

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: SUBDIVISION: ERF 725, 1 SMITH STREET, MCGREGOR

Reference number	15/4/6/2	Application submission date	16/01/2023	Date report finalised	23-8-2023
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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)	Erf 725				
Physical address	1 Smith Street	Town	MCGREGOR		
Current zoning	Single Residential Zone I	Extent	3192m ²	Are there existing buildings on the property?	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
Applicable zoning scheme	LIZS. 2018				
Current land use	Dwelling house and Second dwelling			Title Deed number & date	T 33903/2008
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?	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	If Yes, specify			
Any unauthorised land use/building work	<input type="checkbox"/> Y <input checked="" type="checkbox"/> 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 subdivision of Erf 725 McGregor into two portions, Portion A (1000m ²) and Remainder (2192m ²).					
PART D: BACKGROUND & SUMMARY OF APPLICANTS MOTIVATION					
Erf 725 has an area of 3192m ² and is located on the corner of Darling and Smith Streets in the westernmost part of McGregor. Access to the property is from Smith Street, while					
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 Councilor	Other	
PART F: SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION (if applicable)					
3 Objections were received from the owners of erven 830 (across the street) and 615 (adjacent). The objections are attached in Annexure 3. The main points of objection are:					
<ul style="list-style-type: none"> • Subdivision will affect leiwater supply to objectors' properties. • Proposal will not fit in with existing character of the area, specifically due to irregular geometrics of the proposed erven, as opposed to regular rectangular geometrics of other properties in McGregor. • Not clear what off-street parking arrangement will be for the 2 properties. • Will reduce property values. 					
The applicant reacted to the objections as follows (full reaction attached in Annexure 4):					
<ul style="list-style-type: none"> • Provision of leiwater is protected by a servitude, which will remain intact • Alignment of subdivision line will have no impact on the streetscape, views or the "street rhythm". Proposed irregular alignment of the subdivision line is the most effective way to accommodate the existing buildings. There are many such examples in McGregor. • Sufficient on-site parking can be provided. There is enough room and easy street access. • The subdivision will merely accommodate the existing two building on the property and will not alter the land use pattern or (building) density in any way. • Erf 725 already has an irregular geometry, while the subdivision remain true to the street front grid pattern in McGregor. 					
PART G: SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS (if applicable)					
<u>Elektriese Ingenieursdienste</u>					
<ol style="list-style-type: none"> 1. Ons het geen beswaar teen die voorgestelde onderverdeling nie. 2. Elektriese dienste en kapasiteit is beskikbaar en grootmaat dienste bydraes vir 6kVA per erf is van toepassing indien 'n nuwe aansluiting benodig word. 3. Vir 'n nuwe aansluiting moet 'n formele aansoek gerig word aan die Elektriese Ingenieursdienste afdeling. Die beskikbaarheid van elektriese kapasiteit moet herbevestig word indien die aansoek meer as 12 maande na die datum van hierdie skrywe ontvang word. 4. Enige alternatiewe kragopwekking moet by die Munisipaliteit geregistreer word in gevolge die Munisipale Bywette. Meer inligting is beskikbaar op die Munisipale webwerf. 					
<u>Siviele Ingenieursdienste</u>					
No comment received. The Senior Manager Civil Engineering Services confirmed telephonically that there is no objection to the proposal, subject to the provision of separate services connections, conservancy tanks and vehicle access points for each of the two erven. The standard conditions in this regard apply.					

Verkeersdienste

Geen kommentaar gelewer

Wyksraadslid Wyk – Raadslid M Oostendorff-Kraukamp

Geen kommentaar gelewer

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

The planning evaluation of the application is based on the "relevant considerations" as explained in the Western Cape Department of Environmental Affairs and Development Planning's guideline document. An abridged explanation of the concept of "relevant considerations" is attached in Annexure 5.

It is confirmed that relevant considerations have been taken into account in this evaluation and that the proposal is deemed to:

- conform to the development principles of SPLUMA and LUPA;
- be consistent with norms and standards, applicable national and provincial government policies, Provincial Spatial Development Framework (PSDF) and the municipal spatial development framework (SDF) as is explained in more detail below;
- not impact negatively on existing rights and obligations;
- not contribute to nor detract from the constitutional transformation imperatives;
- be accommodated by existing engineering services, social infrastructure and open spaces;
- not require or involve any investigations to be carried out in terms of other laws;
- be in line with the relevant provisions of the zoning scheme;
- not affect the environment to an extent that warrants approval in terms of environmental legislation;
- to be desirable, as motivated more fully below:

DESIRABILITYAlignment with the spatial plans

Both the Western Cape Provincial Spatial Development Framework (PSDF), 2014 and Langeberg Spatial Development Framework (SDF), 2015 promote the conservation of historic settlements and their unique sense of place and identity. (Related extracts from the PSDF and SDF are attached in Annexure 6).

The Langeberg SDF makes the following relevant statements / proposals for McGregor:

- The agricultural plots in the centre of the blocks are a key component of the character of the village as well as a significant productive landscape being used for food gardening in many instances;
- To protect this resource two minimum subdivision overlay zones are proposed:
 - Overlay Zone I: Most of the village west of a line along Long street from the entrance to the town cutting back midblock between Kantoor and Tindall streets through to Church street is not permitted to subdivide less than 1000m² with not more than 50% hardened surfaces; and,
 -
 - There should be 2 storey height restrictions on all properties.
- It is likely that the village will continue to appeal to urban migrants, retirees and the B&B industry. This development can be accommodated in the proposed Overlay Zone I up to the parameters noted above. All buildings should be in keeping with the proposed heritage guidelines; and,

The key issue in determining whether the proposal is consistent / aligned with the PSDF and Langeberg SDF is whether it is in keeping with the heritage character of the town. The main determinants in this regard are i) density / erf sizes, ii) layout pattern and iii) the design of buildings. The erf sizes, density and layout pattern/erf form is discussed under "Compatibility with character of surrounding area" below, where it is concluded that the proposed density, erf sizes and erf form is compatible within the character of the surrounding area.

As the existing buildings will serve as the main dwellings on the two new erven, the design of buildings is not a key consideration in this case. Furthermore, there are various guidelines in place for the village as a whole, that will apply to any alteration or extension to the existing buildings, notably the "Guidelines for McGregor" (origin unknown), "McGregor Building Guidelines" (compiled by the McGregor Aesthetics Committee) and the "General Guidelines for Urban Conservation Areas" (compiled by the former National Monuments Council). Any possible negative impact in this regard can therefore be mitigated by imposing a condition that all buildings must adhere to these guidelines.

Economic impact

The proposed development is not expected to have a significant economic impact on the precinct/neighbourhood/ settlement, because the existing dwellings will be used and only minor alterations to the existing infrastructure is required in order to use both erven separately.

Social impact

The development will not necessarily lead to greater social justice and equity of access to opportunity, in line with the settlement restructuring principles, but will also not do anything to the contrary.

Scale of the capital investment:

The subdivision will create another saleable property, that should generate some income for the applicant, as well as increased rates and taxes.

Compatibility with character of surrounding area.

The applicant property is situated in the south-western part of town, which is dominated by large single residential erven. The proposed (continued) single residential land use is therefore considered to be in keeping with the surrounding land uses. The key consideration here is whether the proposed residential density and erf sizes are compatible with that of the surrounding area. This can be partially determined by the application of the municipality's subdivision policy, which determines specific minimum allowable erf sizes and erf dimensions in relation average erf sizes / street frontages in a specific area. The evaluation in terms of the subdivision policy is attached in The following table summarizes the situation in this regard:

	Immediate surrounding area (calculated as per subdivision policy) – 27 erven	Wider area 122 erven in southern part of McGregor	Proposal - 2 erven
Average erf size	1989m ²	1846m	1596m ²
75% of average	1492m ²		
Smallest erf	999m ²	999m ²	1000m ²
Gross density (du/ha)	3.9 erven / ha	4.6 erven / ha	5.1 erven / ha

(Calculations in Annexure 7)

The average proposed erf size is in keeping with the average erf size of properties in the south-western sector of the town, which makes up about a quarter of the town's extent. The proposed gross density of 5.1 erven per hectare is also only slightly higher than the current density of 4.6 erven per hectare in this part of the town.

The proposal complies with Council's subdivision policy (see calculations and evaluation in Annexure 7)

With regards to the form of the subdivision, the proposal is regarded as generally compatible with the grid layout pattern of McGregor and particularly with the immediate surrounding area, where similar stepped and non-perpendicular erf boundaries are observed. It is noted that Erf 725 already has a triangular shape and irregular boundaries, particularly along erven 615 and 1017. Also, the subdivision line is perpendicular to the street boundary, with the relative long (17m) front section of it positioned directly opposite the boundary between erven 417 and 830 across the street. This should ensure that the subdivision, as viewed from street level, will appear to fit in well with the existing pattern.



Impact on the external engineering services:

The creation of one additional erf, which already has a dwelling on, can be easily accommodated in the existing municipal services networks. The subdivision will however be subject to the payment of the relevant bulk services development charges.

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

It is not expected that the proposed development / land use will have a negative impact on the safety, health and wellbeing of the surrounding community. The only issue identified by the objectors in this regard, is the possibility of on street parking. As there will be adequate site access and space on the two new erven for on-site parking, as well as the fact that there already are two dwellings on the applicant site, it can be concluded that the subdivision in itself will not cause on street parking.

Impact on heritage:

Given the compatibility with erf sizes / density, possibility of control over building style and low visual impact, the impact of the proposed development on heritage is deemed to be acceptable. The building on the site as well as all existing heritage buildings in the vicinity will remain unaffected in terms of its setting, visibility and access.

Traffic impacts, parking, access and other transport related considerations such as public transport; and

The additional traffic generated by 6 additional households is unlikely to have a negative impact on the road system or – quality. The proposed cul de sac can function as an extension of Mill Street.

Impact on the quality of life of the immediate and surrounding residents

The subdivision is expected to have a very low visual impact, considering that no new buildings are envisaged and that any alterations or extensions to existing buildings will be subject to the existing building rules for McGregor.

The proposed subdivision will create an extra neighbouring property for erf 1017 only. The objectors' properties will remain unaffected in this regard. The potential impact on privacy is therefore adjudged to be very low.

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

N/A

PART J: RECOMMENDATION

That the application for the subdivision of erf 725, McGregor into 2 portions - Portion A (1000m²) and Remainder (2192m²) – be approved in terms of Section 60 of the Langeberg Municipality : Land Use Planning By-Law 2015, subject to the following conditions on terms of Section 66 of the by-law and for the reasons stated below:

1. The subdivision must be in accordance with plan marked MCG275-LBM-OP.
2. Each erf must be provided with its own direct water- and electricity connection, as well as a vehicle access point before any of the erven in the subdivision may be registered. The applicant is responsible to make the necessary applications for such connections and access to the Langeberg Municipality.
3. Each erf must be provided with its own on-site conservancy tank before any of the erven in the subdivision may be registered. The conservancy tank must comply with the municipality’s minimum specifications (as determined by the Senior Manager: Civil Engineering Services) and must be positioned so that the municipality’s tanker can easily service it from the street.
4. All internal service connections that may exist between the existing buildings on the two properties have to be removed and confirmed as such in writing to the Manager: Town Planning before registration may take place.
5. The applicant must pay the Development Levy for Civil Engineering Services for one additional opportunity as provided for in the Municipal tariffs, before any of the erven in the subdivision may be registered.
6. The applicant must pay the Bulk Levy for Electrical Engineering Services related to the new electrical erf connection as determined by the Manager Electrical Engineering Services, before any of the erven in the subdivision may be registered.
7. The street addresses of the two new erven will be:
 - Portion A: 1 Smith Street
 - Remainder erf 725: 1a Smith Street
8. To give effect to Sections 20(5)(c) of the Langeberg Municipal Land Use Planning Bylaw, 2015 the applicant’s Land Surveyor must submit draft erf diagrams or a draft General Plan with the new erf numbers on to the Municipal Town Planning Department for endorsement. Such endorsement in terms of Section 60 of the Langeberg Municipal Land Use Planning Bylaw, 2015 will only be given after the applicant has accepted these conditions in writing by means of the standard agreement,
9. At least one of the new erven in the subdivision must be registered separately within 5 years after the date of the approval, failing which the approval will lapse in terms of Section 22(1) of the aforementioned Bylaw, regardless of whether an erf diagram or general plan has been approved by the Surveyor-General or not.
10. Conditions 2, 3, 4, 5 (with sub-sections, except 5.3), 6 (with sub-sections, except 6.6 and 6.7), 7 and 9 of this approval must be complied with before a Certificate may be issued in terms of Section 28 of the aforementioned Bylaw. This certificate must be submitted with the transfer documents before the subdivision will be registered in the Deeds Office.

PART K: ANNEXURES

- Annexure 1: Location and subdivision plans
- Annexure 2: Motivation report
- Annexure 3: Objections
- Annexure 4: Applicant’s response to objection
- Annexure 5: Summary of “Relevant Considerations”
- Annexure 6: Relevant extracts from PSDF and Langeberg SDF (including heritage study proposals)
- Annexure 7: Calculation ito Subdivision policy

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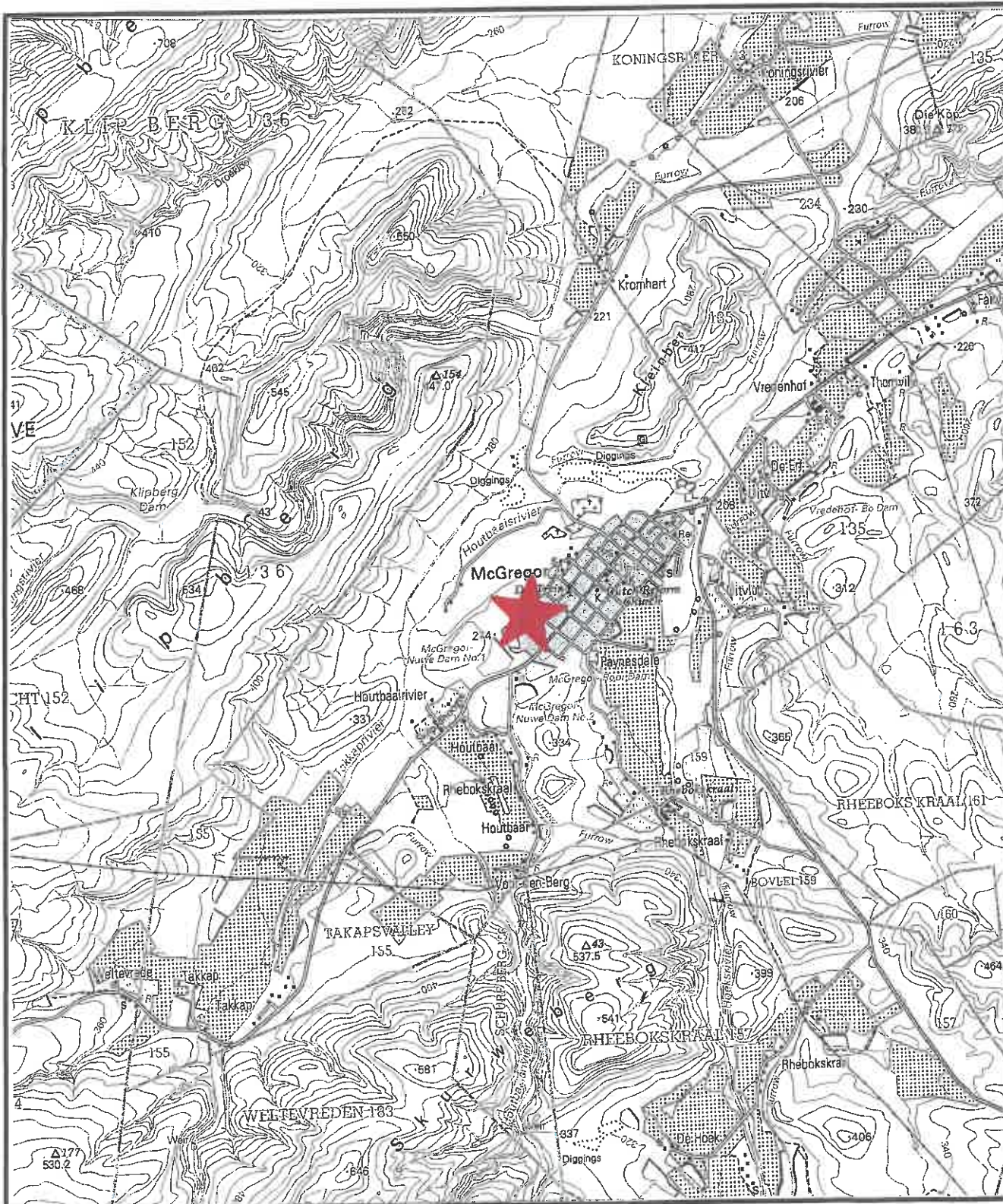
PART L: AUTHOR SIGNATURE

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

.....
DATE

Annexure 1

Location and subdivision plans



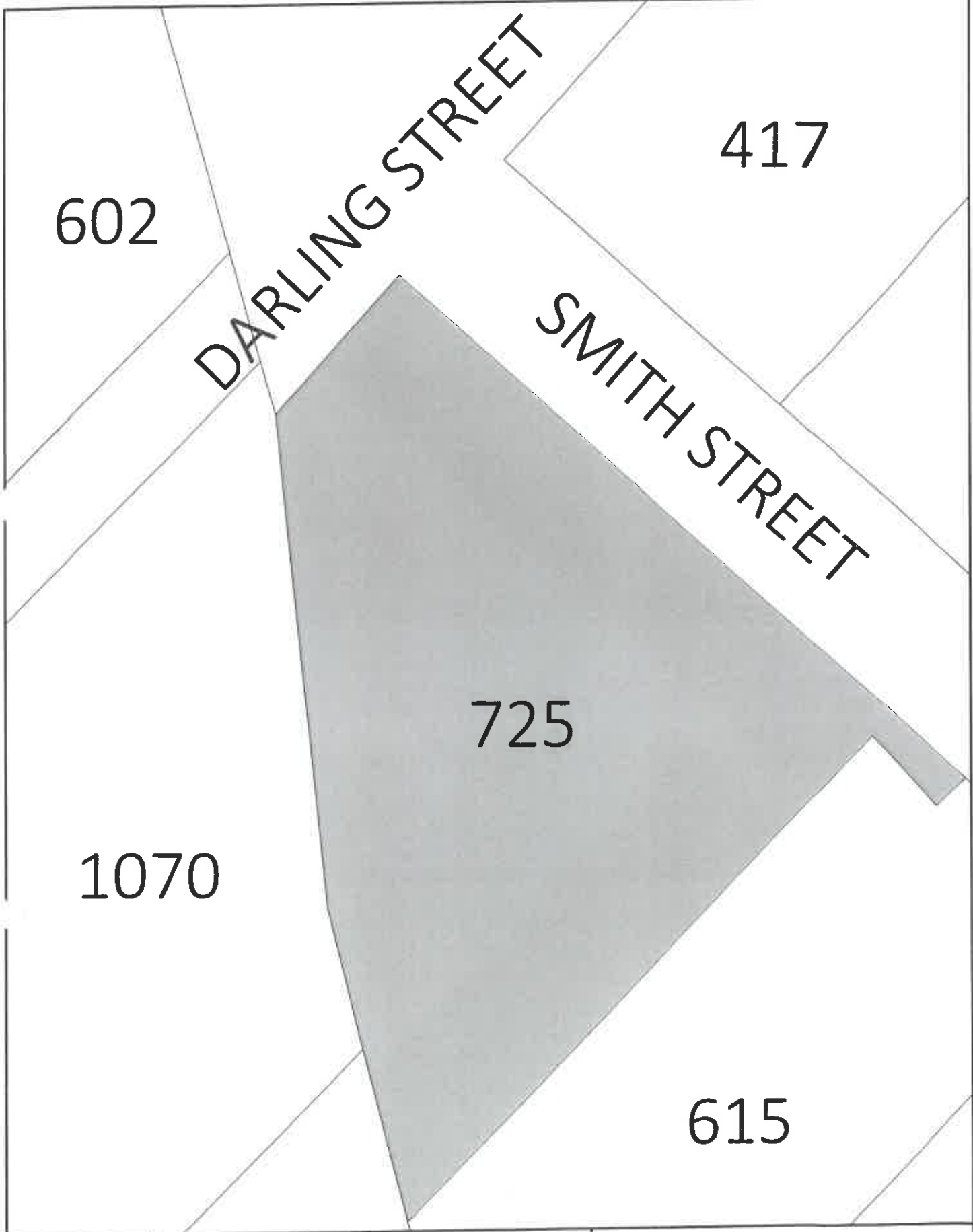
BolandPlan Town and Regional Planning

LOCALITY PLAN

TOPO CADASTRAL

APPLICATION FOR SUBDIVISION:- ERF 725, 1 SMITH STREET, MCGREGOR INTO PROPOSED PORTION A/ERF 725 AND THE REMAINDER ERF 725

#MCG/1218



TEKENINGNOMMER	
#MCG1218	
GETEKEN	MARTIN
DATUM	JAN2023
SKAAL	1 : 500

**PROPOSED SUBDIVISION OF
ERF 725, McGREGOR INTO
PORTION A AND THE REMAINDER**
SITE LOCATION PLAN.



SUBDIVISION PLAN 1

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MCG 725-LBM-OP

SUBDIVISION PLAN 2



Annexure 2

Motivation report

MOTIVATION REPORT

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APPLICATION FOR SUBDIVISION:- ERF 725, 1 SMITH STREET, MCGREGOR INTO PROPOSED PORTION A/ERF 725 AND THE REMAINDER ERF 725

1. INTRODUCTION

BolandPlan Town and Regional Planning was appointed by Johanda Zeller, owner of Erf 725, McGregor, to execute all the requisite urban planning actions pertaining to the proposed application for subdivision on her behalf.

2. PURPOSE

In the light of the above-mentioned background information and appointment, BolandPlan Town and Regional Planning herewith formally submits the following application in terms of the Langeberg Municipality:- Land Use By-law, 2015:-

❖ **Subdivision** of Erf 725, McGregor into two portions.

For Municipal processing purposes the application can be summarized as follows:-

APPLICATION FOR SUBDIVISION:- ERF 725, 1 SMITH STREET, MCGREGOR INTO PROPOSED PORTION A/ERF 725 AND THE REMAINDER ERF 725

3. THE PROPERTY

3.1. Description:-

The subject property is formally described in Title Deed T 33903/2008 as:-

Erf 725, McGregor, situated in the Breede River / Winelands Municipality (now Langeberg Municipality), Division of Robertson, Province of the Western Cape.

3.2. Location:-

The subject property is located on the corner of Smit and Darling street on the south-western built edge of McGregor.

Google coordinates:-

- ❖ 33°57'07.56" S
- ❖ 19°49'10.66" E

3.3 Total area:-

Erf 725, McGregor in extent:- 3 192 m²

3.4. Ownership:-

The owner of Erf 725, McGregor is described in the relevant Title Deed T 33903/2008 as Johanda Zeller.

No bond has been registered against the subject property.

3.5. Orientation:-

North:- Erf 417, McGregor:- residential use with dwelling house
Erf 330, McGregor:- Municipal common
Smith street

East:- Erven 830 and 615, McGregor:- residential use with dwelling house

South:- Erf 1070, McGregor:- residential use with dwelling house

West:- Erf 602, McGregor:- residential use with dwelling house
Darling street

3.6. Character of the area:-

The surrounding area has a mixed use of business and institutional type land-uses within the earmarked Central Business District (CBD) and heritage precinct of Worcester town characterized by heritage buildings within the surrounding scenic landscapes of the mountain surrounds.



REGIONAL MAP INDICATING THE TOWN MCGREGOR IN THE LANGEBERG MUNICIPAL REGION



GOOGLE EARTH AERIAL PHOTO OF McGREGOR INDICATING THE LOCATION OF SUBJECT PROPERTY

4. CURRENT AND SURROUNDING LAND USES

Current land use:-

In terms of the Langeberg Municipality Integrated Zoning Scheme By-Law, as applicable to the McGregor urban area, the subject property is zoned as:-

- Erf 725, McGregor:- **Single Residential zone I (SRZI)**

The land use designation as well as current existing use of the relevant property is briefly described below:-

Primary use is dwelling house.

Dwelling house means:-

Means a building containing only one dwelling unit, together with such outbuildings as are ordinarily used with a dwelling house, including:-

- A storeroom and garaging;
- A second dwelling or additional dwelling, with a floor area which does not exceed 60 m²; provided that application for consent use must be submitted if the second dwelling or additional dwelling is larger than 60 m²;
- A braai room;
- Renewable energy structure for household purposes;
- Home occupation;
- Letting to lodgers for long term rentals;
- B+B establishment;
- Home care; and
- a creche.

The property has one main dwelling and a second dwelling unit.

Surrounding land uses:- primarily residential in nature.



MAIN DWELLING HOUSE ON ERF 725, MCGREGOR

5. SITE DESCRIPTION

Subject property is located on the south-western periphery of the built edge of McGregor, within the demarcated urban edge with no significant conservation value. The erf is developed with a main house and a second dwelling with existing service infrastructure.

6. PROPOSED SUBDIVISION

The purpose of this application is to obtain the requisite planning approval for the redevelopment of subject property into two Single Residential zone I erven:-

APPLICATION FOR SUBDIVISION:- ERF 725, 1 SMITH STREET, MCGREGOR INTO PROPOSED PORTION A/ERF 725 AND THE REMAINDER ERF 725

In order to obtain the requisite land use rights, the following is proposed:-

- **Subdivision** of Erf 725, McGregor, in terms of Section 15(2)(d) of the Langeberg Municipality:- Land Use By-Law, 2015 into 2 erven:-

Proposed Portion A/725	:-	1 000 m ² , and
Proposed Remainder Erf 725	:-	2 192 m ² .

The proposed action will split the two existing dwellings units each on its own cadastral erf.

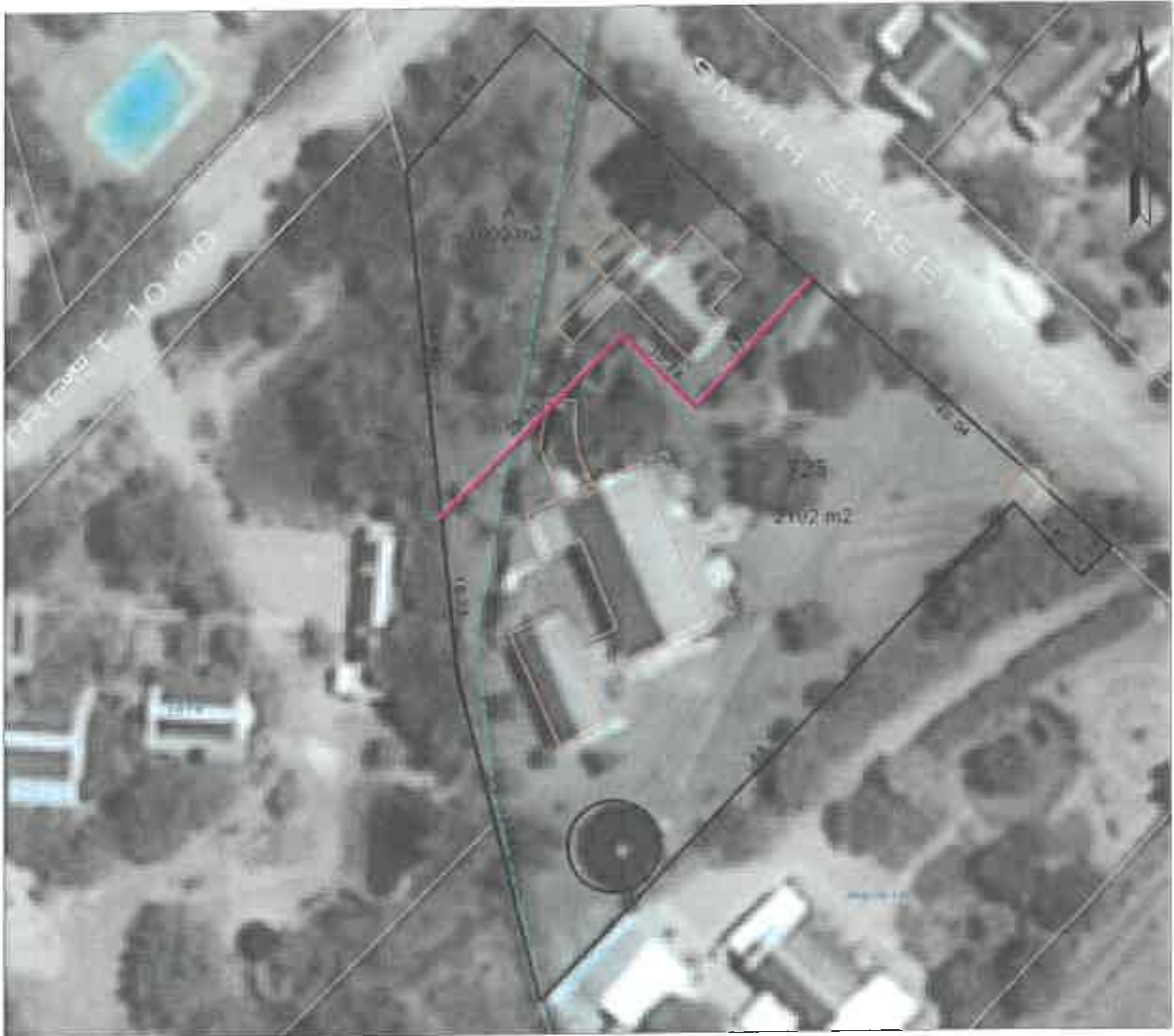
Although the proposed erf alignment is not following the usual preferred McGregor grid pattern, we had to move around the main house layout and align in such a way to have a positive impact on the existing street front pattern of McGregor town.



THE SECOND DWELLING ON ERF 725, MCGREGOR



The braai area link between the main house and the second dwelling would need to be partially demolished to adhere to the new 2-meter side building line of the new Remainder Erf 725, McGregor.



Proposed subdivision of Erf 725 into Portion A and the Remainder. Streetscape preserved.

7. PROPOSED DEVELOPMENT

THE PROPOSAL:-

- ❖ The proposal entails a realignment of an existing big erf with 2 existing dwelling units within the residential area of McGregor.
- ❖ Realignment to create 2 cadastral properties by means of a subdivision.

MOTIVATION:-

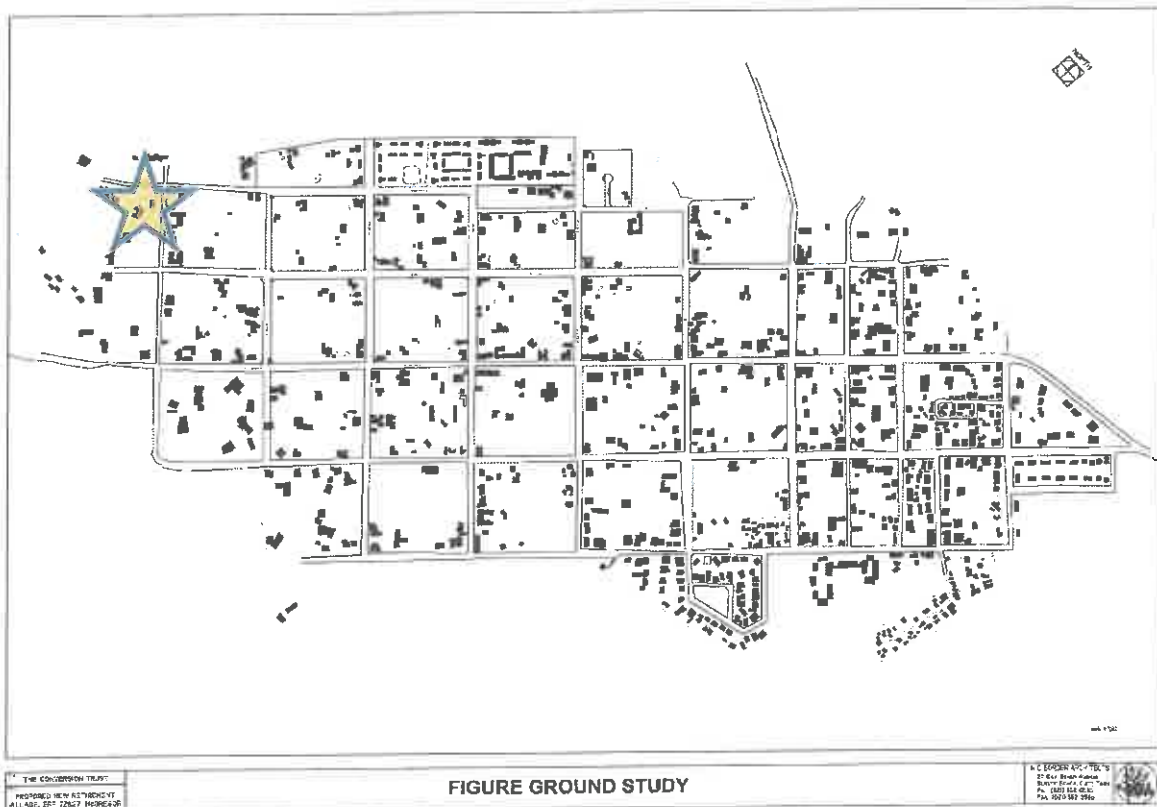
- ❖ The proposed subdivision is subservient and related to the dominant residential use and property size in the area.
- ❖ The proposed subdivision is compatible with provincial and municipal policy.
- ❖ No change in physical land use in the area.
- ❖ The proposal will fit in with the existing character of the area.
- ❖ The proposal does not infringe on the authenticity of the town landscape.

- ❖ The architecture is existing and fits the guidelines of McGregor.
- ❖ The proposal does not lead to inefficient service delivery or unjustifiable extensions to the municipality's reticulation networks.
- ❖ The property has no heritage significance and do not contain any proclaimed heritage elements.
- ❖ The proposal will not have a negative impact on any heritage resources.
- ❖ No traffic study has been conducted but the proposal to subdivide has minimal impact.
- ❖ Sufficient provision will be made for parking.
- ❖ The site is currently serviced with Municipal electricity, water and sewerage services. It is deemed that sufficient capacity is available to accommodate the additional erf with existing dwelling house.
- ❖ The proposal is in line with the policies of the Provincial and Municipal Spatial Development Frameworks as it **supports residential densification**.
- ❖ The application is consistent with norms and standards of Langeberg Municipality.
- ❖ The existing irrigation furrow will be retained.

ARCHITECTURE:-

The building structures are existing and do reflect elements of existing buildings and structures in McGregor.

If changes to the buildings are proposed building plans would need to conform to the guidelines set by the McGregor Aesthetics Committee.



The above figure of McGregor was utilized to represent urban pattern and rhythm.

8. TITLE DEED

The subject property is described in terms of Title Deed Nr. T 33903/2008.

The relevant title deed has been scrutinized. No indication of any limitations which would prevent the proposed application for Subdivision of Erf 725, McGregor, was in evidence.

9. ZONING SCHEME BY-LAW

The subject property falls under the jurisdiction of Langeberg Municipality. The application for Subdivision of Erf 725, McGregor is being made in terms of the Langeberg Municipality:- Land Use By-law, 2015, as applicable to the McGregor urban area.

The proposed application is in compliance with all the requirements as set out in terms of the relevant Zoning Scheme By-Law.

10. ACCESSIBILITY OF PROPERTIES

- The Remainder would need a new access from Smith street.
- Portion A can use the existing access in Smith street or apply for a new access from Darling street.

11. SERVICES

11.1. Water:-



The Remainder erf (Main house) will keep its existing water connection from the Municipal water main running parallel to Smith street on the eastern side of the Smit street boundary.

Existing water connection to the 2nd dwelling would be cut off from the Remainder and a new connection would need to be installed from the main running parallel to Smith street on the western side of the Smith street boundary.

11.2. Refuse disposal:-

Existing service. Waste generated to be collected by Municipality and delivered to the Municipal waste site.

11.3. Electricity Supply:-

Electricity supply existing. The second dwelling would need its own connection for billing purposes. Backup power could be generated from a solar system on the roofs if needed.

11.4. Sewage Disposal:-

Existing sewage systems.

11.5. Storm water:-

Common Law applies. Existing stormwater reticulation.

12. MOTIVATION:- NEED AND DESIRABILITY

The following sections is an assessment of the application in terms of the decision-making criteria listed in Section 68 of the Langeberg Municipality Planning By-Law, 2015, and serves as the motivation for the approval of this application.

12.1:- CONSISTENCY WITH PLANNING LEGISLATION

12.1.1:- SPLUMA (Spatial Planning and Land Use Management Act, 16 of 2013)

Section 42 of SPLUMA stipulates that, in considering and deciding on an application, a Municipal Planning Tribunal must –

- (a) Be guided by the development principles set out in Chapter 2 (of SPLUMA);
- (b) Make a decision which is consistent with norms and standards, measures designed to protect and promote national and provincial government policies and the municipal spatial development framework; and
- (c) Take into count –
 - i. The public interest;
 - ii. The constitutional transformation imperatives and the related duties of state;
 - iii. The facts and circumstances relevant to the application;
 - iv. The respective rights and obligations of all those affected;
 - v. The state and impact of engineering services, social infrastructure and open space requirements; and
 - vi. Any factors that may be prescribed, including timeframes for making decisions.

The application is considered to be in line with the requirements of Section 42 of SPLUMA, due to the following reasons:-

- ❖ The remodeling of the erf contributes positively to the principle of spatial justice as it ensures to improve the use of land.
- ❖ Approval of the application will allow the land to be utilized more efficiently.
- ❖ It contributes positively to the principle of spatial sustainability.
- ❖ The proposal contributes positively to the principle of efficiency as it optimises the use of existing resources and infrastructure on the property without resulting in negative financial, social, economic or environmental impacts.
- ❖ The proposal supports the principle of spatial resilience as it will ensure flexibility in municipal policies that will ensure economic development and creation of employment opportunities.
- ❖ The application promotes the sustainable use of land as it allows current existing services infrastructure to be utilised, thereby contributing to the economic viability of the property while also contributing to employment creation.
- ❖ The proposal takes into account and respects public interest and ensures that rights and obligations of affected parties are not affected and does not impact on engineering services, social infrastructure and open space requirements.
- ❖ The application is compliant with all relevant environmental legislation.

12.1.2:- LUPA (Western Cape Land Use Planning Act, 3 of 2014)

Section 59 of LUPA contains a list of land use principles which should guide land use planning. The application adheres to these principles, as stipulated below:-

Spatial justice:-

The proposal contributes to the principle of spatial justice as it ensures improved utilization of the property.

Spatial sustainability:-

The proposal will contribute positively to the economic viability of the property.

The proposal also does not negatively affect any natural habitat, heritage and tourism resources or ecological corridor and environmentally protected areas.

Efficiency:-

The proposal optimizes the use of existing resources and infrastructure and is in support of existing land uses in the surrounding area.

Spatial Resilience:-

The proposal supports spatial resilience as it will ensure flexibility in municipal policies by promoting economic development and creation of employment opportunities.

12.2:- CONSISTANCY WITH SPATIAL DEVELOPMENT FRAMEWORKS:-

12.2.1:- Western Cape Provincial Spatial Development Framework (PSDF)

The WCPSDF constitutes a comprehensive spatial planning policy framework, inclusive of planning principles and policy provisions. Its provisions are applicable to all development applications in the province.

The vision underpinning the WCPSDF is:-

"A HOME FOR ALL"

The document identifies three key areas requiring government intervention in order to realize this vision. The relevant areas are:-

- ❖ Socio-economic development (improvement in the general standard of living and the reduction of poverty);
- ❖ Urban restructuring (addressing spatial discrimination, racism and inefficiency);
- ❖ Environmental sustainability (ensuring the conservation of sufficient environmental capital to meet the needs of future generations).

The development proposal is briefly discussed in relation to these three overarching development objectives contained in the WCPSDF:-

Socio-economic development

The WCPSDF sets the following objectives with regard to socio-economic development:-

- ❖ Proposed developments should be aligned with future settlement patterns in the Western Cape, specifically bearing in mind existing economic opportunities and natural resources. In that regard, the Langeberg area has been identified as a growth corridor.
- ❖ The conservation of a "sense of place", cultural landscape and historic buildings. The proposed development will contribute to the urban texture of McGregor.

Urban restructuring

The relevant goals for urban restructuring are the following:-

- ❖ The development of effective, people-friendly areas. With regard to effectiveness, the proposal is for infill development. The development will draw upon existing infrastructural and other resources within the existing urban node in McGregor. Effectiveness is further increased by the proposed utilization of existing facilities and infrastructure on the subject properties.

Environmental sustainability

- ❖ More compact settlement footprints will minimize environmental impacts.
- ❖ Development within a buildup area.

Spatial implications referral in the WCPSDF:-

The lack of integration, compaction and densification in urban areas in the Western Cape has serious negative consequences for municipal finances, for household livelihoods, for the environment, and the economy. The PSDF provides principles to guide municipalities towards more efficient and sustainable spatial growth patterns. In order to secure a more sustainable future for the Province it is important that settlement planning and infrastructure investment achieves:-

- ❖ Higher densities;
- ❖ Shift from a suburban to urban development model;
- ❖ More compact settlement footprints to minimize environmental impacts; and

- ❖ Reduce the costs and time impacts of travel and enhance Provincial and Municipal financial sustainability in relation to the provision and maintenance of infrastructure, facilities and services.

By **prioritizing a more compact urban form** through investment and development decisions, settlements in the Western Cape can become more inclusionary, widening the range of opportunities for all.

The proposed development will contribute to urban restructuring and existing infrastructure and resources will be better utilized.

The proposal will encourage investment and create opportunities while enhancing the area's sense of place and enhancing the existing character.

The Western Cape Provincial Spatial Development Framework (WCPSDF) encourage densification and therefore the application is considered to be in line with the principles of the WCPSDF.

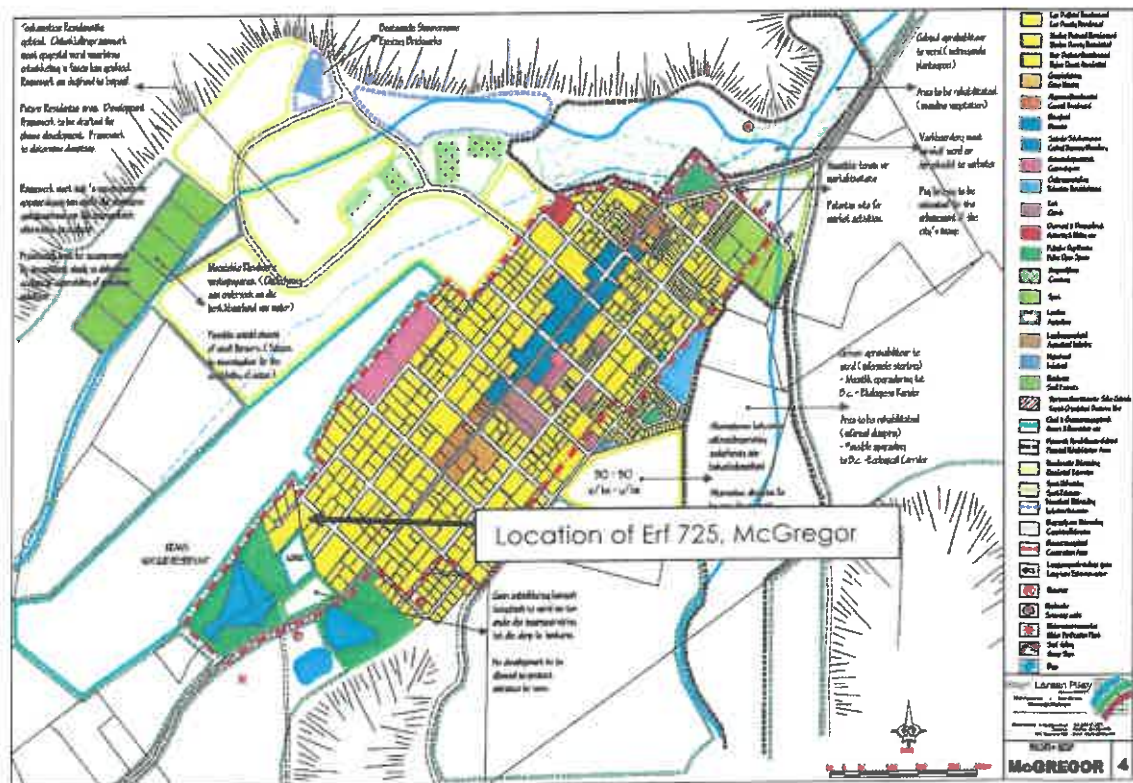
12.2.2:- Langeberg Municipality Spatial Development Framework (SDF)

The Langeberg Municipality SDF comprises a number of combined strategies in order to establish an appropriately broad approach to urban development in the relevant municipal area. The framework is underpinned by the following overarching strategies:-

- ❖ **Holism:-** A settlement should be comprised of an integrated structure of complex functioning systems and interlinked components. It should constitute more than just a functional habitat; it should be a meeting place for people to access opportunities for living, working and recreation. Spatial planning should therefore not be viewed in isolation, but rather as expressive of a holistic vision which comprehensively addresses the living environment of the given settlement.
- ❖ **Concentration:-** Concentration entails the concentration of activities within a defined space. As such, people and activities are brought closer together, which in turns contributes towards the more effective use of resources such as urban and rural land, construction materials, as well as all forms of energy and capital. The resulting compact settlement is in contrast to the expensive and wasteful use of resources associated with dispersed settlement patterns.
- ❖ **Integration:-** Related to that of concentration, this strategy entails the overlapping or integration of a number of activities and land uses within a defined space. This facilitates an increased level of synergy between social, political and economic activities. The physical manifestation is a more coherent and less interrupted urban structure. Such a structure is more conducive towards the creation of a more effective and supportive environment, and the facilitation of access thereof by the poorer members of the community. The integration of urban and rural functions may also be addressed by means of this strategy.
- ❖ **Conservation:-** The image and identity of communities are influenced by both the visual and functional qualities of the living environment. These qualities should be conserved, strengthened and built upon in order to ensure a sustainable environment. The form and expansion of a settlement should always be fundamentally based on the conservation of its given natural and built environments, comprised of its unique landscapes, functioning ecological systems, as well as the historical buildings and urban spaces which form part of the settlement's cultural heritage.

The proposed subdivision of Erf 725, McGregor reflect the above spatial strategies. The proposed subdivision is concentrated within the demarcated urban area.

The Langeberg Municipality SDF endorses the subdivision policy which was drawn up by Prof. Fabio Todeschini (viz. *McGregor Conservation and Development Policy*, 1993). The *Policy* was never approved by the relevant MEC, and thus does not have statutory status. Nevertheless, it serves as a set of broadly accepted guidelines. The relevant document specifically addresses the subdivision of Residential zone I erven. In the opinion of Prof Todeschini (included as part of the HIA), the preservation of mean erf sizes of 2 000 m² is not necessarily in the best public interest. He notes that the McGregor urban environment had significantly changed over the past 20 years. Former urban agricultural activities have disappeared, and Council has approved a number of smaller subdivisions.



Extract from the Langeberg Municipality Spatial Development Framework

The application complies with the Spatial Development Framework of Langeberg Municipality.

12.3. DESIRABILITY OF THE PROPOSED LAND USE

- ❖ Proposal in line with the provisions of existing planning policy, documents and plans
- ❖ No negative impact on the traffic patterns
- ❖ No negative impact on the aesthetics
- ❖ No change in the nature of the area
- ❖ No socio-economic impact
- ❖ The “sense of place” of McGregor will be conserved

13. SUMMARY

This report has served to motivate the need and desirability of the application for:-

APPLICATION FOR SUBDIVISION:- ERF 725, 1 SMITH STREET, MCGREGOR INTO PROPOSED PORTION A/ERF 725 AND THE REMAINDER ERF 725

The proposed subdivision is compatible with existing Langeberg Municipality Spatial Development Framework and the Provincial Government of the Western Cape Spatial Development Framework and will have no negative impact.

We are further of the opinion that the application does not deviate from applicable policy, will not have any detrimental impacts on existing land use rights in the surrounding area, will not endanger the safety and wellbeing of the surrounding community in any way, and will not lead to any disturbances to either the built or natural environment.

The purpose of this report is to motivate for the desirability and need of the application for subdivision of Erf 725, 1 Smith street, McGregor in order to align the existing 2 dwelling units each on its own title.

Taking into account the above presentation made in this report, the view is herewith expressed that the proposed subdivision will both compliment and strengthen the existing character of McGregor in the following ways:-

- ❖ The proposed subdivision is aligned with the forward planning proposals contained in applicable Municipal and Provincial policy documents.
- ❖ The proposed subdivision will not be negatively affected by any natural factors.
- ❖ The proposed subdivision will not negatively affect any natural elements.
- ❖ The proposal espouses sound modern urban planning principles.
- ❖ The proposed subdivision will have no negative impacts on existing traffic patterns or on services.
- ❖ No negative impacts on the aesthetics, character, quality or functioning of the area will result from the proposed subdivision.
- ❖ Additional tax basis for the Municipality.

Taking into account these factors, the opinion is hereby expressed that the proposed subdivision will benefit the existing area.

For these reasons we have no hesitation in recommending the proposed application for subdivision of Erf 725, McGregor for favorable consideration by your Council.

We trust that you find the above in order, and eagerly await your response in this regard.

Kind regards

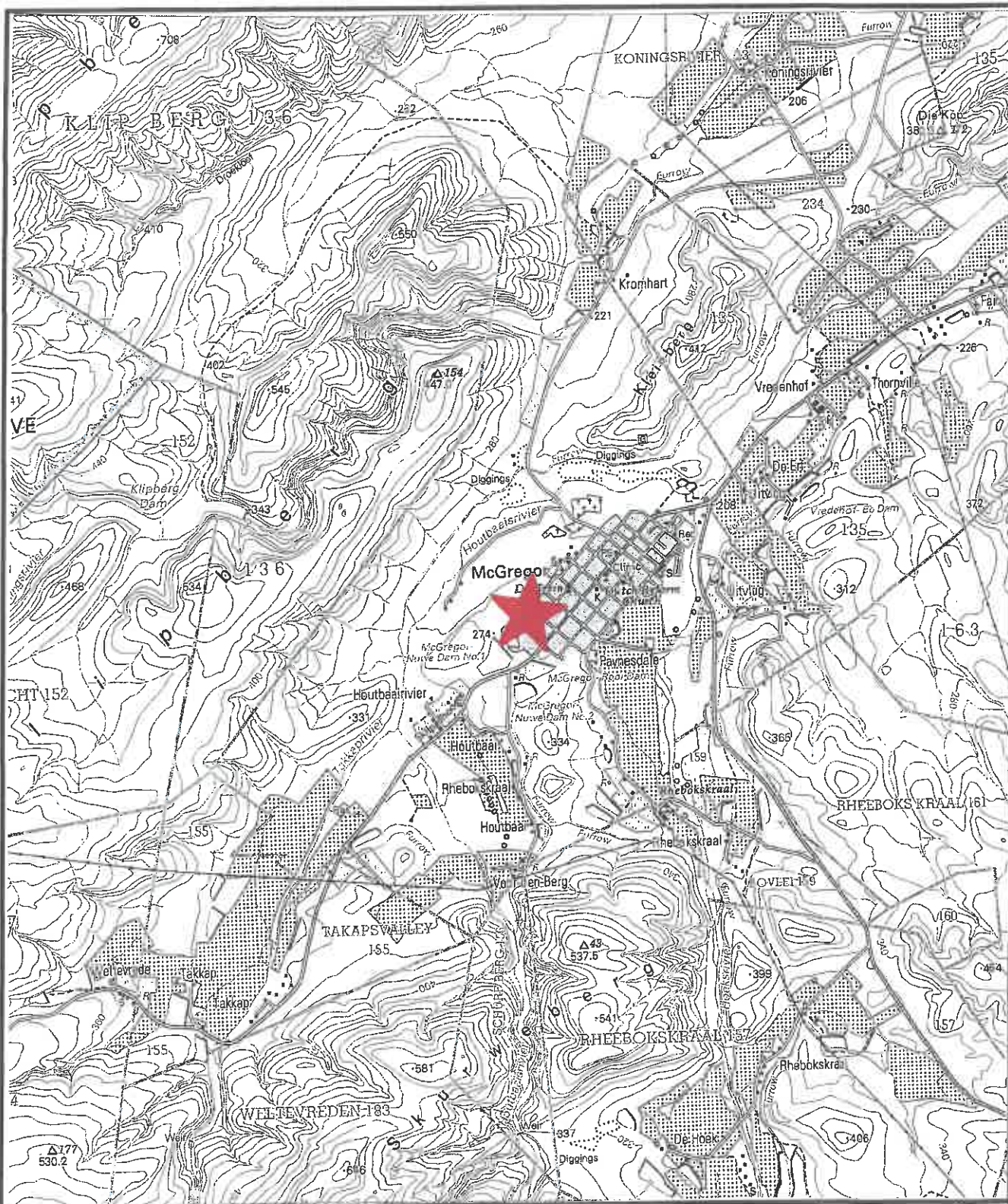
MARTIN Oosthuizen

for BolandPlan Town and Regional Planning

082 5655 835

[Tch.Plh/B/8270/2014](#)

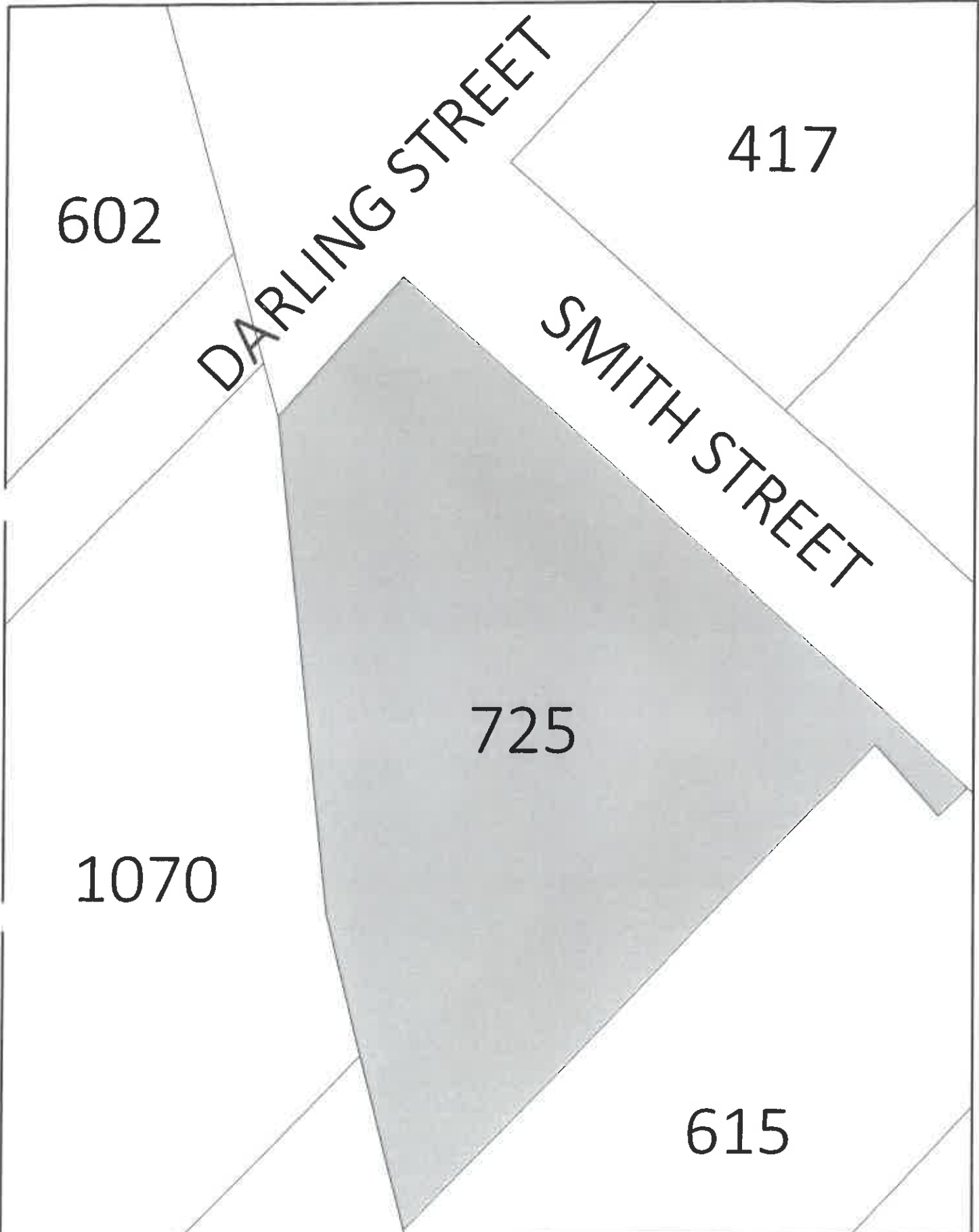
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BolandPlan Town and Regional Planning

LOCALITY PLAN
TOPO CADASTRAL

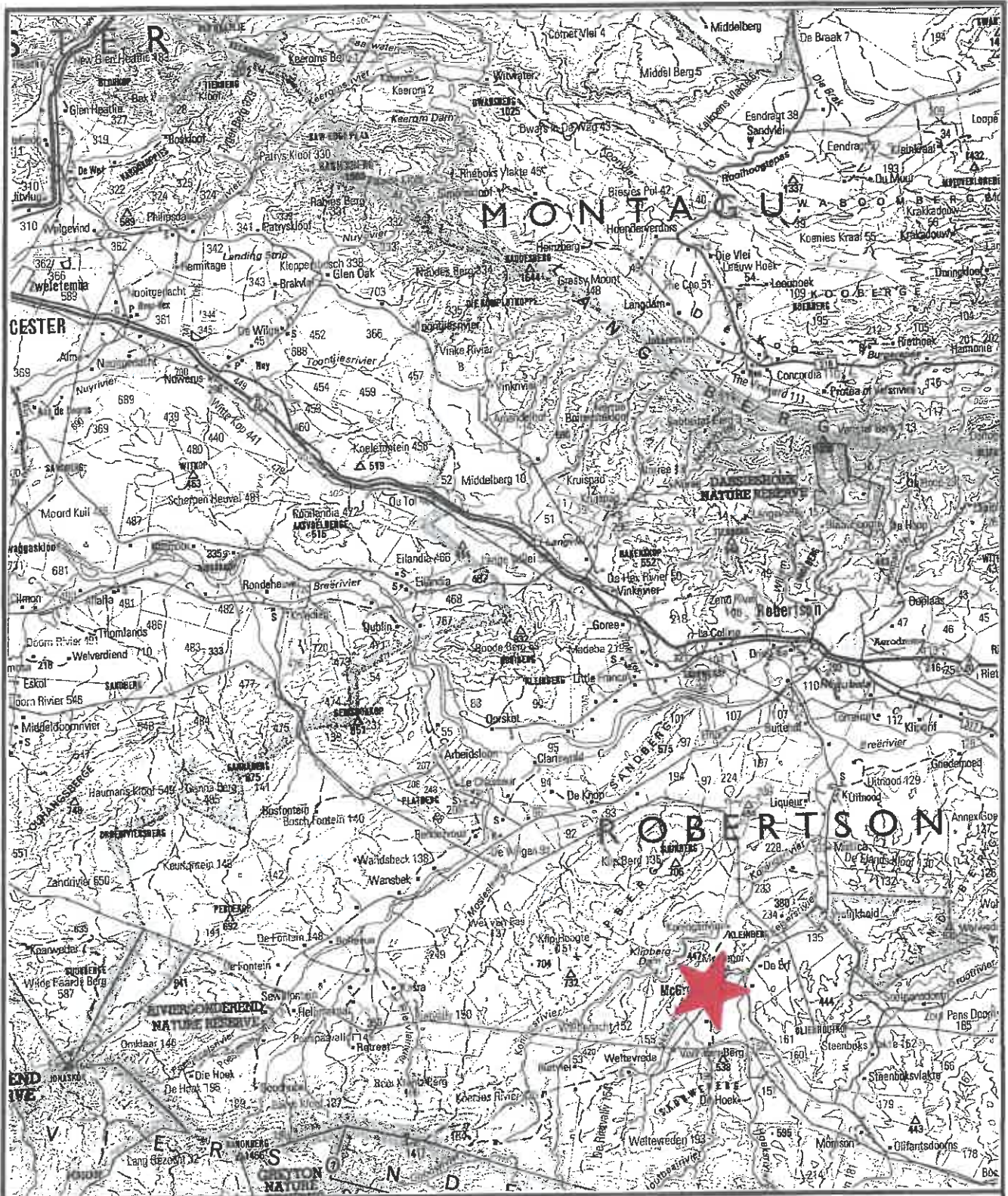
APPLICATION FOR SUBDIVISION:- ERF 725, 1 SMITH STREET, MCGREGOR INTO PROPOSED PORTION A/ERF 725 AND THE REMAINDER ERF 725
#MCG/1218



TEKENINGNOMMER	
#MCG1218	
GETEKEN	MARTIN
DATUM	JAN2023
SKAAL	1 : 500

**PROPOSED SUBDIVISION OF
ERF 725, McGREGOR INTO
PORTION A AND THE REMAINDER**





BolandPlan **Town and Regional Planning**

REGIONAL PLAN
1:250 000

APPLICATION FOR SUBDIVISION:- ERF 725, 1 SMITH STREET, MCGREGOR INTO PROPOSED PORTION A/ERF 725 AND THE REMAINDER ERF 725
#MCG/1218





Annexure 3
Objections

OBJECTION 1

(ERF 830)

34

21 April 2023

THE MANAGER: TOWN PLANNING LANGEBERG
MUNICIPALITY
3 PIET RETIEF STREET MONTAGU 6720

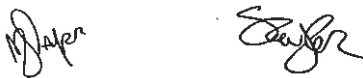
Ref: 15/4/6/2 Proposed subdivision: Erf 725, McGregor

Dear Sir, Madam

We wish to object to the proposed subdivision: -

1. The subdivision is right across the Lei Water channel which supplies our property and will impact continued supply should the subdivision go ahead.
2. The proposal will not fit in with the existing character of the area and as such will reduce the value of our property.

SINCERELY,



S&HL TAYLOR

OBJECTION 2

35

Myrna Staal

From: nicola mitchell <nhsmitche11@gmail.com>
Sent: Friday, 21 April 2023 13:55
To: Myrna Staal
Cc: Jonathan Dos Santos; Collaborator
Subject: Erf 725, McGregor – subdivision proposal

(ERF 615)

Good afternoon,

I wish to object to the proposed subdivision for the following reasons: -

Ref: 15/4/6/2 Proposed subdivision: Erf 725, McGregor

1. The subdivision is right across the Lei Water channel which supplies our property and will impact continued supply should the subdivision go ahead.
2. The proposal will not fit in with the existing character of the area.

Thank you for your attention.

Kind regards,
Nicola Mitchell

6 Smith Street
McGregor

OBJECTION 3

316

21 April 2023

(ERF 615)

THE MANAGER: TOWN PLANNING
LANGE BERG MUNICIPALITY
3 PIET RETIEF STREET MONTAGU 6720

Ref: 15/4/6/2 Proposed subdivision: Erf 725, McGregor

Dear Sir/Madam

I object to the proposed subdivision of Erf 725 (1 Smith Street, McGregor) on the basis that I am not in agreement with the statements in Section 7 of the Application for Subdivision as follows:

- The proposal will fit in with the existing character of the area.
- The proposal does not infringe on the authenticity of the town landscape.

I submit that the subdivision, as indicated in the last illustration in Section 6 of the Application, reproduced below, results in two properties with highly irregular geometries. This is NOT in keeping with either of the two bullet points quoted above, as the vast majority of properties in McGregor are of a regular rectangular geometry.

In addition, it is not clear what off-street parking arrangements will be made for either property, if any. It will be noted that all other properties in Smith Street between Voortrekker and Darling Streets have off-street parking, generally including properly designed garages or carports.



Proposed subdivision of Erf 725 into Portion A and the Remainder. Streetscape preserved.

Yours Sincerely,

Dr Andrew Mitchell

3 Smith Street, McGregor, 6708
e-mail: andrewamitchell@gmail.com
Phone: +27 83 235 8932

Annexure 4

Applicant's response to objections

REACTION TO OBJECTIONS

38

Date:- 15 May 2023
Our ref:- #MCG/1218
Mun ref:- 15/4/6/2

The Municipal Manager
Langeberg Municipality
Private Bag X2
ASHTON
6715



For attention:- Mr J le R van Zyl

RESPONSE TO OBJECTION RECEIVED:-

APPLICATION FOR SUBDIVISION:- ERF 725, 1 SMITH STREET, MCGREGOR INTO PROPOSED PORTION A/ERF 725 AND THE REMAINDER ERF 725

Above mentioned application and Municipal e-mail with objections for comment dated 4 May 2023 refers.

During Langeberg Municipalities Land Use Planning By-Law public participation process letters were sent out to surrounding land owners and a notice placed in the local newspaper for comment and/or objection.

Three **objections** were received from:-

- ❖ **S+HL Taylor,**
- ❖ **Nicola Mitchell, and**
- ❖ **Andrew Mitchell.**

The evaluation of land use applications and the basis of a refusal by Council are set out in the Langeberg Municipality:- Land Use By-law, 2015, section 55(3) indicate that an application shall be refused solely on the basis of a lack of desirability of the contemplated utilization of land concerned including the guideline proposals included in a relevant guideline issued by the Provincial Minister. The comments in response to the notice of the application, including comments received from municipal departments. Impact on municipal services, IDP, SDF, applicable structure plans and the PSDF.

We were instructed to respond, on our client's behalf, to the objections received from S+HL Taylor, Nicola Mitchell and Andrew Mitchell, and we do so below.

Our response to the main issues identified in the objector's letters is summarized and structured as follows:-

1. The subdivision line is across the lei water canal and will impact continued supply;
2. The subdivision will not fit in with the existing character of the area;
3. The subdivision will reduce the value of the objector's property;
4. Subdivision will result in two properties with highly irregular geometries; and
5. Provision for off-street parking.

BolandPlan Town and Regional Planning's response to the objection received:-

1. The subdivision line is across the lei water canal and will impact continued water supply.

Lei water is protected by servitude and the subdivision will have no negative impact on water supply.

2. The subdivision will not fit in with the existing character of the area:-

The alignment of the subdivision has no negative impact on the existing residential character of the area:-

- No change to the street scape.
- No change to the street view.
- No change to the street rhythm.

3. The subdivision will reduce the value of the objector's property:-

This is seen as speculation and not a reason to object.

4. Subdivision result in two properties with highly irregular geometries:-

Although the proposed erf alignment does not wholly follow the usual rectilinear McGregor grid pattern, this is the best way to re-align between the two existing dwellings. There are many examples across McGregor where boundary alignment has been adjusted to accommodate existing structures.

The alignment does not have a negative impact on the street scape.

5. Provision for off-street parking:-

There are no development parameters for off-street parking on properties zoned as Residential zone I. Sufficient on-site parking is available if required.

CONCLUSION

I submit in conclusion that the proposal supports residential densification without any negative impact on the historical layout of McGregor and that we trust that you will consider our submission positively.

Yours faithfully

MARTIN Oosthuizen

BolandPlan Town and Regional Planning
PO Box 963 WORCESTER
6849
082 5655 835

For your perusal we also attach personal response from the land owner on the objections received.

APPLICATION FOR SUBDIVISION 15/4/6/2

Applicant's Response to Objections:

5th May 2023

The objections submitted by the three respondents were wholly expected; we would have been disappointed if they had not have objected as that would have indicated that our assessment of their characters would be flawed.

These respondents have submitted their objections out of pure malice and spite.

The objections are; without exception, merely blunt statements without a shred of fact or rationale with which to substantiate them, and indicates that they are merely grasping at straws and talking through their hats.

However ludicrous the objections may be, the municipality expects the applicant to respond to the objections. A formal response from our duly appointed Town Planning Consultant with Power of Attorney serves as such; but this personal response is included as an addendum to the formal response.

1] The objection from Nicola Mitchell of 6 Smith Street as usual shows absolutely no original or independent thought, and merely parrots the objections submitted by the Taylor's of 4 Smith Street. As such these two objections are dealt with as one:

These Respondents raise two issues; both of which have absolutely no basis in fact or in reality and show a marked lack of understanding or knowledge of property values and of the leiwater system. To respond directly then to the two points of objection:

a) *"The subdivision is right across the lei water channel which supplies our property and will impact continued supply should the subdivision go ahead":*

The respondents do not specify how they foresee that the subdivision would create a scenario in which the subdivision will "impact supply".

The leiwater canal system across McGregor (and other towns), while being mostly on municipal land, crosses multiple private properties with ever changing ownership. The lei water canal that feeds the respondents specific properties crosses six private properties, including four subdivisions, before crossing the property in question, erf 725, and exiting into Darling and Smith Streets to supply their properties.

There are many such examples in McGregor of the lei water canal being crossed by private property boundaries, including subdivisions.

Further, the lei water canal, and operation thereof, is subject to a servitude in favour of the municipality. A subdivision cannot override this servitude.

The objector's argument is from the outset null and void.

(PS: As a further indication of the respondent's ignorance: A channel is a passageway or natural waterway connecting two points, normally two natural bodies of water. A canal is a man-made artificial waterway cut through land for a purpose such as transport or irrigation. McGregor has lei water canals, not channels).

b) The second point made by these respondents is twofold: that the subdivision "will not fit in with the existing character of the area", and that that would have the result of "reducing the value of our property".

We will address each of these sub-arguments separately:

b.1) Firstly; the objectors themselves are guilty of destroying the character of the area, in particular the streetscape, in direct contravention of McGregor's heritage guidelines, the recommendations of Todeschini and Japha (1993) and of Abrahamse (2013), and even of the Western Cape Heritage Guidelines 2013; **Heritage and Scenic Resources: Inventory and Policy Framework for the Western Cape** (policy TV.7, pg 43). As Penny Pistorius states in her **Study of McGregor Buildings, 1986**: "*Many of the newer elements ... have had a negative effect on the existing landscape elements, and that it is essential that the positioning of any new structure on these sites must be carefully considered.*" There was no care or consideration in the respondents positioning or style of the structure they imposed on the streetscape. The double story double garage monstrosity which they built late 2000's (without consulting this neighbour or giving opportunity to object) has permanently destroyed the streetscape and character of the area of upper Smith Street. As an interesting aside; the respondent Mitchell of 6 Smith Street refused to allow the monstrosity to be built against her boundary with the Taylors, who then built it on the opposite boundary.

All three respondents are also further responsible for destroying the character of the area through the wilful and spiteful encouragement of growth of vegetation – trees and hedges – on their properties in order to obstruct the normally open views across the village and block, flouting all heritage and aesthetic guidelines for McGregor.

More pertinently to our response though is the fact that the two structures situated on the property in question, erf 725, have been substantially in place since 1988 and much of the structures date even earlier than that, pre-dating the structures on the respondents' properties by a considerable margin. The respondents are late-comers to McGregor and moved in with the structures on erf 725 having been in place for many years already. The smaller structure on the proposed Portion A of erf 725 was originally a garage and storeroom, later converted to an office, workshop and store, and later still to a second dwelling, at every stage remaining substantially unchanged in form.

The subdivision will in no way alter the land-use pattern or density.

It is plainly ridiculous to think that a line drawn on a map can be considered to alter the "character of the area".

b.2) The respondents also make the assertion that the subdivision will reduce the value of their properties, yet provide no theory or premise on which they make this assertion.

The reality is quite the contrary; based on valuations provided by two estate agents the post-sub-division valuations of this property are some 48% higher than the pre-subdivision valuations. The per square metre value with similar structures will of course reflect on neighbouring properties, in the current hypothetical and future reality of the sale of the respondents' properties, to their benefit.

Once again, the respondent's argument holds absolutely no truth and is invalid.

2] The third respondent, Mitchell of 3 Smith Street, raises two points dealt with below:

a) He states that the subdivision will result in "*two properties with highly irregular geometries*", which in turn is not "*in keeping with the existing character of the area*", and which will "*infringe on the authenticity of the town landscape*".

This statement raises three issues:

Firstly, if Mitchell had actually taken some time to look at the diagram which he copied and pasted from the Motivation Report, he would have noticed that the undivided property in

question, erf 725, has by no means a regular geometry, while the subdivision remains true to the existing street-front grid pattern of McGregor.

Mitchells' own property, 3 Smith Street, when subdivided off the original larger erf 615, has - by his own reasoning - a "highly irregular" geometry. From his entrance gate, or NW corner, his boundary has a very distinct zig-zag before straightening out along his SW boundary. The rear, or SW boundary of his property, is at a distinct angle and certainly not part of the rectilinear grid pattern. Of the six corners to his property, only two, on the street front, are at more or less right angles.

Secondly, by zooming out slightly it is markedly apparent that the SW corner of the village is distinctly not geometrical and does not follow the rectilinear gridlike form of much of the rest of the village. Todeshini and Japha (1993) recognise that "*One of the distinguishing features in McGregor is that there are different areas within the village grid, and different conditions along its boundaries*", and that the: "... village boundary is irregular: the adapted grid edge skirts individual erven", and that; "*The grid has been adapted to the topography where necessary*". Looking at the erven in the SW corner of the village it is difficult to find a single erf that has a 'regular geometry'. Of the 19 properties in this corner of the village there are only three of the more than 46 boundary corners which have a right angle. This is true of two recent subdivisions in the area; erf 1363 and erf 1123, to which the respondent made no objection, again pointing to a personal attack on the applicant rather than a concern for the area or town landscape.

Finally; it has historically been and still is common practise for property boundaries in McGregor to be adjusted to cater for objects or structures, and even for topography. There are many such examples across McGregor. The zig-zags, bends and kinks, and off-grid boundaries abound in McGregor, but no more so than in the SW corner of the village.

The respondent's contention is unjustified and indefensible. The subdivision boundary is most certainly in keeping with the existing character of the area and will not infringe on the authenticity of the town landscape".

b) The respondent is mostly correct in his statement that other properties in Smith Street have off-street parking facilities. However, there are three points to be added here:

Firstly; even though there are off-street parking facilities on these properties, just in the one block of Smith Street, between Mill Street and Darling Street (which includes both the applicant and the respondents' properties) four of the eight residents/visitors with garage or carport available to them choose rather to park on-street. Erf 625 parks permanently in Mill Street; erf 609 parks mostly on the street; erf 417 always parks on Darling Street, and erf 602 mostly park on the street.

Secondly, the applicant has resided in McGregor far longer than the respondent and there has never been a day when the applicants' vehicles were parked on the street overnight. At all times our two vehicles, and our visitors' vehicles, have always been accommodated on our property. There is enough room on both subdivisions, with easy street access, to accommodate any number of vehicles off-street. It will be up to the new owner/s to determine whether they want a dedicated parking facility or not, and where this/those will be built, if at all.

Finally, it none of the respondent's business where residents or visitors choose to park their vehicles, on-street or off-street. There is no red line nor any no-parking signs or any other

parking restrictions along Smith Street. Having a garage or carport, and having to use such, is not a requirement of the municipal bylaws.

In conclusion:

The objections of the respondents have absolutely no substance and are rejected with the contempt that they deserve.

The old adage applicable here is that: 'It is far better to keep quiet and let people think you a fool, rather than to speak out and prove it'.

Sincerely

David Zeller
Applicant
Erf 725 subdivision.
1 Smith Street
McGregor

Summary of Relevant Considerations

Section 33 of the Constitution requires that organs of state make decisions which are **lawful, reasonable and procedurally fair**. It further provides that national legislation must be enacted which provides that those whose rights have been adversely affected by administrative action, are given an opportunity to have the administrative action reviewed in a court of law (or, where appropriate, an independent and impartial tribunal).

In order to give effect to section 33 of the Constitution, the Promotion of Administrative Justice Act (3 of 2000) ("PAJA") was promulgated. Section 6(2) of PAJA sets out the reasons why an administrative decision may be reviewed. Section **6(2)(e)(iii) of PAJA** provides that an administrative decision may be reviewed if **irrelevant considerations were taken into account** or if **relevant considerations were not considered by the decision maker**.

When assessing a land use application, there are certain general development principles contained in the Spatial Planning and Land Use Management Act, No 16 of 2013 (SPLUMA) and the Western Cape Land Use Planning Act, No 3 of 2014 (LUPA) that must be taken into account, and which are regarded as relevant considerations for the purpose of PAJA.

Furthermore, section 2(2)(d) of LUPA states that **a municipality must regulate the criteria for deciding on land use applications**. These are determined in the Langeberg Municipal Land Use Planning Bylaw, 2015 (the bylaw). Chapter V, Section 65 (1) (a) to (s) of the bylaw sets out the general criteria that must be considered when deciding on a land use application.

In terms of the above, in **considering and deciding on an application**, a Municipal Planning Tribunal / Authorised official / Appeal Authority / Official **must** be guided by

- (a) The **development principles of SPLUMA and LUPA**;
- (b) The prescribed **procedure to be followed** in processing the application; (**Bylaw S65(1)(b)**)
- (c) The **comments received in response** to the notice of the application and the **comments received from organs of state and internal departments of the municipality**. (**Bylaw Section 65(1)(d)**)
- (d) The **response by the applicant** to the **comments** referred to above. (**Bylaw Section 65(1)(e)**)

and, when considering land use applications, must take into account the following key aspects, as drawn from various sections of SPLUMA, LUPA and the Langeberg Municipal Land Use Planning Bylaw:

- (a) Must make a **decision which is consistent with**:
 - (i) norms and standards
 - (ii) measures designed to protect and promote the sustainable use of agricultural land
 - (iii) national and provincial
 - (iv) government policies
 - (v) the municipal spatial development **framework (SPLUMA S42(1)(b))**
- (b) May not make a decision which is **inconsistent** with a municipal spatial development framework (**SPLUMA S22(1)**)
- (c) May depart from the provisions of the Municipal Spatial Development Framework in **site specific circumstances (SPLUMA S22(2))**

- (d) Must ensure **alignment** with any relevant structure plans, the PSDF and any applicable Regional SDFs; **(Bylaw, S65(1)(l)(n)(o))**
- (e) Must take into account **public interest (SPLUMA 42(1)(c)(i))**
- (f) Must have regard to at least **any guidelines issued by the Provincial Minister** regarding proposed land uses; **(LUPA 49(e))**
- (g) Must take into account **any applicable national or provincial policies** that guide decision making; **(Bylaw, 65 (1) (p))**
- (h) Must take into account the **impact on existing rights and obligations; (SPLUMA 42(c)(iv))**
- (i) Must take into account the **constitutional transformation imperatives; (SPLUMA, S42(1)(c)(i))**
- (j) Must take into account the **state and impact of engineering services, social infrastructure and open space requirements; (SPLUMA S42(1)(c)(v))**
- (k) Must consider any factor that may be prescribed, including timeframes, for making decisions; **(SPLUMA, S42 (1)(c)(**
- (l) Must take into account **investigations carried out in terms of other laws** which are relevant to the consideration of the application; **(Bylaw 65(1)(f))**
- (m) Must take into account the **relevant provisions of the zoning scheme; (Bylaw 65(1)(s))**
- (n) When considering an application affecting the environment, **ensure compliance with environmental legislation; (SPLUMA, 42 (2))**
- (o) Must consider the desirability of the proposed land use **(LUPA, section 49(d) and Bylaw S65(1)(c))**

Annexure 6

Relevant extracts from PSDF and Langeberg SDF (including heritage study proposals)

PSDF

The Western Cape's unique sense of place and identity underpins it's economy in numerous ways and requires appropriate responses to the heritage, cultural and scenic assets of the Province.

Scenic landscapes, historic settlements and the sense of place which underpins their quality are being eroded by inappropriate developments that detract from the unique identity of towns. Causes include a lack of adequate information and proactive management systems..... Conservation strategies, detailed place-specific guidelines and explicit development parameters must supplement urban edges to ensure the effective management of settlement and landscape quality and form.

POLICY R5: SAFEGUARD CULTURAL AND SCENIC ASSETS

1. Input townscape and landscape making considerations into municipal SDFs, land use management systems and infrastructure development programmes.
2. Protect heritage and scenic assets from inappropriate development and land use change.

Objective 5: Confirm and and strengthen the sense of place of important cultural landscapes, artefacts and buildings

3.1.7.3 PROVINCIAL SPATIAL POLICIES

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.

3.3.1.1 SETTLEMENT POLICY OBJECTIVES

The Provincial settlement policy objectives are to:

1. Protect and enhance sense of place and settlement patterns
2.
3. Promote an appropriate land use mix and density in settlements
4.
5.

The protection and enhancement of heritage and cultural resources is a clear Provincial mandate with indirect but strong links to its economic development mandate, especially with respect to skills retention in the knowledge economy.

A strong sense of place and quality environments within settlements at all scales is increasingly recognized as an essential dimension of sustainable settlement. This relates to the economic potential associated with tourism, attracting skills into the service and knowledge economy, as well as the wellbeing and dignity of communities of all income groups.

Landscape and heritage management are an essential and integral aspect of spatial planning and not separate from it. Principles pertaining to settlement development should always support the protection and enhancement of cultural and heritage assets.

POLICY S1: PROTECT, MANAGE AND ENHANCE SENSE OF PLACE, CULTURAL AND SCENIC LANDSCAPES

1.
2.
3. Respond to and enhance an economically, socially and spatially meaningful settlement hierarchy that takes into account the role, character and location of settlements in relation to one another while preserving the structural hierarchy of towns, villages, hamlets and farmsteads in relation to historical settlement patterns.
4. Use heritage resources, such as the adaptive use of historic buildings, to enhance the character of an area, stimulate urban regeneration, encourage investment and create tourism opportunities, while ensuring that interventions in these heritage contexts are consistent with local building and landscape typologies, scale, massing, form and architectural idiom.
5. Conservation strategies, detailed place-specific guidelines and explicit development parameters must supplement urban edges to ensure the effective management of settlement and landscape quality and form.

LANGEBERG SDF 2015

Implications of National Development Plan 2030 for Langeberg Municipality: Architectural styles unique to the area together with the scenic beauty of the natural landscape should be promoted to strengthen the tourism sector.

Implications of National Spatial Development Perspective: McGregor is identified as a town with a low development potential and high social need.

Implications of Provincial Spatial Development Plan
Urban edges to be defined around current urban development areas to contain outward growth of areas and to increase the gross densities within those areas

Implications of Provincial Urban Edge Guideline Manual
In the Langeberg the following elements play a critical role in delineating the Urban Edge: Heritage aspects such as landscapes, views, rural landscapes...

Settlement guidelines:

Principles for intensification corridors and linkages:

- Show sensitivity towards existing heritage buildings;
- Enhancing the street experience through landscaping and guiding the architecture of new developments

Urban design guidelines:

UD11: Any proposals for the redevelopment of existing buildings should consider their heritage value, elements of the vernacular architecture and, where possible, retain these important elements. Similarly, the historical characteristics of existing buildings should be considered to draw from their elements that could be integrated into the design and construction of new buildings close by.

Settlement hierarchy and structure

McGregor – heritage and tourist village –

- The agricultural plots in the centre of the blocks are a key component of the character of the village as well as a significant productive landscape being used for food gardening in many instances;
- To protect this resource two minimum subdivision overlay zones are proposed:
 - Overlay Zone I: Most of the village west of a line along Long street from the entrance to the town cutting back midblock between Kantoor and Tindall streets through to Church street is not permitted to subdivide less than 1000m² with not more than 50% hardened surfaces; and,
 -
 - There should be 2 storey height restrictions on all properties.
- It is likely that the village will continue to appeal to urban migrants, retirees and the B&B industry. This development can be accommodated in the proposed Overlay Zone I up to the parameters noted above. All buildings should be in keeping with the proposed heritage guidelines; and,

Heritage study & guidelines in SDF

The spirit of a proposed Heritage Area is to encourage the maintenance of the building stock in that area, as well as the quality of the urban character that is defined by the relationship of buildings to one another and to other urban elements such as the streets, parks/squares, riverine corridors and so forth.

The following guidelines should be applied broadly when considering any proposals for construction, alteration or repair within the proposed Heritage Area

New construction:

5. Reference to the style, shape/form and materials used in the older buildings should inform new construction within a heritage area.
 - 5.1 The shape and positioning of the building on the site should echo those of the older buildings, particularly with reference to the roofline, position of the building on the property and form of the building as visible from the street. For instance, if most other buildings within the Heritage Area have gabled ends, new construction should follow suit.
 - 5.2 Materials used in new construction should be similar to those used on older, traditional buildings in the vicinity.
 - 5.3 Roofing materials should similarly echo those evident on the older buildings in the vicinity of the site.
 - 5.4 The streetscape of the block on which the building(s) is located should be retained and wherever possible enhanced. Building lines and setbacks from the street and side boundaries should respect and follow the patterns established in the original layout of the area in which construction is taking place. Where they are common, verandas of similar proportions to those of the original buildings in the area should be included in designs.
 - 5.5 While respecting the historical nature of the area within which it is located, new construction should not be historicist in approach. While following the basic guidelines outlined above, it should be clear that the new building is of the 21st Century rather than trying to blindly mimic buildings of the 19th and 20th Centuries.
 - 5.6 Owners are encouraged to retain historical forms of fencing along the boundaries of their properties, but where this is not possible or practical alternative solutions may be considered, provided they are in keeping with the maintenance of the streetscape and do not obstruct the significant views towards the buildings from the street. Boundaries around properties that are residential or were originally residential should not exceed 1.8 metres in height.

5.7 In certain instances, for example where a historically significant property has been subdivided, new construction may be required to be set back far from the street edge or have a flat and contrasting roof in order to be subservient to the main, historically significant structure.

Change of use, densification, subdivision, consolidation:

9. It is understood that it is often in the interests of retention of historic building stock and the character of an area that the use of individual buildings and parcels of land should change as the area in which they are located develops and economic circumstances change. However, in all instances the implications thereof must be assessed from the perspective of the implications for individual buildings and parcels of land and the integrity of the areas in which they are located. Applications therefore have to be made in each instance of proposed change of use/ subdivision/consolidation.

Annexure 7

Calculation in terms of Subdivision policy

CALCULATION ITO SUBDIVISION POLICY - ERF 725 MCGREGOR

	Area	No. of erven	Average size	75% of average	Length	No. of fronts	Average	75% of average	
	56144	27	2079	1560	1263	32	39.5	29.6	
TOTAL	56144	27	2079	1560	1263	32	39.5	29.6	
	<u>more than 2x larger</u>	<u>4159</u>			<u>more than 2x longer</u>		<u>78.9</u>		erf no
	4426	1			86.6	1	86.6	65.0	1074
					102.5	1	102.5	76.9	625
TOTAL LARGER	4426	1	4426	3320	189.1	2	189.1	141.8	
REVISED TOTAL	51718	26	1989	1492 m²	1073.9	30	35.8	26.8 m	
				minimum erf size				minimum front	

APPLICATION OF SUBDIVISION POLICY ON SUBDIVISION PROPOSAL FOR ERF 725 MCGREGOR						
	Erf size		Erf front		Erf depth	Result
Proposal						
Remainder	2192m ²		40.0m		57.2m	
Portion A	1000m ²		37.4m		30.8m	
Policy						
Absolute minimum	1000m ²	and	16m	and	20m	Complies
Smallest in sample area (excluding panhandles)	999m ²	and	13.1m	and	n/a	Complies
Place specific minimum	1492m ²	or	26.8m	and	n/a	Complies

General guidelines

Minimum erf size: 400m² = 2192m² and 1000m² = Complies

Minimum street frontage: 16m = 40m and 37m = Complies

Minimum depth of erf: 20m = 27m average = Complies

All erven must have direct street access = Complies.

Erf form must concur with the existing development pattern of the area = Complies (see explanation below)

No panhandle erven are allowed in historical town centers and elsewhere where the development pattern is characterized by a uniform grid pattern = Complies

No access by means of servitudes or private roads to a single erf will be accepted = Complies.

= COMPLIES WITH GENERAL GUIDELINES

Place specific guidelines

Proposed erven should conform to all above mentioned requirements, but should also be evaluated in the context of the immediate environment. Therefore new erven should compare as follows with erven in the immediate environment and must, in addition to the general guidelines, comply with at least one of the following two criteria:

Criterion 1 - Erf size:

a. A new erf may not be smaller than the smallest erf in the immediate environment and = Complies

b. a new erf may not be smaller than 75% of the average erf size in the immediate environment = **Portion A does not comply.**

= Does not comply with Criterion 1

OR

Criterion 2 – Street frontage:

a. The street frontage of a new erf (the smaller front in the case of a corner erf) may not be less than the shortest street front (excluding existing panhandle erven) and = Complies

b. the street frontage of a new erf (the smaller front in the case of a corner erf) may not be less than 75% of the average street front. = Complies

= Complies with Criterion 2

= COMPLIES WITH PLACE SPECIFIC GUIDELINES

Wider area - Southern part of McGregor

Block No	Block area (m ²)	n	Average erf size (m ²)	Density (du/ha)
1	24224	8	3028	3.3
2	10019	6	1670	6.0
3	22753	12	1896	5.3
4	25609	15	1707	5.9
5	25480	13	1960	5.1
6	25945	14	1853	5.4
7	25794	15	1720	5.8
8	25603	17	1506	6.6
9	22826	14	1630	6.1
10	16938	8	2117	4.7
Nett	225191	122	1846	5.4
Gross	267613	122		4.6

