to create a constitution that made provision for the operation of the estate that ensured the agricultural character was preserved going forward:

5.1 Approval letter 2008 Clause 2.1 states:

*[Translated]: The Montagu Scheme Regulations include the application property in the Long Street urban conservation area with the **aim of protecting the agricultural character of it.***

5.2 Approval letter 2008 Clause 3.9 states:

*[Translated]: The applicant must draw up a constitution for the Homeowners' Association, in which further provision is made for the operation of the Remainder and the 7 new plots as an 'equestrian estate,' as well as architectural and other management guidelines **to ensure that the development maintain[s] an agricultural character..***

6. These conditions are formalized in the Constitution and its Rules, and are part of the management guidelines of the DBCE described as 'A Country Lifestyle in a Country Town':

6.1 Annexure "A" of the Constitution states:

*The guidelines are purely there to ensure that home owners and prospective home owners have the **guarantee that development will not change the country feel of the Estate and that development is carried out in such a way that the character thereof is maintained.***

The proposed plan is in violation of the restrictions and limitations stated in the constitution. All HOA members are subject to these legal limitations and the application can therefore not be implemented. The plan cannot be submitted without the majority approval of the owners, however, as it is in violation of the constitution, it cannot be submitted in its current form. You are kindly requested to reject the application.

Lastly, as a residential property owner, the notion of campers within 10 meters of my border line with resultant noise, smoke and garbage is alien to the very concept of city planning. It has come to my attention that Mr. Andy Simmans is currently contracted as consultant head of engineering at Langeberg Municipality. This application process will be monitored carefully.

Kindly acknowledge receipt.



MRS J OLIVIER

Erf 5228, De Bos Country Estate, Montagu

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BESW ANT. 6

Myrna Staal

From: Janelle Vermeulen
Sent: Thursday, 07 September 2023 12:11
To: Madelene Kellerman
Cc: Myrna Staal
Subject: FW: VOORGESTELDE VERGUNNINGSGEBRUIK EN WYSIGING VAN VOORWAARDE: ERF 5227, BROWNSTRAAT 8, MONTAGU
Attachments: Dr. MS Kellerman Prof Korps.pdf; Proposed Consent Use and Amendment-Erf 5227, MontagU.pdf

Good day, Dr. Kellerman

Thank you for your response.

I'm forwarding it on to Ms. Myrna Staal who is copied into this email.

Vriendelike groete/Kind Regards

Janelle Vermeulen

Sekretaresse: Stadsbeplanning / Secretary: Town Planning
023 614 8030
jvermeulen@langeberg.gov.za



"People at the centre of Development"

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From: Madelene Kellerman <madelene.kellerman@gmail.com>
Sent: Thursday, September 7, 2023 12:07 PM
To: Janelle Vermeulen <jvermeulen@langeberg.gov.za>
Subject: Re: VOORGESTELDE VERGUNNINGSGEBRUIK EN WYSIGING VAN VOORWAARDE: ERF 5227, BROWNSTRAAT 8, MONTAGU

Dear Sir/Medame

Hereby our response in regards to the proposed changes of use of Erf 5227
There are a few concerns and questions relating to two aspects of this proposal.

1) The proposal to formalize /allow campsites on the banks of the Keisie river are concerning for at least two reasons.

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A)

During the 1981 flood 13 people lost their lives in Montagu. Six people died within a 150 m radius from where those campsites are proposed.

This flood happened in Jan/Feb of that year. Our families living nearby (today called Wijnberg and Mirihof) narrowly escaped with our lives.

Climate change and the potential of flash-floods within the hundred year period is more probable there for:

There are obvious issues if the municipality allows a zoning departure that can put people's safety at risk by allowing camping sites in a flood plane.

B)

The impact on the water source downstream and possibly upstream of the river and the impact on the environment over time is a big question and should be all of our concern.

I have noticed all kinds of garbage drifting in the river the past few years. The Keisie low banks are easy to access and if there are not some form of barrier to prevent campers of accessing the riverbed and water source it might expedite /cause contamination of the water source/ environment.

Question: What are the regulations dealing with the human impact on river systems? And how can the municipality police/supervise such activities if it occurs on private land bordering a river system?

2) The second aspect of this application that raises some questions and concerns pertains to NOISE pollution.

As pointed out in this application, Die Bos is part of a quiet semi rural area, and surrounded by small holdings.

The beauty of this area includes the serenity, peace and quiet that most people living in Montagu and visiting here came to enjoy.

We would be dishonest if we pretend that the noise that came from loudspeakers and events held at Die Bos over some weekends to date, did not serve as a great disturbance to our neighbours as it could be heard right into the town as sound travels especially in a rural setting.

As these events were happening occasionally it was tolerated without complaint, however:

This application wants to include activities i.e. weddings and activities both inside and outside of the venue/ building intended to be used.

This means the likely probability for a higher frequency and more intense use and more production of noise and disturbance.

There are several examples of wedding venues being allowed on farms bordering towns. We are familiar with Laborie and Nederburg in Paarl being wedding venues on farms bordering the town.

These farms are much larger than the Die Bos smallholding, and therefore much further removed from the urban areas of the town Paarl.

Despite that, there are strict rules guiding the scale (number of wedding guests) and the cut off time and other operations for these venues.

We would ask the Municipality to strongly consider the impact that regular weddings and potentially noisy events will have on our neighbours and the people that actually live nearby in Montagu.

Although we want for Die Bos to succeed as a desirable destination, any development promoting tourism can only be successful if it is done in harmony with the actual inhabitants of the Town.

We thank you for considering these questions, comments and concerns.

Yours Faithfully

Dr Madelene Kellerman and Dr John Holland

Rose straat 9,
Montagu

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BESWAAR 7

TD & LJ Herbert
Erf 5302, De Bos Country Estate,
No 11 Middel St, Montagu, 6720

FAO: Langeberg Municipality,
The Manager, Town Planning,
3 Retief St, Montagu, 6720

DATE: 12 September 2023

REF: 15/4/1/1&5 (RE 5227 PLANNING APPLICATION)

Dear Sir,

**OBJECTION TO APPLICATION BY RE5227 FOR PROPOSED CONSENT USE(S) AND
AMENDMENT OF CONDITION**

1. We acknowledge receipt of your letter dated 16 August 2023, regarding the planning proposal of Remainder Erf 5227 (8 Brown St).
2. We have examined the application and plans presented by Planserv on behalf of Agama Mountain Products CC, owner of RE 5227.
3. We are the newest owners within the De Bos Country Estate, having taken transfer in March 2023. It is noted that Agama Mountain Products CC, owner of RE5227, is also a member of the De Bos Country Estate (DBCE) and as such they are contractually bound to uphold the Constitution and Rules of the DBCE.

OBJECTIONS

4. We wish to strongly object to:
 - 3.1 any amendment of the condition referred to in the application; namely Condition(a) of the Council Decision taken in 1995 (Item 276/95). The condition is binding and 'all development is limited to the scope and use as indicated in that application'. Furthermore, only the SDP 2017 (with its own restrictions and conditions) that is approved and recognised by the HOA.
 - 3.2 the proposed consent use for a 'Function venue'
 - 3.3 the proposed consent use for 'Tourist facilities'

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Herbert (Erf 5302)

When we made the decision to look for a retirement home in the Western Cape we spent months visiting the smaller rural towns to get a feel for the environment and how well the municipalities were managing the delivery of services and the general upkeep of the town. We eventually settled on Montagu and decided to purchase a home within the De Bos Country Estate because of the tranquil setting and the beautiful country/agricultural feeling of living on a farm close to town.

Prior to finalizing the "Offer to Purchase" I called for a copy of the Home Owners Constitution and rules of conduct. I also had meetings with the chairman of the Home Owners Association, Mr David Olivier. We were particularly interested in understanding what the owners of RE 5227 could potentially develop in the open space in South Western Corner of the DBCE. We also had an opportunity to interact with the rest of the homeowners who were determined to ensure that the DBCE remained a peaceful and tranquil country lifestyle estate. I also noted that the constitution was very clear in that any changes to Site Development Plans would have to be approved by all eight members of the HOA.

From our previous experiences and having been exposed to dealing with the home owners associations in four different estates across the country in Durban, Pretoria and Paarl we fully understand how critical the HO Constitution and the associated rules of conduct are, in running an estate. The legal ramifications of being a HOA member is a serious matter, which in this case is critical when considering the proposal and affording additional rights to the current landowner of Remainder ERF 5227.

REASONS FOR OBJECTIONS (SUMMARISED)

1. The Constitution and its Rules are binding

The owner of Remainder Erf 5227 is a member of The De Bos Country Estate (DBCE), together with the owners of the seven residential single erfs (Erf numbers 5228, 5229, 5301, 5302, 5303, 5304 and 5305) and is therefore contractually bound to uphold the Constitution and Rules of the DBCE. The owner of Remainder Erf 5227 is not a separate entity that can act independently without obligation.

The DBCE is a country lifestyle estate of which the owner of Remainder Erf 5227 is legally bound by the Constitution and its Rules.

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The planning application submitted by Planserv (Pty) Ltd on behalf of Agama Mountain Products CC disregards both the Constitution's regulations and the need to protect the estate's rural character. Such an application cannot proceed without compliance with the express and/or implied intentions and conditions outlined in the governance documentation, as well as the HOA's mandatory approval.

2. RE Erf 5227 has NO historical land use rights

The Municipality set binding conditions for the establishment of the DBCE:

- Condition(a) in 1995 (276/95)
- The approval letters of 2005 and 2008
- The DBCE Constitution and Rules

The proposal does NOT take cognizance of the above conditions, the historical land use nor the previous approvals.

Remainder Erf 5227 has NO historical land use rights other than what the Municipality has confirmed in the new zoning certificate of 2022. No departures (additional consent uses) are approved by the HOA and without such approval, the application should not have been lodged with the Municipality in the first instance.

3. Noise and disturbance

The proposed additional consent uses (under resort zoning) will have a highly negative impact within the DBCE. The noise, disturbance and security issues will disrupt the tranquil and peaceful character established on the estate since inception, and also devalue much from the properties of the single erven within the estate.

REASONS FOR OBJECTIONS EXPLAINED IN MORE DETAIL

THE DBCE HOME OWNERS ASSOCIATION CONSTITUTION AND RULES

1. Protecting the agricultural/rural character of DBCE

The express intention of the establishment of the HOA is set out in clause 3 of the Constitution which is to promote, advance and protect the interests of its members. This intention must be read in conjunction with clauses 1 to 3 of the Conduct Rules (Annexure B of the Constitution Rules). These conditions are formalised in the Constitution and its Rules, and are part of the management guidelines of the DBCE described as 'A Country Lifestyle in a Country Town':

1.1 Annexure "A" of the Constitution states:

*The guidelines are purely there to ensure that home owners and prospective home owners have the **guarantee that development will not change the country feel of the Estate and that development is carried out in such a way that the character thereof is maintained.***

(Annexure R - Constitution Rules Annex 'A')

1.2 Annexure "B" of the Constitution states:

Para 1.

*The area between Erven 5228, 5229, 5301, 5302, 5303, 5304 and 5305 in the DBCE and the river, situated on the Remainder of Erf 5227 Montagu, is not for common usage and remains part of the De Bos Guest Farm and **will also keep its agricultural nature.***

Para 2.

Usage of the area between the residential erven and the river by the said owners of Erven 5228, 5229, 5301, 5302, 5303, 5304 & 5305 is restricted to walking, riding horses, cycling, sitting on the benches and general enjoyment of the peaceful nature around the pond and along the river. Picnics or any other use of the area would require consent from the owner of the Remainder of Erf 5227 Montagu.

Para 3.

General consideration for the other members in the estate should be practiced when using the area referred to in clause 2 above and no screaming or shouting will be allowed. Likewise, members should also allow for usage of this area within reason (children riding bikes, running or riding horses, talking and laughing) this creating a healthy family environment.

Para 5.

...A general consideration and respect for the spirit in which the estate was created will be maintained.

- 1.3 The Annexures "A" and "B" were incorporated in the Constitution to ensure that the estate maintained its country lifestyle environment and character.
- The Design Guidelines of Annexure "A" ensure that home owners and prospective home owners have the guarantee that development will not change the country feel of the Estate and that any development is carried out in such a way that the character thereof is maintained.
 - The Conduct Rules of Annexure "B" warrant the peaceful and undisturbed nature of the area between the erven and the river that is not for common (public) usage, and that it will keep its agricultural nature.

- 1.4 The effect of the Governance Documentation of the HOA (the Constitution and Rules) is exactly for this purpose: to guide, and **restrict** if necessary, the development and usage of the individual properties of the members pursuant to what is stated and agreed to in those governance documents.
2. We bought into the De Bos Country Estate under the conditions set out above, confident that the Constitution and its Rules will legally safeguard our investment in a "Country Lifestyle Estate" that would maintain its agricultural character for years to come. Any future developments would not **change the country feel of tranquility, peace and security of the estate without a unanimous vote.**

3. **Planning proposals MUST be approved by HOA**

3.1 Clause 25.2 of the Constitution states:

No owner of any erven referred to in clause 25.1 shall be entitled to commence building on his property unless he/she, prior to lodgement of his/her building plans with the local municipality for approval, obtains written approval of the building plans from the Trust Committee of the DBCE HOA. The owner must lodge the aforesaid approval of the HOA together with the owner's building plans at the local municipality.

3.2 Consequently, the country feel/character of the estate is secured and all members comply (unless a modification is approved by a unanimous vote). Furthermore, this prevents members of the HOA being exposed to unscrupulous developers who may seek to exploit the lack of clear guidelines. Thus the legal procedure upholds the Municipality's conditions at DBCE's establishment to protect the rural/agricultural character of the both the estate and Montagu Urban Conservation Area A.

3.3 Please refer to the last paragraph on page 8 of the application, where Planserv suggests no consent or approval is required by the HOA when submitting a land-use planning application. It appears that the applicant has been misled and chosen to ignore the following facts:

- a) Remainder Erf 5227 is not a stand alone property, but a subdivision within the De Bos Country Estate, and as such the owner (a member of the HOA) is bound to the governance documentation of the Constitution which includes the obligation and responsibility of present planning applications to the HOA for approval.
- b) Any planning application (without HOA approval) which intends to interfere/restrict or infringe upon the Annexures "A" and "B", will be unlawful and will be considered a unilateral amendment of the Constitution and its Rules contrary to clause 17.7 of the Constitution. Such actions shall consequently be of no force and effect pursuant to clause 10.5 of the Constitution.

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3.4 To sum up, it would be unlawful for a member (in this case Erf 5227) to unilaterally apply to amend a condition that originally limited the scope and use as indicated in an application that had previously been approved by the HOA.

3.5 It would also be unlawful for a member (in this case Erf 5227) to unilaterally apply for a planning departure (additional consent uses) which would affect/change the character of the development without HOA approval.

3.6 In 2018, the RE 5227 owner submitted Site Plan 2017 (SP01. 22/04/2017) to the HOA for review and approval. Camping activities were originally restricted to the northern area and main house (previously Erf 310, 308-9). Approval was sought to extend a few campsites and construct a sizable swimming pool onto the agricultural and grazing area closer to the residential erven (previously known Erf 307). Given that the approval was requested retrospectively, formal HOA approval was granted in good faith on August 12, 2018, but there were some restrictions.

3.7 It does not make any sense why the owner of RE 5227 requested HOA approval in the past, but not in this instance with this planning application, where there is a far greater impact on the development as a whole? The governance or obligation to abide by the Constitution has not changed.

4. Development on the Southern Portion

The owner of RE 5227 has submitted a site plan (NH202302/SDP Rev) which was received by the HOA on 24 February 2023. From a review of the site plan, the owner was requesting HOA approval to consider a proposal to develop the Southern Portion of RE 5227, the area in front of the single plots and within the 50 year floodline. The development included expanding the camping sites which are located in front of the single plots. This proposal is not lawful as it would interfere/restrict or infringe upon Annexure "B" of the Conduct Rules. The HOA voted against this proposal.

5. The Lapa

5.1 The facts are clear that The Lapa has been misrepresented more than once in the planning application as a building containing its own ablutions with historical use rights that can be used for proposed future resort activities. [Background page 3 *'the existing Lapa, including ablution facilities used for tourist groups...therefore accepted that the Lapa is considered a lawful land use right, forming part of the existing holiday development..'*].

5.2 This is not factually correct, as the Lapa is dilapidated and has been used for animals and feed storage. The Lapa currently has no ablutions and has NOT been used for tourist groups. See legal letter and see Annexure B of The Conduct Rules of the HOA Constitution. The Lapa is positioned on the *'The area between the subdivided erven in the DBCE and the river, is not for common use and remains part of the de Bos Farm and WILL keep it's agricultural nature'*.

5.3 Furthermore, in August of 2018 (when the HOA approved site plan 2017 retrospectively), **the conditions mentioned renovations for a lapa bathroom that will be utilised by only HOA members (not the general public).** This was provided to the HOA by the owner of RE 5227.

5.4 At that point (2018), a member of the HOA expressed his concern regarding *“the intended ablution, where the sheep kraal is currently situated”* (in other words - a place that has never been utilised as an ablution). To this day, the lapa has not been used for ablutions. So insisting that the lapa with a bathroom has been used for campers since 2004 is simply factually incorrect.

6. **NOISE AND DISTURBANCE**

6.1 Recently in 2022, under the new 2018 By-laws of the Integrated Zoning Scheme the Municipality reclassified the previous zoning of RE 5227 from Agriculture/Special Zone I to the most compatible split new zoning – Resort Zone and Agricultural Zone II.

6.2 The schedule 1 Uses Table - **description of Resort zone :**

The objective of this zone is to promote tourist and holiday facilities in areas with special environmental or recreational attributes, and to encourage general public access to these facilities. At the same time, care should be exercised to minimise potential negative impacts of development on fragile environments. The guiding principle should be that a resort must not detract from the amenity that attracted the holiday facilities in the first place, nor should it cause a public nuisance for other people living and working in the vicinity. This zone should only be used in exceptional cases and is normally applicable to tourist developments outside established, built-up areas. The Constitution governance ensures responsibility to the whole and each member. RE 5227 has an obligation NOT to cause nuisance for people living and working within his same estate, let alone the general neighbourhood.

– *‘the guiding principal should be that a resort must not detract from the amenity that attracted the holiday facilities in the first place’.* The estate was set up as a unique, quiet and tranquil environment for homeowners with a guest farm that accommodated a limited amount of temporary holiday guests.

6.3 The proposal seeks to not only increase the frequency and number of commercial activities, but also to have these activities take place directly adjacent to the residential properties.

The proposed infrastructure to handle the large crowds of people, will include parking bays for an additional 118 vehicles. In addition, the proposal covers an entertainment

boma, a kitchen, scullery, and ablutions, as well as 18 new camp sites that would be situated directly adjacent to our residential properties. The owner also wants to disperse braais, bins and temporary toilets throughout the estate to service the crowds and the campers.

Entertaining crowds of people at large commercial events and adding 118 parking bays in very close proximity to Erf 5228 will certainly disrupt the quiet and tranquil environment for all the residents.

Another grave concern is the whole aspect of security within the DBCE that has no high fences and walls securing the single residential erfs from the crowds who will be parking very close to the single erf homes. Who is going to control and police this situation? This would have the effect of forcing the single erf residents to erect high security fences with electric wires in order to protect themselves and their properties. This would fundamentally change the nature and feel of the country estate and as such it would be considered as a contravention of the codes of conduct that was designed to protect the members and the country/agricultural feel of the estate.

This is not what was envisioned when the owners purchased into an estate that would give them a country life in a country town.

We therefore strongly object to the proposal and assert that the planning application has not been objectively compiled with due regard for other HOA members.

7. *When reviewing the description of what is allowed under "Resort Zone" it makes specific mention that the development should not cause a public nuisance for other people living and working in the vicinity. This zone should only be used in exceptional cases...'*
8. **The above reasons are exactly why ONLY the primary uses of Tourist accommodation and Smallholding are mentioned on the new zoning certificate. Because they fulfil the needs of RE 5227 within the confines of De Bos Country Estate.**
9. The Southern Portion in front of the residential erfs, which is currently deemed to **"remain agricultural"** (See Constitution Annexure "B") cannot be used for camping because RE 5227 does not have Agriculture-1 zoning rights which does allow camping as a consent use..
10. Please bear in mind that RE 5227 has only Agriculture-2 zoning of which camping is NOT a primary or consent use of AGZII. The current approved Resort activities are

very much restricted to the tourist accommodation on the northern and (small strip of the central area near the new swimming pool).

11. More recently, the owner acted in accordance with the Constitution rules and approached the HOA to request permission to host a biker rally in November, making it clear in a letter that there would be no disturbance, loud music, or revving of bikes, the HOA members showed willingness to engage and to cooperate; and all members approved the event under those conditions.

12. Ultimately, there is no need for RE 5227 to be granted additional consent uses since the De Bos Guest Farm can apply, with HOA approval, for a temporary permit to hold smaller, more evenly spaced-out and well managed events that will avoid the destruction of the unique and tranquil character of the DBCE.

CONCLUSION

1. We confirm that the current approved Municipal Zoning and primary uses are acceptable. We do not have any intention to show prejudice towards the current zoning of RE Erf 5227 or to limit the usage of the property of Agama Mountain Products CC, except to the extent that the usage is governed by DBCE HOA Conduct Rules and Design Guidelines.

1.1 Our purpose is simply to hold the owner of the Remainder of Erf 5227 accountable to the express and/or implied provisions of the governance documents of the HOA as expressly and/or implied set out in the Constitution in conjunction with Annexure "A" and Annexure "B" thereto.

1.2 Going back to December 2015, the property owner of RE 5227 and seven other single residential property owners purchased properties within a country lifestyle estate known as the De Bos Country Estate. All members were fully aware that the 8 properties would be governed by the legal obligations and responsibilities of a HOA based on a Constitution and management guidelines designed to uphold the country feel and character of the DBCE.

It is extremely concerning that the owner of RE 5227 now has a change of heart and attempts to introduce new commercial activities that would change the character and feel of the estate for all members of the HOA. The constitution is based on serving the interests of all members to the benefit of the DBCE. There is a legal process to follow that requires the HOA approval and as such the owner of RE 5227 needs to follow due process.

2. We are sure that the Municipality is fully acquainted with what process needs to be followed when the usage rights of the residential erven within the DBCE could possibly be under threat due to a pending application. Any change to the usage rights must be supported by a unanimous resolution by all the members of the HOA.
3. More specifically, in order to satisfy the requests of the application the following actions need to happen:
 - In relation to the camping development on the Southern Portion several clauses of Annexure "B" must either be deleted or substantially amended and agreed to by a unanimous resolution by all members of the HOA.
 - In relation to adding consent uses to the current zoning, the previous municipal approvals were granted on condition that the rural character be preserved. This would have to be revoked as well as the first paragraph of Annexure "A".
 - In relation to the case of removing an amendment [Condition(a) of the Council Decision taken in 1995 (Item 276/95)], it would be unlawful for a member to unilaterally apply to amend a condition that originally limited the scope and use as indicated in an application / site plan that had previously been approved by the HOA.
4. In conclusion, this sort of development as laid out in the application document, cannot be expected to be acceptable to property owners who were sold the DBCE as a tranquil rural environment in which to live.

It would be greatly appreciated if you could acknowledge receipt of our objection from the owners of Erf 5302.

Mr TD Herbert and Mrs LJ Herbert

Erf 5302, De Bos Country Estate, Montagu

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Die Bestuurder: Stadsbeplanning

Langeberg Munisipaliteit

Retief St 3, Montagu, 6720

**AANSOEK/VOORGESTELDE VERGUNNINGSGEBRUIK EN WYSIGING VAN
VOORWAARDE: ERF 5227, BROWNSTRAAT8, MONTAGU - VERW: 15/4/1/1&5**

Geagte leser,

BESWAAR TOV AANSOEK VAN VERGUNNINGSGEBRUIK BY RE5227

1. Ek erken ontvangs van u skrywe gedateer 7 August 2023 (volledige aansoek in die pos ontvang op 28 Augustus 2023) aangaande die beplanningsvoorstel op die restant van Erf 5227 (8 Brown St).
2. Ek het die aansoek, opgestel deur Planserv namens Agama Mountain Products CC, eienaar van RE 5227, deeglik bestudeer. Ek verstaan en begryp die volle impak van die aansoek aangesien ek reeds vir 8 jaar die eienaar is van Erf 5304 asook 'n lid is van die De Bos Country Estate (DBCE), waarvan die eienaar van erf 5227 ook n lid is.

BESWARE

3. Hiermee wens ek my my sterkste beswaar aan te teken tot:

3.1 enige wysiging van die kondisies/voorwaardes soos vermeld in die aansoek; naamlik:

"Condition(a) of the Council Decision taken in 1995 (Item 276/95). The condition is binding and 'all development is limited to the scope and use as indicated in that application'. Furthermore, only the SDP 2017 (with its own restrictions and conditions) that is approved and recognised by the HOA".

- 3.2 - die voorgestelde vergunningsgebruik van n "Function venue"
- die voorgestelde vergunningsgebruik van die "Tourist facilities"

Tans beskik RE 5227 slegs oor "Primary use rights" 'Tourist accommodation' and 'Smallholding'. Daar bestaan GEEN "Consent, Departures or Non-Conforming" gebruike wat goedgekeur is tov van RE 5227 nie, of enige erkende historiese "land

use rights". Enige sodanige wysings verg goedkeuring deur die De Bos Country Estate Home Owner Association (HOA).

COETZER (ERF 5304)

As eienaar van Erf 5304, direk aangrensend aan die lapa area asook die voorgestelde uitbreidings (off grid kampeerplekke) op die suidwestelike gedeelte van RE 5227 bevestig ek dat ek, soos die De Wets (eienaar erf 5305), in die verlede gebuk gegaan het onder die oormatige geraas en steurings agv die kommersiele aktiwiteite van die De Bos Gasteplaas. Gevolglik staan ek enige verdere uitbreiding van "resort activity" ten sterkste teen.

Die eienaars van Erf 5305, De Wet, het breedvoerig hieroor geskryf en ek bevestig dat ons in dieselfde bootjie is en stem ten volle saam met hul betoog. Met vergunning sal ek dit dus nie in my beswaar herhaal nie.

REDES VIR BESWAAR (opsommend)

1. Die bindende konstitusie en gepaardgaande reëls

Die eienaar van die restant van Erf 5227 is n lid van die De Bos Country Estate (DBCE) en is kontraktueel verplig om die konstitusie en gepaardgaande reëls te gehoorsaam en onderhou.

"The De Bos Country Estate is NOT a mass tourist attraction, nor is RE 5227 a separate rural property that can act independently without obligation. The DBCE is a country lifestyle estate of which the owner of RE 5227 is a legal part. The protection of the development's agricultural / rural character has been an enduring condition for approval by the Municipality on the consolidation / subdivisions of the original erven and is currently upheld/underwritten in the DBCE HOA's Constitution (Governance Documentation)".

Die beplanningsaansoek minag beide die konstitusie en gepaardgaande reëls en die behoefte om die landelike karakter van die estate/landgoed te bewaar. Genoemde aansoek kan nie voortgaan sonder "compliance with the express and/or implied intentions and conditions outlined in the governance documentation, as well as the HOA's mandatory approval".

2. RE 5227 het GEEN historiese "land use rights"

Die Munisipaliteit het bindende kondisies gestel met die totstandbringings van die DBCE:

- Condition(a) in 1995 (276/95)
- The approval letters of 2005 and 2008
- The DBCE Constitution and Rules

Die aansoek erken nie bogenoemde kondisies nie.

"Remainder Erf 5227 has NO historical land use rights other than what the Municipality has confirmed in the new zoning certificate of 2022. No departures (additional consent uses) are approved by the HOA and without such approval, the application should not have been lodged with the Municipality in the first instance".

3. Geraas en versteuring van die landelike atmosfeer

"The proposed additional consent uses (under resort zoning) will have a highly negative impact: the noise, disturbance and security issues will disrupt the tranquil and peaceful character established on the estate since inception, and also derogate much from the properties of the single erven within the estate. Furthermore, the new consent uses, introduce a foreign land-use pattern which is specifically warned against for the Montagu Conservation Area in which the DBCE is located".

In die De Wet, erf 5305, beswaar dokument word die drie besware omvattend toegelig. Ek onderskryf elke woord van die gedelaileerde beswaar en ag dit dus nie nodig om dit in my beswaar te herhaal nie

GEVOLGTREKKING

1. Ek herbeklemtoon dat slegs die huidige goedgekeurde Munisipale sonering asook primere vergunningsgebruik van Erf 5227 aanvaar word en dat daar geen intensie bestaan om teen die huidige sonering te diskrimineer nie en ook nie voorskrywend te wees mbt die huidige goedgekeurde vergunningsgebruik van Agama Mountain Products CC, maar beperk tot die bestaande en goedgekeurde Gedragsreëls en Ontwerp Riglyne. Dit is verder my intensie om bloot die eienaar van Erf 5227 (restant) verantwoordelik en aanspreeklik te hou om die "governance" dokumente van die HOA, soos uiteengesit in die Konstitusie, te ag en te onderhou

Geliewe ontvangs te erken asb

MNR A.D COETZER

Erf 5304, De Bos Country Estate, Montagu

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Applicant's response to objections

Your Ref: Erf 5227 Montagu
Our Ref: 2315/L02
Date: 31/10/2023

The Municipal Manager
LANGEBERG MUNICIPALITY
3 Piet Retief Street
Montagu
6720

By email: mstaal@langeberg.gov.za

Sir/Madam,

REPLY TO OBJECTIONS: APPLICATION FOR AMENDMENT OF A CONDITION IN RESPECT OF THE EXISTING APPROVAL & CONSENT USE - ERF 5227 MONTAGU, LANGEBERG MUNICIPALITY

The interested and affected parties were notified of the abovementioned application by the Langeberg Municipality on 8 August 2023. The application was advertised in the local newspaper on 8 August 2023. The 30-day comment period was extended by the Langeberg Municipality to 16 September 2023. A total of eight objection letters were received, raising more or less the same concerns.

The main topics of the objections are summarised as follows:

1. The Constitution;
2. Land use rights;
3. Noise and disturbance;
4. Agricultural character;
5. Infrastructure services

Please see the response to the abovementioned topics and subcategories below:

Main reasons	Relevant aspects	Response
1. The Constitution	a) Use rights of the southern portion	The area between Erven 5228, 5229, 5301-5305 and the river remains part of Erf 5227 for the use and enjoyment of the landowner. Restricting usage of that part of Erf 5227 by the other members of the HOA is considered an imposition of real rights of ownership to Erf 5227. The Constitution should not be applied as a tool to frustrate the lawful development of De Bos Guest Farm (now known as and hereafter referred to as De Bos Backpackers and Camping). Similarly, the Conduct Rules may not be used to restrict De Bos Backpackers and Camping's usage of the southern portion of Erf 5227 or any part of Erf 5227. The Conduct Rules are merely what the title suggests, a guide to promoting harmonious co-existence between residents and De Bos Backpackers and Camping and should be read with that intention. A planning application for the southern portion simply needs to show that a development is consistent with the zoning and the Constitution. Once approval is granted, De Bos Backpackers and Camping must comply with the Conduct Rules.

	<p>b) Building plans be approved by the HOA before any such applications are lodged with the Municipality.</p>	<p>In terms of the Constitution, the HOA's approval is required for the submission of building plans. No new buildings or structural alterations of buildings are proposed with this application. A land use planning application was submitted, not a building plan. The HOA is afforded an opportunity to comment on the application as part of the Public Participation Process. The HOA may not withhold building approvals unreasonably, especially concerning the proposed restoration of existing buildings such as the Lapa which was historically used for tourist groups.</p> <p>Before applying, an inquiry was made to Mr. Theo Rebel, Chief Town & Regional Planner, Department of Environmental Affairs and Development Planning, Western Cape, about the need to obtain the HOA's approval for submission of a land use planning application. The Langeberg Municipality was included in the correspondence. The application was submitted after receiving his response.</p> <p>The view of the Department is summarized below:</p> <ul style="list-style-type: none"> ▪ A municipality is well within its rights to, at a pre-application meeting or later in the application process, require that the input from an HOA needs to be submitted. They may require it to be submitted with the submission of the application but may also agree to receive it during the public consultation process of the application. ▪ It would be irregular to insist that written support of the HOA needs to be submitted with the application. This would equate to the municipality which is legally the competent decision maker to, via this procedure, abdicating its decision-making mandate to an HOA. ▪ It is comprehensible that an HOA may not support a land use application in certain instances, but then it should be in writing and submitted either with the application or as part of the public consultation. A municipality is well within its rights to insist on the submission of the comments of an HOA to make an informed decision on a land use application. ▪ If the comment of the HOA is negative or non-supportive then that is what the municipality must consider in the determination of the application. A municipality may refuse a land use application that is not supported by an HOA but a municipality it is not compelled to either not accept or refuse a land use application if an HOA is not in support of it. A municipality needs to consider all inputs and comments and make an informed decision on the land use application. By not accepting an application without the consent of an HOA, neither the applicant nor the HOA will have the opportunity to appeal the initial decision. ▪ Most municipal land use planning by-laws provide that if an applicant fails to provide the additional information or documents within the contemplated period, the municipality must consider the application without the information or documents and notify the applicant accordingly. In such an instance the absence of the
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		information may be to the disadvantage of the applicant. The municipality is not bound by the decision of the HOA, and it also has the power to decide an application without the consent or comment thereof.			
	c) The peaceful and undisturbed nature of the area between the erven and the river is not for common (public) usage.	Mr. De Wet refers to "common" and "public" whereas these words have different meanings. What is meant is that the area between the residential erven and the river is not for full shared usage between all the HOA members since it remains the property of De Bos Backpackers and Camping. Usage of that area by other members of the HOA is restricted. The landowner of Erf 5227 can utilize it for own or public use, depending on what is allowed in terms of the zoning scheme regulations. The proposed low-impact camping in the southern portion must also adhere to the rules of the Constitution and general consideration and respect towards the residents of Erven 5228, 5229, 5301-5305 should be practised. Rules relating to noise, privacy and access must be laid down for camping in this area.			
2. Land use rights	a) The Lapa is not a historical use	In the 2005 application by TPS Consulting Town and Regional Planners, reference is made to the Lapa (a thatch structure with ablutions) used for group camping purposes. Reference is als: made to the existing Lapa, including ablution facilities primarily used for tourist groups in the application submitted by Umsiza Planning in 2007. Furthermore, the 2017 SDP that was approved by the HOA also shows the "Lapa with bathroom" as well as the existing sewer line. Even though the Lapa is not currently used as a kitchen/scullery/ablutions area for campers, the intention is to restore it to its historical use. The Lapa is already serviced with a sewerage line running from Middle Street along the sewer servitude on Erf 3505, as shown on the SDP.			
	b) A function venue is not a consent use in Agricultural Zone II.	The two zonings contained in the split zoning of Erf 5227 are not specifically demarcated. However, the building (Old Barn) in which the function venue is proposed is related to the original resort. A function venue is allowed as a consent use in the Resort Zone.			
	c) Opinion of Anna-Christa Redelinghuys (Town Planner who dealt with the former application approved in 2008): ▪ Detail of camping areas was not included in the SDP as it was existing uses with no need for approval; ▪ Existing uses on Erf 307 at that stage included 2 cottages (guest accommodation), a lapa (note NO ablutions) and 200 pecan nut trees.	The image below is an extract from the application form of the former application (submitted in 2007 and approved in 2008): Is die grondeenheid ontwikkel (geboue, ens)? <table><tr><td>JA</td><td>NEE</td></tr><tr><td>X</td><td></td></tr></table> Indien wel, wat is die aard en kwaliteit van die ontwikkeling? <u>Erwe 308 en 309 bestaan uit die hoofwoning en stookkamer, asook die grootse gedeelte van die oord wat 'n tuinwoningstel, 'n binnehof met twee woonstelle, 'n slaapsaal, kampeerterrein met ablusie, kampeerkombuis en swembad insluit. Perdestalle kom aan die suidekant van die huis voor en 'n perde-arena is noord van die huis ontwikkel.</u> <u>Ontwikkeling op Erf 307 bestaan uit twee kothuise, waarvan elkeen uit twee selfversorgingseenhede met 6 beddens elk bestaan. 'n Lapa, ingesluit ablusie-geriewe, kom ook voor wat hoofsaaklik vir toeriste-groepe gebruik word.</u> The opinion offered by Ms. Redelinghuys in 2023 differs from the information provided by her on the application form of that particular application referred to. The Lapa was indicated on the subdivision plan submitted with her application (see Annexure E of PLANSERV's application).	JA	NEE	X
JA	NEE				
X					

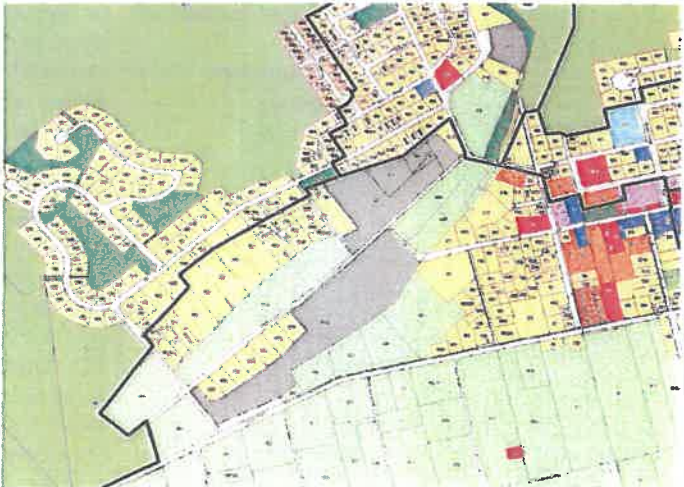


	<p>d) Condition (c) of the 1995 approval: "That the owner is granted approval to continue to keep farm animals"</p>	<p>This is incorrectly referenced to condition (b) by Mr. De Wet. Before the objector makes an accusation that "the keeping of animals intended to be a tourist attraction" is a misstatement by the applicant, it is advised that he makes sure of his facts. The exact wording of the applicant at that time was used. The image below is an extract from the development proposals that were submitted in 1995 by the landowner at that stage:</p> <p style="text-align: center;"><u>ONTWIKKELINGSVOORSTELLE</u></p> <p><u>"Ons beoog om 'n volwaardige vakansieplaas te ontwikkel.</u></p> <p>Op die korttermyn beplan ons die aanbou en opgradering van die eenhede 15, 16, 17 en 18.</p> <p>Op die mediumtermyn, afhangend van aanvraag, beplan ons die omskepping van die woonhuis vir toerisme-doeleindes en die oprig van 'n nuwe woonhuis, asook die aanbou van verdere eenhede.</p> <p>Op die perseel is daar 'n kampeerterrein en 'n kwekery. Daar is reeds 2 hektaar pekanneutbome aangeplant en die plan is om alle geskikte grond onder pekanneute te vestig.</p> <p>Aangeheg vind u 'n skematiese voorstelling van die huidige infrastruktuur asook gebruike.</p> <p>Ons wil nie die reg verbeur om plaasdiere aan te hou nie, aangesien hulle <u>deel vorm van die toeriste-atraksies van die perseel.</u>"</p> <p>The fact that special consent had to be obtained to keep animals implies that the land use changed from agriculture to resort. If the keeping of animals was allowed as a primary right, no need for consent was required. approval was granted to deviate from the development parameters to continue a land use that would otherwise not have been permitted.</p>
3. Noise and disturbance	a) The frequency and number of commercial activities/events are a concern.	<p>It would be unfair to limit the number of activities or events that may be held per annum as it is subject to seasonality, weather conditions and the country's economic climate. There is furthermore an assumption made that there will be an unacceptable frequency and number of activities/events without any facts to support this allegation. The activities/events are intended to supplement the income of De Bos Backpackers and Camping.</p>
	b) The proposal will create noise, traffic, disturbances and security issues for members of the HOA.	<p>Most of the land uses provided for in the current zoning regulations are already being carried out. The intention is not to create a mass commercial tourist attraction but there may be occasional large events from time to time, as is currently the situation. Event permits will still have to be obtained before the events. These events should be planned properly and the event organisers must adhere to the rules and regulations in terms of the municipal events bylaw as well.</p> <p>To reduce noise nuisance, it is advised that the cut-off time for events/functions is 23:00 and no music or noise disturbances are allowed between 23:00 – 08:00. When noise exceeds the permitted level, the Municipality can investigate and take action against the neighbour or other</p>



		<p>noise source. It is therefore in the best interest of the landowner of Erf 5227 to adhere to the rules and respect their neighbours.</p> <p>A right-of-way servitude is registered over Erf 5227 Montagu in favour of Erven 5228, 5229, 5301-5305 Montagu. There is no intention to make use of the right-of-way servitude for any land uses or activities on Erf 5227 Montagu and the owners of the aforementioned properties will have unobstructed use of the servitude road. Guests visiting De Bos Backpackers and Camping will use the entrance from Brown Street. In times when Brown Street might experience more traffic than usual, the residents of Erven 5228, 5229, 5301-5305 Montagu can simply drive straight along Middle Street towards Meul Street which gives access to the rest of the town.</p> <p>It is advised that clear signs be placed at conspicuous places on Erf 5227 to remind guests of general rules and to request them to respect the neighbours by, inter alia, keeping noise down and not accessing certain areas.</p> <p>The owners of all 7 residential properties within the HOA were aware at the time they purchased their properties that Erf 5227 was zoned differently and operating as a business. The HOA's opposition to the application ignores that cooperation with De Bos Backpackers and Camping may be a way to help maintain the character and sustainability of the De Bos Country Estate.</p>
	<p>c) The objectors refer to 118 additional parking bays, noisy entertainment boma(s), kitchen and scullery area(s), braais, ablution(s), rubbish and temporary toilets within meters of residential homes/dispersed over the property.</p>	<p>The application does not contemplate additional parking but the total number of bays required for all the land uses. Most of the indicated spaces are already used for parking. The number of 118 parking bays indicated is only to show that sufficient parking can be provided if all land uses were to be operated at once – the chance of that being the case is slim.</p> <p>It is unclear why reference is made to the specific land uses in plural form. There will only be one boma and it is unacceptable and potentially offensive to make generalizations about the campers that will make use of it. Some groups camping in that area might as well be religious or nature lovers who will not necessarily be noisy or use alcohol. It is suggested that general rules be laid down for the use of this area which also considers the neighbours' peace and privacy. Screening and landscaping with dense vegetation between the application site and Erven 5304-5305 would contribute to protecting the privacy of those landowners as well as the campers.</p> <p>No specific location was shown on the SDP for the temporary toilets and refuse bins. Braais and rubbish bins will be provided at each campsite. These will be cleaned regularly. Temporary toilets will only be used in the case of events, larger functions or farmers' markets, if necessary. There is no intention of placing these in the southern portion of the property as it will be too far for visitors to walk and too difficult to transport taking into consideration the site layout, access roads and topography. The temporary toilets should be placed close to the main events.</p>



4. Agricultural character	<p>a) Mr. De Wet refers to the 2005 application for the subdivision of Erf 307. It is noted that the subdivided plots were rezoned back to Agricultural, allegedly reaffirming the municipality's agricultural objective. He also mentions that it is interesting to note that these plots would become 7 single residential erven in 2008.</p> <p>b) Development should be compatible with the historic land use pattern and refrain from introducing foreign land use patterns.</p>	<p>This highlights the fact that the preservation of the agricultural zoning is not so important. On the other hand, preserving the area's rural character is still important. Preservation of the rural character does not necessarily imply that the zoning of a property should be agricultural or that only agricultural land uses may be carried out. In the case of De Bos Country Estate, a Single Residential Zone I erf can still have a rural character if the architectural and management guidelines of the country estate are applied.</p> <p>It is mentioned in the 1995 application that the intention was to develop Erf 5227 as a proper resort. The adjacent properties are zoned Single Residential Zone I, Resort Zone and Agricultural Zone II in terms of the Langeberg Municipality: Integrated Zoning Scheme By-law, 2018. The surrounding smallholdings are mainly used as lifestyle properties with small scale agricultural activities but some of these smallholdings offer tourist accommodation and tourist facilities. Low density residential land uses are found on the Single Residential Zone I erven. Montagu Caravan Park (zoned Resort Zone) is located adjacent to the application site.</p> <p>The two zonings contained in the split zoning of Erf 5227 are not specifically demarcated on a site development plan or any spatial plans of the municipality. In fact, the whole of Erf 5227 Montagu is shown as Special Zone on the existing Zoning Map and as Resort Zone on the draft Integrated Zoning Scheme Map of the Langeberg Spatial Development Framework, dated August 2017.</p>  <p>Foreign means unfamiliar or strange. Neither the Agricultural nor the Resort Zone, with consent uses (most already existing), is considered foreign as it fits in with the character of the surrounding area.</p>
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		<p>It is interesting to note that some other municipalities in the Western Cape allow campsites as a primary right in both the Agricultural Zone I and II categories. The land use is therefore compatible with both zonings and considered in line with the agricultural character of such properties.</p> <p>Rural character refers to the patterns of land use and development where open space, natural landscapes, and vegetation are preserved over the built environment. The low-density development on Erf 5227 as well as the small-scale agricultural uses, including the keeping of horses and donkeys as a tourist attraction, contributes toward the preservation of a rural character.</p>
5. Infrastructure Services	a) Infrastructure needed to accommodate the crowds is a concern.	Most of the land uses are already being carried out in existing serviced buildings/structures. The Engineering Services reports submitted to the Municipality will inform and guide the authorities in their decision-making.
	b) Some 118 parking bays to be provided additionally.	The number of parking bays on the SDP is shown as it is a requirement in terms of the municipal bylaw. If two or more uses combine to share a common parking area, the Municipality may approve parking requirements that provide less than the quantum of the parking required for individual uses. However, a total of 118 parking bays are indicated on the SDP to prove that sufficient parking space is available for all the existing and proposed land uses. The parking bays will not necessarily be hardened but the option is there to demarcate the parking areas if the need arises. It is not expected that all land uses will be carried out permanently but occasionally when functions/events are held, sufficient parking space will be available.

I trust that this response will enable the authorities to make an informed decision. Please do not hesitate to contact me if you have any questions.



MM COETZEE Pr. Pln



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Services reports

15 September 2023

Your Reference:

Our Reference: Erf 5227 Montagu/100/GN

De Bos Backpackers and Camping
c/o PlanServ (Pty) Ltd
P O Box 64
Riversdale
6670

Attention: Ms. Madie Coetzee

**BASIC ELECTRICAL ENGINEERING SERVICES REPORT FOR AMMENDMENT OF A
CONDITION IN RESPECT OF THE EXISTING APPROVAL & CONSENT USE: ERF 5227
MONTAGU, LANGEBERG MUNICIPALITY**

1. BACKGROUND AND TERMS OF REFERENCE

The proposed land use and amendment of land use is to establish off grid low impact camp sites with no modifications to the existing electrical site infrastructure.

Mapule Consulting Cape (Pty) Ltd has been appointed to investigate the electrical infrastructure capacity and requirements for the proposed development and this report relays our findings and recommendations.

2. EXISTING ELECTRICAL INFRASTRUCTURE

The property is situated in the Langeberg Municipality electricity distribution area. Information obtained from the Langeberg Municipality confirmed the following:

- Point of supply to the development is at a transformer on the property, circled in orange on Annexure A – Electrical Infrastructure Layout.
- Capacity of the supply to the development is a 40A three phase low voltage supply (27,7 kVA).
- Existing electricity account information is:
 - Account number: 5-72-05227-001-9
 - Consumer name: Agama Mountain Products cc, P.O. Box 103, Montagu, 6720.
- No restrictions to the available supply was highlighted by the Municipality.

An existing internal low voltage distribution network to the various low voltage loads are supplied from the existing consumer main distribution board and all loads are satisfactorily supplied from the above supply.

3. ELECTRICAL LOAD ESTIMATE

We estimate the loading to the existing facility to be 20,0 kVA (28,8 A three phase), based on the calculation below.

It must be noted that the diversity factors indicated in the table is for the worst case total load condition. Due to the mixed use loading of the site (house and cabins with residential load characteristics and offices and recreational facilities) the peak loading from the different loads are not coinciding and limits the impact on the bulk supply.

The addition of facilities at the Lapa for campers as well as electrification of the existing camp sites on the northern side of the property will add approximately 23,6 kVA (34 A three phase) additional load to the installation resulting in a total future load of 62,2 A three phase.

OFFICES AT:

HEAD OFFICE

P.O. Box 15082

PANORAMA

7506

Tel: +27 21 930 5790

E-Mail: gideon@mapule.co.za

22 Fairfield Street South

Fairfield Estate

Parow

7500

SPRINGS

P.O. Box 1300

SPRINGS

1560

Tel: +27 11 362 1829

E-Mail: christo@mapule.co.za

The total maximum future site load is estimated at 43,6 kVA (63 A three phase).

Electrical load estimate (Rev 1)				
Load Description	Supply breaker	Connected load (kVA)	Diversity factor	Diversified load (kVA)
Existing loads				
House	32A TP	8	0.5	4
Spare	32A TP	0	0	0
Old Pool	20A TP	2.5	0.4	1
Local sso's	2 * 20A SP	2	0.6	1.2
New Pool	32A TP	6	0.2	1.2
Barn	20A TP	8	0.4	3.2
Hot water cylinder	20A SP ELU	2	0.4	0.8
Cottage 1	40A SP	6	0.5	3
Cottage 2	40A SP	6	0.5	3
Lights	10A SP	1	0.7	0.7
Resort's Office DB	63A TP	3	0.5	1.5
Gate	20A SP	1	0.4	0.4
Total Existing Load		45.5		20
Future loads				
Camp Sites on Northern side	14 * 2 kVA / pillar box	28	0.7	19.6
Lapa (previously spare)	32A TP (Gas heating and cooking)	10	0.4	4
17 Low Impact Camp Sites	No connection	0	0	0
Total Future Load		38		23.6
Total Future Site Load		83.5		43.6

The increase in maximum demand for the new development is 23.6 kVA due to the camp sites on the northern side of the development being provided with electrical supply points at an average loading of 2 kVA per pillar box serving up to 4 camp sites. For this report we assumed that hot water generation will be from renewable energy and / or gas and cooking facilities will be gas operated.

Although the supply increase is not significant, the increased load will result in the maximum load to be higher than the municipal supply breaker rating. We thus recommend that the supply should be upgraded to an 80 A three phase supply.

4. AVAILABILITY OF ELECTRICITY

The availability of the existing 40A low voltage three phase supply from the Langeberg Municipality is adequate for the proposed development but may be overloaded due to imbalanced loads or abnormal conditions. The margin between the calculated load of 37,7 A and the supply breaker rated at 40 A is too small and thus an upgrade of the supply to 80 A three phase is recommended.

5. SUMMARY

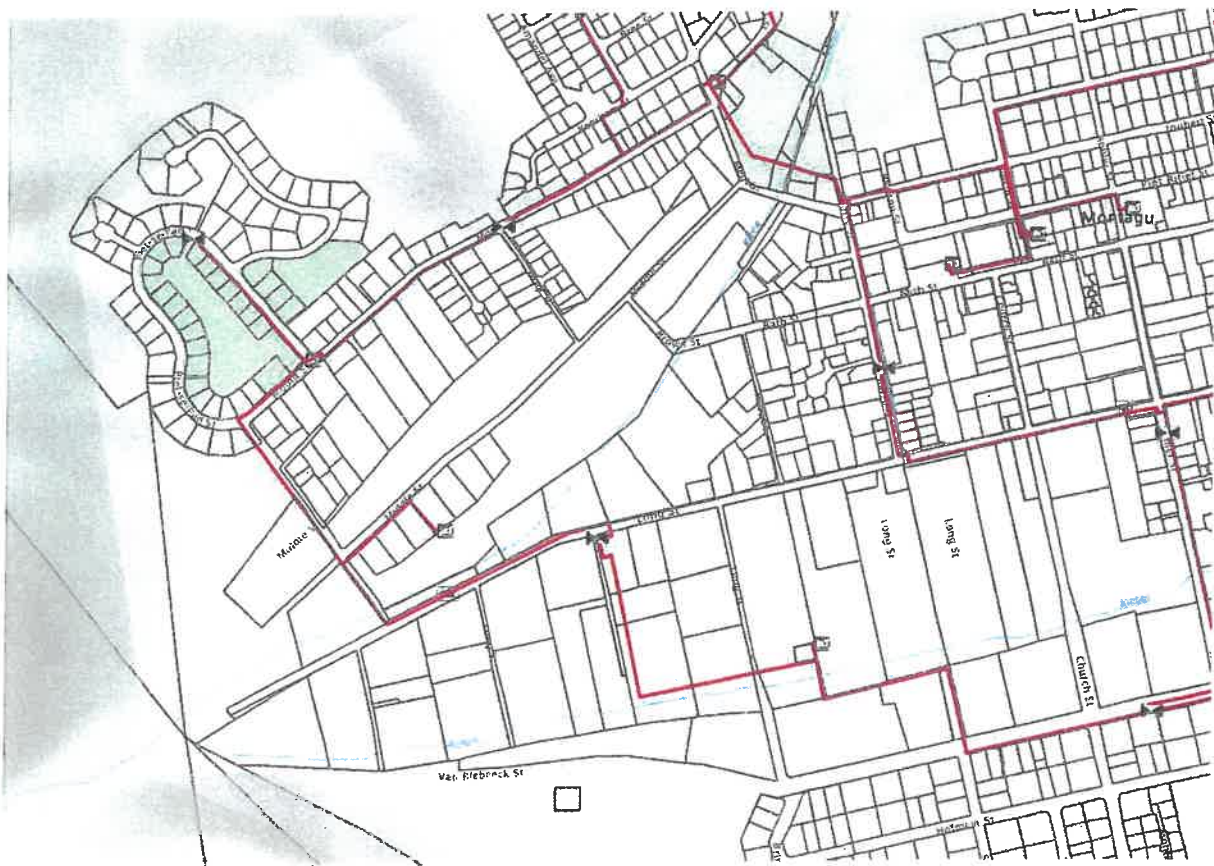
We summarise that the existing electricity supply of 40A three phase (low voltage) currently available for the development is not adequate for the intended future use and should therefore be upgraded to 80 A three phase due to the adding of low impact electrification of the camp sites on the northern side as well as provision of communal services at the Lapa.

This report was compiled by:


Gideon Naudé (Pr Eng)

for Mapule Consulting Cape (Pty) Ltd

Annexure A: Electrical Infrastructure Layout



Directors: Gideon Naudé, BEng (Electrical) (Hons), Pr Eng, SM-SAIEE; Stefan J Snyman, BEng (Electronics), M-SAIEE
Reg No: 2020/234211/07

Our Ref: 2023-5227_ajl9

22 September 2023

PlanServ (Pty) Ltd
PO Box 64
Riversdale
6670

Attention: Madie Coetzee

**MONTAGU – ERF5227
PROPOSED CIVIL ENGINEERING SERVICES
De Bos Backpackers and Camping
8 Brown Street, Montagu
PRIVATE DEVELOPMENT**

We have investigated the possibility to provide this development with Civil Engineering Services and want to comment as follows:

1. SEWER:

We propose an upvc 160mm waterborne sewer connection point at the existing municipal manhole point on the erf, that will drain into a new 160mm upvc sewer line that gravitates to the Main Municipal gravity line that crosses the river. This line gravitates to the lower pumpstation that pumps sewerage to the purification works.

2. DRINKING WATER:

The new development will be supplied with drinking water from the existing Town's Reservoirs via the existing water main network and have a static head that varies between 50m and 60m in Middel street at the point of connection. The drinking water gravitates via an existing 75mm diameter supply line in Middel street and has enough capacity to supply the development with the required flow. The fire flow of 25l/s will be available at various points in the development. We suggest an upvc 75mm diameter class 9 main connection point at the entrance of the erf with a sluice valve and a bulk water connection meter on the Engineering plan.

3. ROADS:

The Main access to the new development will be Brown street. The additional traffic that will be generated do not need a Traffic Impact Study or a Access Management plan. The new internal roads and access gate within the boundaries of the private development erf will be constructed by the developer with either crusherdust only or with brick paving

4. STORM WATER MANAGEMENT:

The stormwater flow, from the development is not concentrated flow channeled into pipes, but will be sheet flow that discharges into the river.

The 50 year flood lines has been calculated by other Engineers and shown on the Engineers plan.

We confirm that a portion of the proposed development are within the 50 or 100 year flood lines.
No permanent structure seems to be below the 50year flood line.

5. SOLID WASTE

All solid waste generated by the development will be collected by the Municipality at a central collection point for the private erf. Tenants will separate Glass, paper, plastics and other refuse.

6. MAINTANANCE

All maintenance on Civil Engineering services within the private development will be arranged by the HOA.

All works will comply with Municipal specifications.

Yours Faithfully



AJ LOUW
Pr.Teg.(Ing)
Reg.No. 9670059

Notes:

No.	Date	Revision	Initial

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Engineer
AJ LOW
Professional Engineer
Consulting Civil Engineer

SIGN DATE
PO BOX 570, ROBERTSON, 8705
ECOA 96 700 59 REG. PR TOS ING
Tel 022 828 1196 Fax 080 220 7798
Cell 072 257 6096 Email ajlow@telekom.net
Municipal Approval

SIGN DATE

Client
Andrew & Tracy Simmans

SIGN DATE

Project
**De Bos Backpackers and
Camping
8 Brown Street
Montagu 6720**

Drawing
CIVIL ENGINEERING LAYOUT

Scale 1:1000 Drawn
Checked A.J. Date SEPT 2023
Drawing No. DEB_GL001
Revision No. 0

Erf No.
DE BOS on ERF 5227.
Town
MONTAGU

