

LAND USE PLANNING ASSESSMENT REPORT FOR DIRECTOR: ENGINEERING SERVICES
(In terms of Sections 56, 65 & 66 of the Langeberg Land Use Planning Bylaw PN 264/2015, 30 July 2015)

**PORTIONS 3, 4 & 16 BOSJEMANS PAD NO.173, SWELLENDAAM: PROPOSED SUBDIVISION AND CONSOLIDATION
(REALIGNMENT OF BOUNDARIES) AND THE REGISTRATION OF WATER PIPELINE AND ROAD SERVITUDES**

Reference number	15/4/14/2	Application submission date	31/01/2024	Date report finalised	25 June 2024
		Last comment received	25/04/2024		

PART A: AUTHOR DETAILS

First name(s) & Surname	Amber De Wet
Job title	Town Planner
SACPLAN registration number	

PART B: PROPERTY DETAILS

Property description (in accordance with Title Deed)	Portion 3 (192.24ha), Portion 4 (221.84ha) & Portion 16 (214.37ha) Bosjemans Pad No. 173, Swellendam RD				
Physical address	±15km NE of Swellendam, off R60 and DR1333	Town	Rural – Swellendam		
Current zoning	Agricultural Zone I	Extent (m ² /ha)	As above.	Are there existing buildings on the property?	Y N
Applicable zoning scheme	Langeberg Integrated Zoning Scheme, 2018.				
Current land use	Agriculture, winery, self-catering cottages and a farm stall	Title Deed number & date	3/173: T 51910/2021 4/173: T 90824/1998 16/173: T 38557/2009		
Any restrictive title conditions applicable	Y N	If Yes, list condition number(s)	As declared by applicant		
Any third-party conditions applicable?	Y N	If Yes, specify	As declared by applicant		
Any unauthorised land use/building work	Y N	If Yes, explain	As declared by applicant		

PART C: APPLICATION DESCRIPTION

Application is made for subdivision, consolidation and servitudes as follows:

- Subdivision of Portion 16 (±214.37ha) of Bosjemans Pad No. 173 into ptn A (±75.9ha) and R/16/173 (± 138,47ha), as shown on the plan marked BOSJEMANS PAD 3, 4, & 16/173 SWE-LBM-OP1.
- Subdivision of Portion 4 (±221.8ha) of Bosjemans Pad No. 173 into ptn B (±53.1ha) and R/4/173 (± 168,7 ha), as shown on the plan marked BOSJEMANS PAD 3, 4, & 16/173 SWE-LBM-OP1.
- Consolidation of ptn A/16/173, ptn B/4/173 and Portion 3/173 to create a new farm of 321.24ha, as shown on the plan marked BOSJEMANS PAD 3, 4, & 16/173 SWE-LBM-OP2.
- Registration of four 3m wide water pipeline servitudes marked: yJ to Jz; z 1a 2a 3a; vw; and u a b Y, as shown on plan BOSJEMANS PAD 3, 4, & 16/173 SWE-LBM-OP1.

- Registration of a 3m wide water pipeline servitude and reservoir as shown on the plan marked BOSJEMANS PAD 3, 4, &16/173 SWE-LBM-OP3.
- Registration of a 4m wide road servitude (xy), as shown on the plan marked BOSJEMANS PAD 3, 4, &16/173 SWE-LBM-OP1.

PART D: BACKGROUND & SUMMARY OF APPLICANTS MOTIVATION

The properties are located ±15km NE of Swellendam, off R60 and DR1333 and are zoned as follows:

- Ptn 3/173 - The property is zoned as Agriculture Zone I and has existing structures which include 5 self-catering cottages, a primary dwelling unit, a manager's house, winery and outbuildings.
- Ptn 4/173 – The property is zoned as Agriculture Zone I and has existing structures which include a farm stall, primary dwelling, outbuildings and staff housing.
- Ptn 16/173 – The property is zoned Agriculture Zone I and has 6 self-catering cottages.
- The properties promote both agriculture as well as agri-tourism land uses.
- The proposed expansion of Ptn 3/173 will allow for the expansion of the Bushmanspad Estate Winery which will ensure that all the vineyards will be on one cadastral unit whilst the remaining portions will concentrate on developing their agri-tourism and sheep farming.
- Servitudes will be registered over existing water pipelines to ensure continued access to irrigation water supply.

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

PART F: SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION (if applicable)

The application was advertised in the normal manner on 23 January 2024. Letters were sent to the surrounding property owners. No comments or objections were received.

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

NAME	DATE RECEIVED	SUMMARY OF COMMENTS	RECOMMENDATION
Department of Infrastructure	13/10/2023	• Access is off TR32/1 and MR6024. No additional accesses are proposed. The branch offers no objection to this application.	No objection
CapeNature	02/08/2023	The proposal will not result in any direct impact on biodiversity through primary rights: • A large portion of Portion 3 and small section of Portion 16 falls within the Langeberg West Mountain Catchment Area on the upper slopes and is therefore classified as a Protected Area. • The remaining natural vegetation is classified as Other Natural apart from the Critical Biodiversity Area along the Huis River and Ecological Support Area along the other watercourses. • The three resultant farms will similarly allow for areas of agriculture and natural vegetation and existing development, although Portion 3 will have proportionally more agriculture than before.	No objection

Department of Environmental Affairs & Development Planning	03/07/2023 (land use)	- The proposed subdivision and consolidation of the proposed Portion A and proposed Portion B with Portion 3 of the Farm 173 (321.2ha) will consolidate all the wine producing vineyards thus strengthening the viability of the commercial farm. - No objection to the proposed boundary realignment. - The size norms in terms of long-term sustainability must be established by the WD Department of Agriculture.	No objection		
Department of Agriculture, Western Cape	26/05/2023	The Department does not support the subdivisions and consolidations as the Remainders of Portions 4 and 16 are not considered viable units – refer to Section H below.		Objection	
CWDM – Health	31/01/2024	No objection subject to the standard conditions.	No objection		
Department of Agriculture, National	20/06/2023	Application has been granted in terms of Act 70 of 1970. Consent No: 57431	No objection		
Breede-Olifants Catchment Management Agency for DWAF	24/07/2023	- The water use registration is for irrigation of the crop and is registered with BOCMA. - The “beurtwater” allocation for Portions 4 and 16 will be reallocated to the consolidated farm Portion 3. - Therefore BOCMA is in support of the application. The Applicant should contact BOCMA immediately on the confirmation of the subdivision and consolidation.	No objection		
Ward Councilor for Ward 8	26/01/2024	No objection	No objection		
Eskom	24/07/2023	Eskom services cross the area in question and the conditions stipulated on their letter regarding proximity to services must be adhered to.	No objection		

PART H: OBJECTION AND APPLICANT'S RESPONSE TO OBJECTION

Objection:

The Western Cape Department of Agriculture has objected to the application and argues that the re-alignment will result in unviable units on Rem/4/173 and Rem/16/173. Refer to Annexure C.

Applicant's Response to the objection:

The applicant's response dated 24 April 2024 is attached at Annexure D. The applicant argues that the provision for non-agricultural uses on the Rem/4/173 and Rem/16/173 provide rural communities with the opportunity to increase the economic potential of the properties and does not present a significant negative impact on the primary agricultural resources. The valley where the properties are located relies on rainfall for irrigation water and therefore does not have a permanent source of water, therefore the properties are prone to phases of drought which cannot maintain a cultivated farm, and therefore agri-tourism was sought to enhance economic viability of properties that are already not fully agriculturally viable.

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

In terms of Section 65 of the Langeberg Land Use Planning Bylaw, PN 264/2015, of 30 July 2015 an application is required to be assessed in terms of the following:

- Desirability of the proposed use (with reference to Province's "Relevant Considerations Guideline"),
- Compliance with relevant plans (IDP, SDF, PSDF): The proposal must be consistent with the forward planning vision for the application area.
- Compliance with relevant policies and principles,
- Compliance with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014): In terms of section 49 of LUPA consideration must be given to applicable spatial development frameworks and structure plans, and the desirability of the proposal must be determined. In addition, the proposal must be consistent with the land use planning principles referred to in section 59 (spatial justice, spatial sustainability, efficiency and good administration), and
- Compliance with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013): The proposal must be consistent with the principles of spatial justice, spatial sustainability, efficiency, spatial resilience, and good administration. Public interest, constitutional transformation imperatives, facts and circumstances of the application, rights and obligations of those affected, impact on engineering services/social infrastructure/open space requirements, *inter alia*, must be considered.

The properties are zoned Agricultural Zone I in terms of the Langeberg Integrated Zoning Scheme, 2018. The extent of the existing and proposed farms is as follows:

EXISTING FARM	EXTENT (ha.)
Ptn 3/173	192.2ha.
Ptn 4/173	221.8ha.
Ptn 16/173	214.4ha.
Total	628.4ha.

PROPOSED FARM	EXTENT (ha.)	Approved Land Uses, as applicable to new farms
Consolidated Portion 3 with A/3/173 and B/3/173	321.2ha.	6 guest units, cellar and Tourist Facilities (4/11/02 & 15/04/10)
Remainder of Portion 4/173	168.7ha.	Agricultural and natural veld
Remainder of Portion 16/173	138.5ha.	Guest House and 4 Additional Dwelling Units, Tourist Facilities and Camping site (16/08/12)
Total	628.4ha.	

There will be no impact on existing or proposed land uses. The primary use of the properties remains agricultural and agri-tourism. The approved consent uses, as indicated in the table above, will remain applicable on the new farm entities and meet the required development parameters and scale requirements in terms of the new farm sizes. Even after subdivision the smallest farm is still larger than 130ha.

The National Department of Agriculture has approved the application for subdivision and consolidation (Consent No 57431, 20/06/2023).

The Western Cape Department of Agriculture has objected to the application and argues that the re-alignment will result in unviable units on Rem/4/173 and Rem/16/173. In this regard, the following comments are noted:

- Whilst the minimum subdivision size norms of the WC Department of Agriculture are endorsed to ensure that agricultural land is not fragmented and that farms remain sustainable to ensure food security, it is considered that each case must be considered on its merits when the number of agricultural entities created through boundary line realignments remains the same as the original number of farms.

- Both the desirability of the “improved farm” and the potential use of portions which are not viable for conventional agriculture (in terms of the norms) must be assessed in terms of sustainability, efficiency and existing land use rights.
- In the instance of re-alignment applications, where no new farms are created, it is considered that such applications should be supported if the existing land use and agricultural situations on some or all the farms are improved by such boundary realignment e.g. more cost-effective farming practices, improved water use and distribution etc.
- In this case, there are three farms, not all of which are sustainable in terms of the current norms; and three new farms will result from the realignment, of which two will be substandard in terms of the norms for conventional agriculture, and one will have enhanced agricultural viability. The consolidation will facilitate one farm which will be more sustainable, with stronger economic viability and potential to contribute to food security in the longer term. Supporting this application is therefore considered to be consistent with improved sustainability.
- It is noted that the definition of agricultural land in the Langeberg Integrated Zoning Scheme, 2018, includes “natural veld” and therefore the Remainders also meet the requirements in terms of the zoning.
- Although the areas of Portions 4 and 16 have been reduced, their agricultural and agri-tourism potential has not been reduced and the consolidation is consistent with the Langeberg SDF 2015, ensuring that agricultural land is not fragmented, and the new farm is a stronger economic entity. The proposed subdivision and consolidation of the proposed Portion A and proposed Portion B with Portion 3 of the Farm 173 (321.2ha) will consolidate all the wine producing vineyards thus strengthening the viability of the commercial farm, allowing the Remainder Portion 4 (168.7ha) and Remainder Portion 16 (138.5ha) to concentrate on agri-tourism and sheep farming.

There will be no additional demand on municipal engineering services as a result of the boundary realignment. BOCMA has no objection subject to standard conditions relating to compliance with the National Water Act.

There is no adverse impact on biodiversity and no listed activities are triggered in terms of the EIA regulations in terms of NEMA.

There are no conditions of title which restrict the proposed subdivision and consolidation. No additional cadastral entities are being created and no levies are payable.

PART J: ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS (N/A)

PART K: RECOMMENDATION

That the following application be approved in terms of Section 60 of the Langeberg Municipal Land Use Bylaw, 2015, subject to the conditions outlined below in terms of Section 66 of the aforementioned Bylaw:

- Subdivision of Portion 16 (±214.37ha) of Bosjemans Pad No. 173 into ptn A (±75.9ha) and R/16/173 (± 138,47ha), as shown on the plan marked BOSJEMANS PAD 3, 4, &16/173 SWE-LBM-OP1.
- Subdivision of Portion 4 (±221.8ha) of Bosjemans Pad No. 173 into ptn B (±53.1ha) and R/4/173 (± 168,7 ha), as shown on the plan marked BOSJEMANS PAD 3, 4, &16/173 SWE-LBM-OP1.
- Consolidation of ptn A/16/173, ptn B/4/173 and Portion 3/173 to create a new farm of 321.24ha, as shown on the plan marked BOSJEMANS PAD 3, 4, &16/173 SWE-LBM-OP2.
- Registration of four 3m wide water pipeline servitudes marked: yJ to Jz; z 1a 2a 3a; vw; and u a b Y, as shown on plan BOSJEMANS PAD 3, 4, &16/173 SWE-LBM-OP1.
- Registration of a 3m wide water pipeline servitude and reservoir as shown on the plan marked BOSJEMANS PAD 3, 4, &16/173 SWE-LBM-OP3.

Conditions of Approval:

1. Simultaneously with registration of transfer, portion A ($\pm 75.9\text{ha.}$) and portion B ($\pm 53.1\text{ha.}$) must be consolidated with Rem of Portion 3 of the Farm Bosjeman's Pad No 173, Swellendam.
2. At least one of the new properties must be registered within 5 years after the date of the approval, failing which the approval will lapse regardless of whether an erf diagram has been approved by the Surveyor-General or not.
3. The subdivision and consolidation plans will only be endorsed in terms of Section 60 of the aforementioned Bylaw after:
 - 3.1. the applicant has accepted these conditions in writing by means of the standard agreement; and
 - 3.2. draft erf diagrams with the new erf numbers have been submitted by a Land Surveyor to the Town Planning Department.
4. Condition 3 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.
5. The zoning remains Agricultural zone I. The exercise of the primary land use, including the construction of access roads and the conservation, use and management of land, is subject to all relevant legislation, including the EIA listed activities in terms of the National Environmental Management Act No. 107 of 1998; and the Conservation of Agricultural Resources Act 43 of 1983.
6. Water, sewage disposal and refuse disposal services must be provided by the owner. Such services must be provided in accordance with the requirements of the Langeberg Municipality, Cape Winelands District Municipality's Environmental Health Department, and the Department of Water Affairs (BOCMA).
7. The requirements of BOCMA, as specified in their letter dated 24 July 2023, must be complied with.
8. The current water use registration for water users which relates to the current property descriptions, must be adjusted at the Department of Water Affairs within 30 days of obtaining a new Title Deed description/s, so as to reflect the registered water uses on the new property description/s
9. This approval is only in effect where all the above conditions have been complied with. The owner must sign the attached agreement. Where there is any uncertainty regarding the conditions, please contact the Town Planning Department.

It is further recommended that the following road servitude be determined to be exempt in terms of Section 24(1)(f)(iv) of the Langeberg Land Use Planning Bylaw, 2015:

- Registration of a 4m wide road servitude (xy), as shown on the plan marked BOSJEMANS PAD 3, 4, & 16/173 SWE-LBM-OP1.

Reasons for decision:

- a) The existing agriculturally productive land will be retained.
- b) There is no impact on existing services or land uses.
- c) No additional cadastral entities are being created.
- d) There is no adverse impact on biodiversity or the natural environment.

PART K: ANNEXURES

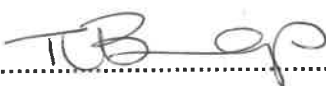
Annexure A	Plans: Subdivision Plan (OP1), Consolidation Plan (OP2), Servitude Plan (OP3) and Land Use Approvals Plan (OP4)
Annexure B	Comments from Departments
Annexure C	Objection from Western Cape Department of Agriculture
Annexure D	Applicant's response to objection

PART L: SIGNATURES

Author name: A De Wet

Date: 27 June 2024

Authorised for submission to Tribunal:


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TL BRUNINGS

MANAGER: TOWN PLANNING

.....27 / 06 2024.....

DATE

RECORD OF DECISION BY LANGEBERG MUNICIPAL PLANNING TRIBUNAL – Refer to minutes for Final Decision

Date of Tribunal Meeting:

APPROVED

APPROVED CONDITIONALLY

APPROVED IN PART

REFUSED

SKEDULE / SCHEDULE 1
Ooreenkoms / Agreement

aangegaan deur / entered into by

.....
Volle name en van / Full name

.....
Identiteitsnommer / Identity number

.....
Adres / Address

(die aansoeker / the applicant)

met die **Langeberg Munisipaliteit** / with the **Langeberg Municipality**

ten opsigte van die volgende ontwikkeling, soos goedgekeur op:
in respect of the following development, as approved on:

.....July 2024

**PORTIONS 3, 4 & 16 BOSJEMANS PAD NO. 173, SWELLENDAM: PROPOSED SUBDIVISION AND CONSOLIDATION:
REALIGNMENT OF BOUNDARIES AND THE REGISTRATION OF WATER PIPELINE AND ROAD SERVITUDES**

Die aansoeker aanvaar die voorwaardes ten opsigte van bogenoemde goedkeuring en onderneem om toe te sien dat die voorwaardes uitgevoer word alvorens die onderveding geregistreer mag word.

The applicant accepts the conditions in terms of the abovementioned approval and undertakes to ensure the execution of the conditions before the subdivision may be registered.

Geteken op die / Signed on the dag van / day of 20.....

te / at

.....
Aansoeker / Applicant

.....
Datum / Date