

Annexure A - Subdivision Plan_Portion 19 Farm 195, Division George

LEGEND

Cronological approval of building plans for
BUILDINGS ① to ⑤ shown on the plan.

- Building ① - Plan approved on 17 Nov 1977
- Building ② - Shown as existing building on above Plan dated 17 Nov 1977
- Building ③ - Shown as existing building on above Plan dated 17 Nov 1977
- Building ④ - Plan approved for a "foreman's house on 18 Jan 1979
- Building ④ - Plan for additions to above house was approved on 12 Jan 1997. On this plan the house was called "Bruschi" house.
- Building ⑤ - A plan "as built" was approved for this dwelling on 17 Feb 2017.
- Building ⑥ - Shade cloth Tool Shed was added at later stage - no building plans found.
- Building ⑦ - Very old workshop - no building plan found.

NOTE: Positions of buildings have been surveyed by a surveyor on 7 October 2020.

NOTA:
Alle mates op die plan is
by benadering en moet
deur 'n landmeter bevestig
word.

Klient: Mr Eric Mair

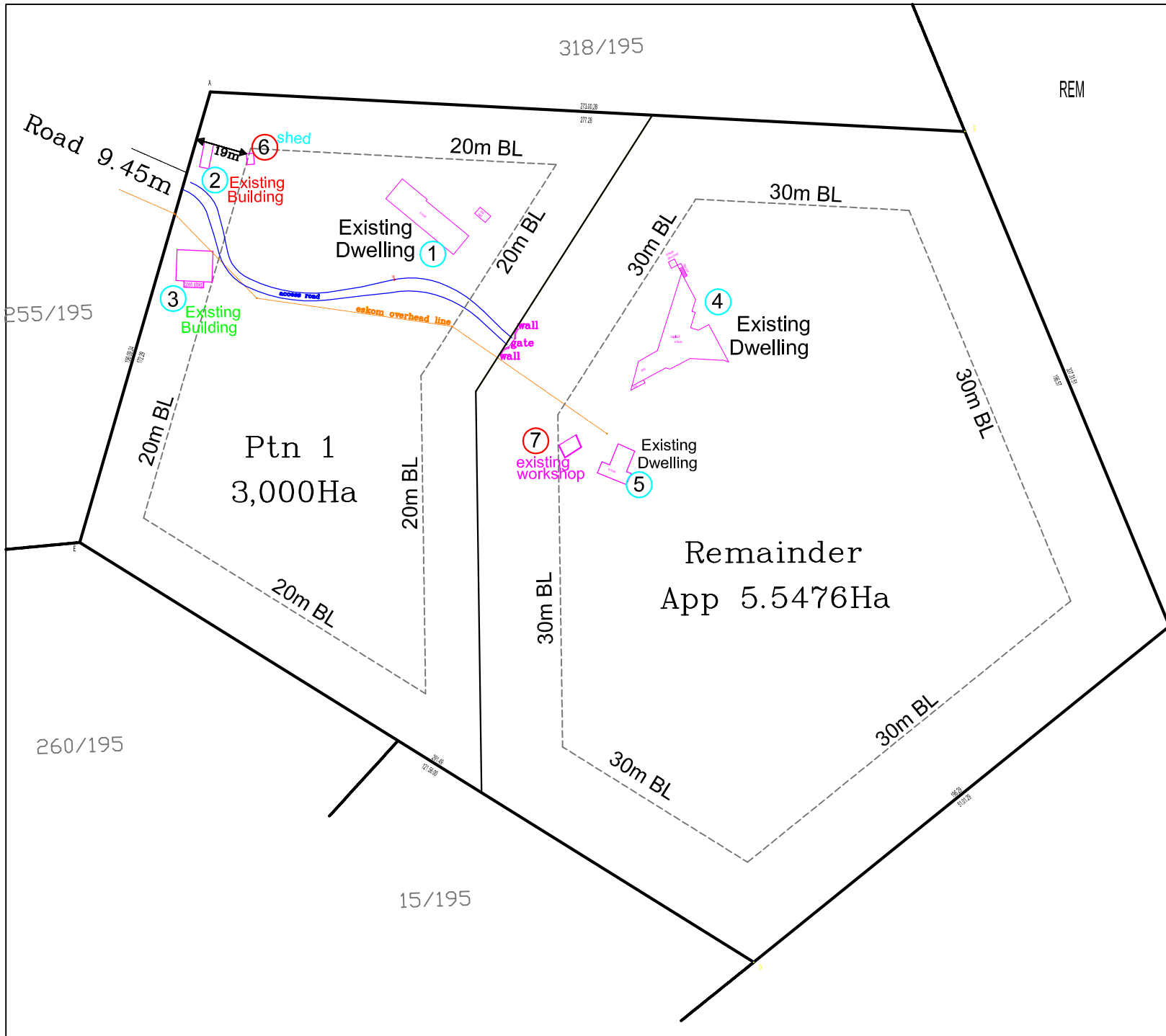
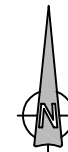
FORMAPLAN
STADS- & STREETDESIGNERS
TOWN- & RESIDENT PLANNERS
P.O. Box 9824, George 6520 / 8 St John St
Tel 0440 873-8305 Fax 0440 874-5632

Project: Subdivision & relaxation of Building line

Title: Subdivision Plan

Eendom: Ptn 19 of Kraai-bosch No 195


Skaal: 1:2000 on A4
Datum: Oct 2020
Tekenings Nommer: Kraai. 19
Drawing Number: 1.4



PRODUCED BY AN AUTODESK EDUCATIONAL PRODUCT

PRODUCED BY AN AUTODESK EDUCATIONAL PRODUCT

PRODUCED BY AN AUTODESK EDUCATIONAL PRODUCT



Erf Number

Allotment area

Water & Sewer System

Road network

Elec DCs Area/Region

Elec Link Network

Elec Development Type

Developer/Owner

Erf Size (ha)

Date (YYYY/MM/DD)

Current Financial Year

Collaborator Application Reference

Portion 19 of 195

George

George System

George

George Network

LV

Normal

Akela Kraaibosch Estate pty ltd

8,5585

2021-10-08

2021/2022

1820387

Code	Land Use		Unit			
				Total Exiting Righth	Total New Right	
RESIDENTIAL				Units	Units	
	Rural Intensification / Agri-subdivisions		unit	1	2	

Is the development located within Public Transport (PT1) zone?

Please select

Yes

Calculation of bulk engineering services component of Development Charge

Service	Units	Additional Demand	Unit Cost	Amount	VAT	Total
Roads	trips/day	4,00	R 2 445,89	R 9 783,56	R 1 467,53	R 11 251,09
Sewerage	kl/day	0,61	R 43 481,05	R 26 523,44	R 3 978,52	R 30 501,96
Water	kl/day	1,00	R 36 320,84	R 36 320,84	R 5 448,13	R 41 768,96
Electricity	kVA	3,20	R 0,00	R 0,00	R 0,00	R 0,00
Transfer	application		R 350,00	R 0,00	R 0,00	R 0,00
Total bulk engineering services component of Development Charge payable				R 72 627,84	R 10 894,18	R 83 522,01

Link engineering services component of Development Charge

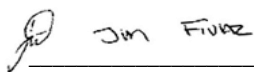
Total Development Charge Payable

City of George

Calculated (CES):

JM Fivaz

Signature :



Date :

October 8, 2021

NOTE : In relation to the increase pursuant to section 66(5B)(b) of the Planning By-Law (as amended) in line with the consumer price index published by Statistic South Africa) using the date of approval as the base month

Notes:

Departmental Notes:

For the internal use of Finance only

Service	Financial codeUKey number	Total
Roads	20160623 020158	R 11 251,09
Sewerage	20160623 018776	R 30 501,96
Water	20160623 021593	R 41 768,96
Electricity	20160623 021336	R 0,00
Tranfers	20160623 019267	R 0,00
		R 83 522,01

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

X
18/09/19

CASE NO: 12437/2018

BEFORE THE HONOURABLE MR JUSTICE SAMELA

Cape Town: Wednesday 18 September 2019

In the matter between:

**LENNYS NEDDA COPE
LINZI ANGELA SPENCE**

First Applicant
Second Applicant

And

**THE TRUSTEES FOR THE TIME BEING OF THE
VAN DER MERWE TRUST REPRESENTED HEREIN BY
ELIZABETH CATHERINA DANIEL**

Respondent

AKELA KRAAIBOSCH ESTATES (PTY) LTD

Interested Party

~~DRAFT~~ ORDER

Having read the papers filed of record and having heard Counsel for the Applicants it is ordered that:

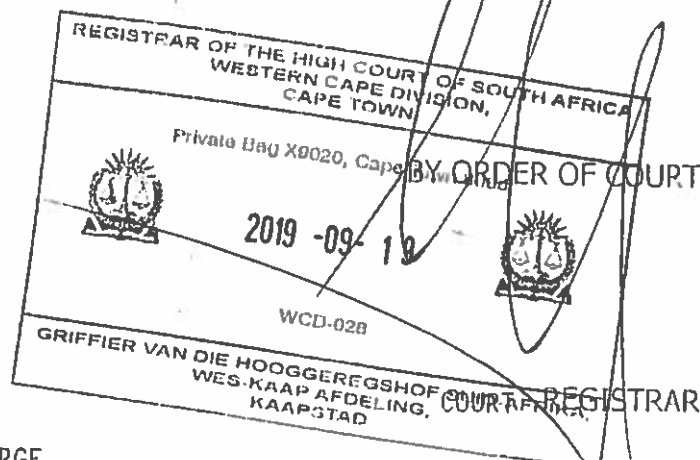
1. Subject to due compliance with all statutory requirements, regulations and deeds office practise and the consent of the Minister of Agriculture in terms of Act 70 of 1970, it is ordered that the property known as:

"Certain piece of abolished quitrent land situate in the Division of George being PORTION 19 (AKELA) (portion of portion 15) of the Farm KRAAI BOSCH NO. 195

MEASURING: eight comma five, five, eight, five (8,5585) hectares"

(the property) is sub-divided in accordance with the subdivision prepared by **PCJ Theron** of **Formaplan** dated 12 April 2017 which is annexed to the notice of motion, marked "X";

2. Ms **Lenny Nedda Cope** and/or **Linzi Angela Spence** is authorised to sign all documents and to take all steps which may be necessary to effect the said subdivision and complete all formalities in connection therewith, as if such steps are authorised by a resolution of the Interested Party;
3. The reasonable and necessary costs to effect the said sub-division is paid by the Interested Party, alternatively by the Applicants and the Respondent in proportion to their shareholding in the Interested Party;
4. Costs of suit.



JC Van der Berg Attorneys, GEORGE
c/o 59 Visagie Vos Attorneys, GOODWOOD

[illegible]

Documentation provided for discussion:

(Include document reference, document/plan dates and plan numbers where possible and attach to this form)

1. TITLE DEED
2. LOCALITY PLAN
3. SUBDIVISION PLAN
4. AGREEMENT

Has pre-application been undertaken for a Land Development application with the Department of Environmental Affairs & Development Planning (DEA&DP)?

(If so, please provide a copy of the minutes)

YES	NO <input checked="" type="checkbox"/>
-----	--

Comprehensive overview of proposal:

The property, registered in the name of Akela Kraaibosch Estates (Proprietary) Limited, was bought in June 1980 by Mssrs Webber and de Jongh. One block of shares in the Akela company was bought by the Van der Merwe family represented by Elizabeth Daniel and the other share was purchased by Dr. C. Bruschi. Dr. Bruschi has since passed away and his shares in the Company have passed on to his daughters, Linzi Spence and Lennys Cope. The Van der Merwe share is now held by the Van der Merwe Family Trust of which Elizabeth Daniel is a Trustee.

In terms of an agreement that was drawn up between the parties some time ago, it is necessary to subdivide the property into two portions in order to comply with the agreement. See attached documentation in this regard.

PART C: QUESTIONNAIRES

**SECTION A:
DETERMINATION OF APPLICATION TYPES, PRESCRIBED NOTICE AND ADVERTISEMENT
PROCEDURES**

Tick if relevant	What land use planning applications are required?	Application fees payable
	2(a) a rezoning of land;	R
	2(b) A rezoning to subdivisional area;	R
	2(c) a temporary departure to use land for a purpose not provided for in the zoning scheme granted on a temporary basis;	R
	2(d) a permanent departure from the development parameters of the zoning scheme;	R
X	2(e) a subdivision of land that is not exempted in terms of section 25, including the registration of a servitude or lease agreement;	R
	2(f) an amendment, suspension or removal of restrictive conditions in respect of a land unit;	R
	2(g) an amendment, deletion or imposition of conditions in respect of an existing approval;	R
	2(h) an extension of the validity period of an approval;	R
	2(i) a consent use in terms of the relevant zoning scheme regulations;	R
	2(j) Amendment / cancellation of a general plan;	R
	2(k) a phasing, amendment or cancellation of a plan of subdivision or a part thereof;	R
	2(l) a contravention levy;	R
	2(m) A determination of a zoning;	R
	2(n) A closure of a public place or part thereof;	R
	2(o) an occasional use of land;	R
Tick if relevant	What prescribed notice and advertisement procedures will be required?	Advertising fees payable
Y X	N Serving of notices (i.e. registered letters etc.)	R
Y	N Publication of notices (i.e. Provincial Gazette, Local Newspaper(s) etc.)	R
Y	N Additional publication of notices (i.e. Site notice, public meeting, local radio, website, letters of consent etc.)	R
Y	N Placing of final notice (i.e. Provincial Gazette etc.)	R
TOTAL APPLICATION FEE*:		R

PLEASE NOTE: * Application fees are estimated on the information discussed and are subject to change with submission of the formal application.

SECTION B:

PROVISIONS IN TERMS OF THE RELEVANT PLANNING LEGISLATION / POLICIES / GUIDELINES

QUESTIONS REGARDING PLANNING POLICY CONTEXT	YES	NO	TO BE DETERMINED	COMMENT
Is any Municipal Integrated Development Plan (IDP)/Spatial Development Framework (SDF) and/or any other Municipal policies/guidelines applicable? If yes, is the proposal in line with the aforementioned documentation/plans?	X		X	
Any applicable restrictive condition(s) prohibiting the proposal? If yes, is/are the condition(s) in favour of a third party(ies)? (List condition numbers and third party(ies))			X	to be Confirmed
Any other Municipal by-law that may be relevant to application? (If yes, specify)		X		
Zoning Scheme Regulation considerations: Which zoning scheme regulations apply to this site? <u>GEORGE INTEGRATED ZONING SCHEME</u> What is the current zoning of the property? <u>AGRICULTURAL ZONE I OR II (TO BE CONFIRMED) Agricultural Zone II</u> What is the proposed zoning of the property? <u>N/A Agricultural Zone II</u> Does the proposal fall within the provisions/parameters of the zoning scheme? <u>N/A</u> Are additional applications required to deviate from the zoning scheme? (If yes, specify) <u>NO</u>				

QUESTIONS REGARDING OTHER PLANNING CONSIDERATIONS	YES	NO	TO BE DETERMINED	COMMENT
Is the proposal in line with the Provincial Spatial Development Framework (PSDF) and/or any other Provincial bylaws/policies/guidelines/documents?	X			
Are any regional/district spatial plans relevant? If yes, is the proposal in line with the document/plans?		X		

SECTION C:

CONSENT / COMMENT REQUIRED FROM OTHER ORGANS OF STATE

QUESTIONS REGARDING CONSENT / COMMENT REQUIRED	YES	NO	TO BE DETERMINED	OBTAIN APPROVAL / CONSENT / COMMENT FROM:
Is/was the property(ies) utilised for agricultural purposes?		X		Western Cape Provincial Department of Agriculture
Will the proposal require approval in terms of Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970)?			X	National Department of Agriculture, Forestry and Fisheries (DAFF)
Will the proposal trigger a listed activity in terms of National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA)?			X	Western Cape Provincial Department of Environmental Affairs & Development Planning (DEA&DP)
Will the proposal require authorisation in terms of Specific Environmental Management Act(s) (SEMA)? (National Environmental Management: Protected Areas Act, 2003 (Act 57 of 2003) (NEM:PAA) / National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004) (NEM:BA) / National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004) (NEM:AQA) / National Environmental Management: Integrated Coastal Management Act, 2008 (Act 24 of 2008) (NEM:ICM) / National Environmental Management: Waste Act, 2008 (Act 59 of 2008) (NEM:WA) (strike through irrelevant)		X		National Department of Environmental Affairs (DEA) & DEA&DP
Will the proposal require authorisation in terms of the National Water Act, 1998 (Act 36 of 1998)?		X		National Department of Water & Sanitation (DWS)
Will the proposal trigger a listed activity in terms of the National Heritage Resources Act, 1999 (Act 25 of 1999)?		X		South African Heritage Resources Agency (SAHRA) & Heritage Western Cape (HWC)
Will the proposal have an impact on any National or Provincial roads?		X		National Department of Transport / South Africa National Roads Agency Ltd. (SANRAL) & Western Cape Provincial Department of Transport and Public Works (DTPW)

QUESTIONS REGARDING CONSENT / COMMENT REQUIRED	YES	NO	TO BE DETERMINED	OBTAIN APPROVAL / CONSENT / COMMENT FROM:
Will the proposal trigger a listed activity in terms of the Occupational Health and Safety Act, 1993 (Act 85 of 1993): Major Hazard Installations Regulations		X		National Department of Labour (DL)
Will the proposal affect any Eskom owned land and/or servitudes?		X		Eskom
Will the proposal affect any Telkom owned land and/or servitudes?		X		Telkom
Will the proposal affect any Transnet owned land and/or servitudes?		X		Transnet
Is the property subject to a land / restitution claims?		X		National Department of Rural Development & Land Reform
Will the proposal require comments from SANParks and CapeNature?	X			SANParks / CapeNature
Is the property subject to any existing mineral rights?		X		National Department of Mineral Resources
Does the proposal lead to densification to such an extent that the number of schools, healthcare facilities, libraries, safety services, etc. in the area may be impacted on? (strike through irrelevant)		X		Western Cape Provincial Departments of Cultural Affairs & Sport (DCAS), Education, Social Development, Health and Community Safety

SECTION D:

SERVICE REQUIREMENTS

DOES THE PROPOSAL REQUIRE THE FOLLOWING ADDITIONAL INFRASTRUCTURE / SERVICES?	YES	NO	TO BE DETERMINED	OBTAIN COMMENT FROM: (list internal department)
Electricity supply:				Directorate: Electro-technical Services
Water supply:				Directorate: Civil Engineering Services
Sewerage and waste water:				Directorate: Civil Engineering Services
Stormwater:				Directorate: Civil Engineering Services
Road network:				Directorate: Civil Engineering Services
Telecommunication services:				
Other services required? Please specify.				
Development charges			X	

PART D: COPIES OF PLANS / DOCUMENTS TO BE SUBMITTED AS PART OF THE APPLICATION

COMPULSORY INFORMATION REQUIRED:					
Y	N	Power of Attorney / Owner's consent if applicant is not owner (if applicable)	Y	N	S.G. noting sheet extract / Erf diagram / General Plan
X			X		
Y	N	Motivation report / letter	Y	N	Full copy of the Title Deed
X			X		
Y	N	Locality Plan	Y	N	Site Layout Plan
X			X		
Y	N	Proof of payment of fees	Y	N	Bondholder's consent
X			X		
MINIMUM AND ADDITIONAL REQUIREMENTS:					
Y	N	Site Development Plan	(Y)	N	Conveyancer's Certificate
X			X		
Y	N	Land Use Plan	Y	N	Proposed Zoning plan
X			X		
Y	N	Phasing Plan	Y	N	Consolidation Plan
X			X		
Y	N	Abutting owner's consent	Y	N	Landscaping / Tree Plan
X			X		
Y	N	Proposed Subdivision Plan (including street names and numbers)	Y	N	Copy of original approval letter
X			X		
Y	N	Services Report or indication of all municipal services / registered servitudes	Y	N	Home Owners' Association consent
X			X		
Y	N	Copy of Environmental Impact Assessment (EIA) / Heritage Impact Assessment (HIA) / Traffic Impact Assessment (TIA) / Traffic Impact Statement (TIS) / Major Hazard Impact Assessment (MHIA) / Environmental Authorisation (EA) / Record of Decision (ROD) (strike through irrelevant)	Y	N	1 : 50 / 1:100 Flood line determination (plan / report)
X			X		
Y	N	Other (specify)	Y	N	Required number of documentation copies
X			X		

PART E: DISCUSSION

- CES: Noted. Capital contribution will be done by 29/11/2019
- TP: According to LSDF, no further subdivision is allowed in this area. Although the LSDF is not approved - Motivate deviation from LSDF.
- Note: No fences/barriers will be allowed - to keep to natural habitation area open.
 - An environmental report may be requested.
 - Motivate development of the coast line in terms of MSDF, 2019.

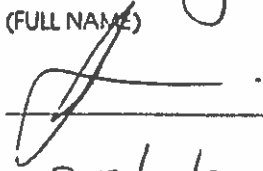
PART F: SUMMARY / WAY FORWARD

- See Comments
- Application may be submitted for consideration.
- Attached please find the public participation process during the school holiday period.

OFFICIAL:

Irene Huyser
(FULL NAME)

SIGNED:



DATE:

2019/12/02

PRE-APPLICANT:

P.C.J. Theron
(FULL NAME)

SIGNED:



DATE:

25-11-2019

PROPOSED SUBDIVISION AND DEPARTURE: PTN 19 OF FARM
KRAAIBOSCH NO 195, GEORGE

1. INTRODUCTION

The property which is registered in the name of Akela Kraaibosch Estates (Proprietary) Limited, was bought in June 1980 by Messrs. Webber and de Jongh. One block of shares in the Akela Company was subsequently bought by the Van der Merwe family represented by Elizabeth Daniel and the other share was purchased by Dr. C. Bruschi. Dr. Bruschi has since passed away and his shares in the Company have passed on to his two daughters Linzi Spence and Lennys Cope.

The Van der Merwe share is now held by the Van der Merwe Family Trust of which Elizabeth Daniel is a Director.

It is now necessary to subdivide the property into two portions in order to comply with an agreement that was drawn up between the parties, some time ago already. See attached documentation in this regard.

Two previous attempts to subdivide the property were submitted but both applications were later withdrawn.

The owners have now appointed Formaplan to apply for the subdivision of the property into two portions as indicated on the proposed subdivision plan. See attached power of attorney and extract from the agreement entered into by Mr. Van der Merwe's daughter Elizabeth (Daniel) to "accept the rights and obligations of the original occupation agreement" which in para. 4 requires shareholders to take all reasonable steps to obtain either subdivision or implementation of the Sectional Titles Act of 1971.

2. THE PROPERTY

2.1 Description

In terms of the deed of transfer, the property is described as certain piece of abolished quitrent land situated in the Division of George being Portion 19 (Akela) (portion of portion 15) of the Farm Kraai Bosch No. 195.

2.2 Size

In terms of the deed of transfer the property is 8,5585ha in size.

2.3 Locality

The property is situated in the south eastern part of Kraaibosch almost adjacent to the Indian Ocean and close to Victoria Bay. The locality can clearly be seen on the attached locality plan.

2.4 Present Use

There are 4 existing dwellings and a workers house as well as a tool shed and a workshop on the property. The rest of the property is unused and covered primarily with Fynbos. ***See photographs 1 to 7 of the existing buildings.***

The history i.r.o. the erection of the existing buildings on the property, is as follows and is indicated as such on the building plans in the Building Office of the municipality: (the numbering of the buildings below are the same as the corresponding numbers of the buildings indicated on the proposed subdivision plan attached hereto):

2.4.1. A building plan was approved for a **house** on the now proposed Ptn 1 of Ptn 19 dated 17 Nov 1977 - **building no. 1 on subdivision plan**. On this building plan one can clearly see that buildings numbered **Existing Buildings 2 & 3**, had already existed in 1977. There are however no older plans for these 2 buildings to indicate what they were approved for and used for prior to 1977. It is however clear that **building no 3** is used as a dwelling unit and according to the attached statement by one of the share holders, Ms Linzi Spence, **building no 2** is used as a workers house.

On the same plan, a further existing building was shown, but there is an endorsement on the building plan that says "*to be demolished*". This building was demolished in the meantime.

- 2.4.2** On 18 Jan 1979 a building plan was approved for a house on the now proposed Rem of Ptn 19 and it was called a **foreman's house** on the building plan - **building no 4**.
- 2.4.3** On 12 Jan 1997 a plan was approved for additions to the latter house (**no 4**) on the now proposed Rem of Ptn 19, but on this plan, the building was approved as "**the Bruschi-house**".
- 2.4.4** On 17 Feb 2017 a plan was approved for an "**as built**" **dwelling house** on the now proposed Rem of Ptn 19 - **Existing Dwelling No 5**.



Photo 1 **Main dwelling on proposed Remainder**



Photo 2 ***Second dwelling on proposed Remainder***



Photo 3 ***Main dwelling on proposed Ptn. 1***



Photo 4 ***Second dwelling on proposed Ptn. 1***



Photo 5 ***Workers house on proposed Ptn. 1***

2.4.5 There is a shed on proposed Ptn 1 that is not shown on any of the building plans. This building encroaches the 20 m building line and application is therefore made for the relaxation of the building line. A building plan will also have to be submitted once this application is approved. ***See photo 6 below.***



Photo 6 ***Shed on Proposed Ptn 1.***

2.4.6 There is also a workshop on the proposed remainder that is not shown on any of the approved building plans. A building plan for this building will also have to be submitted after approval of this application. ***See photo 7 below.***



Photo 7 ***Workshop on proposed Remainder.***

2.5 Surrounding Land Uses

All other properties in the area are used as residential small holdings although some are still vacant. One property is used as a guest house. Developed properties in the vicinity of Ptn 19 are visible on the attached aerial photos.

2.6 Surveyor General Diagram

A Surveyor General Diagram is attached.

3. APPLICATION

- 3.1 Application is made in terms of Section 15(2)(d) of the George Land Use Planning By-Law, 2015 for the subdivision of the property (Ptn 19 of Kraaibosch No. 195) into two portions as follows:

Ptn 1	- 3 ha
Remainder	- 5,5585ha

The purpose of the subdivision is to enable each of the two shareholder parties to take transfer of their portion of the property in terms of an agreement entered into between the parties, as attached.

- 3.2 Application is made in terms of Section 15(2)(b) for the relaxation of the **20m** building line i.r.o. the tool shed on the proposed Ptn 1 as this building was erected recently and without an approved building plan **19 m** from the boundary.

- Note 1** Although some of the buildings on the proposed Ptn 1 encroach the 20m building line, no building line relaxation is required as these buildings were all erected many years ago even before the Section 8 Zoning Scheme came into operation. Before the Section 8 Zoning Scheme, no zoning scheme existed determining building lines for the property.
- 2 None of the existing buildings encroach the building lines that are created by the subdivision line as shown on the subdivision plan.

4. PRE-APPLICATION CONSULTATION

A pre-application consultation i.r.o. the application, for subdivision was held with the Planning Department of the George Municipality on 2 December 2019.

It was pointed out that,

- 4.1 ...according to the LSDF, no further subdivision is allowed in the area and that a deviation from the LSDF will have to be motivated even though the LSDF has not been approved to date.
- 4.2 ...that no fences will be allowed in order to keep the natural habitation area open
- 4.3 ...an environmental report may be requested
- 4.4 ...that development of the coastline be motivated in terms of the MSDF, 2019
- 4.5 It was further mentioned that an application may be submitted for consideration.

All above points will be addressed in this application.

5. OWNERSHIP

5.1 Registered Owner

In terms of Deed of Transfer No T10825/1976, Akela Kraaibosch Estates (Pty) Ltd is the registered owner of the property.

5.2 Power of Attorney

A Power of Attorney authorizing Formaplan to prepare and lodge the application, is attached hereto.

5.3 Bond Holder

There is no bond on the property, and no consent is needed in this regard.

6. DESIRABILITY OF THE PROPOSED SUBDIVISION

The concept, desirability of the proposed subdivision in this application, can be described as the acceptability thereof on the land unit and the environment where it will take place. The proposal will be discussed according to the following to determine the desirability thereof:

- ❖ Physical characteristics
- ❖ Proposed Land Uses / Subdivided Portions
- ❖ Consistency of the proposal in terms of existing planning documents
- ❖ Consistency of the proposal in terms of the character of the area
- ❖ Potential of the Property
- ❖ Accessibility
- ❖ Services
- ❖ Parking

6.1 Physical Character of the Property

6.1.1 Topography

The property is fairly flat where the existing buildings were erected in the past with steeper slopes to the north, east and south. ***See photo 6 on p.14***

6.1.2 Soil Conditions

The soil conditions are not of importance in this application. The buildings on the property are all existing ones and have been so for a very long time without any problems.

6.1.3 Vegetation

The vegetation on the property can be described as predominantly indigenous fynbos except for the areas where buildings were erected and where house gardens were established around these buildings.

6.1.4 Summary

The physical character of the property is such that the proposed subdivision and existing buildings, can be accommodated thereon.

6.2 Proposed Land Use

The property is currently zoned Agricultural Zone II. The property is however not being used for agricultural purposes whatsoever and probably never was, due to the topography and the fact that it is overgrown with fynbos. The property is solely used for residential purposes. The purpose of this application is not to change the land use at all.

6.3 Consistency in terms of Existing Planning Documents

6.3.1 Deed of Transfer

Deed of Transfer No T10825/1976 is applicable to the property. There are no conditions in this deed that restricts the subdivision of the property or the relaxation of the building line. See the attached Conveyancer's Certificate.

The proposed application is considered as consistent with the title deed.

6.3.2 Spatial Planning and Land Use Management Act – SPLUMA

Section 7 of SPLUMA lists 5 development principles that are applicable to spatial planning, land use development and land use management namely:

- ❖ Spatial justice
- ❖ Spatial sustainability
- ❖ Efficiency
- ❖ Spatial resilience
- ❖ Good administration

Section 42 of SPLUMA mentions the factors that must be taken into account when an application is submitted to a municipal tribunal for a decision namely:

- ❖ The 5 development principles as mentioned above
- ❖ Conservation and promotion of agricultural land
- ❖ Public interest
- ❖ Constitutional transformation
- ❖ Rights and obligations of all those affected
- ❖ Impact on engineering services, social infrastructure and open space requirements
- ❖ Compliance with environmental legislation

6.3.2.1 The 5 Development Principles

- Spatial Justice refers to the imbalances in development proposals and spatial planning frameworks of the past that must be addressed. This principle is not applicable to this application.
- Spatial Sustainability refers to spatial planning and land use management systems that must inter alia protect prime and unique agricultural land, promote development in areas that are sustainable and limit urban sprawl and consider future costs of the provision of infrastructure and social services.

The proposed subdivision of this property will not affect this principle at all.

- Efficiency refers to development that optimizes the use of existing resources and infrastructure.

The proposed subdivision will make use of existing services that are already available on the property and no further services will be required, as no further development is envisaged.

This principle is supported.

- Spatial Resilience refers to flexibility in spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks.

This principle is not affected in this application.

- Good Administration refers to an integrated approach to land use and land development for all spheres of government. Spatial development frameworks and inputs thereto by all government departments must be met timeously. Public participation must be transparent and all parties must have opportunity to participate in matters affecting them.

This principle is supported, but is not applicable to this application.

6.3.2.2 Factors Mentioned in Section 42 of SPLUMA

Only the matters relevant to this application, is dealt with here.

- Public Interest in the case of this application is limited due to the scale thereof. Only the direct neighbours could be affected by the proposal.
- In this respect it is important to note that the property is already developed. The purpose of the application is to permit the two shareholders to take transfer of their relevant portions of the property. No development is envisaged. The neighbours will not be able to see or experience any change after approval of the subdivision. The end result will only be visible as a line on the map.
- No further Municipal Services are required for the proposed portions. The property is provided with municipal water, electricity and refuse removal. Sewerage is treated on the property by means of a septic tank.
- The proposed subdivision does not trigger any listed activities in terms of the environmental legislation.

6.3.3 Land Use Planning Act, Act 3 of 2014. (LUPA)

It is clear that LUPA gives effect to SPLUMA in the Western Cape Province. Section 49 of LUPA gives the basis of assessments of land use applications. It mentions that when a Municipality considers and decides on a land use application, at least the following must be assessed:

- Applicable spatial development frameworks,
- Applicable structure plans,
- Principles of Chapter 6 of LUPA,
- Desirability of proposed land uses / subdivision,
- Guide lines that may be issued by the Provincial Minister regarding desirability.

6.3.3.1 Relevant Spatial Development Framework

George Municipal Spatial Development Framework (MSDF) is applicable to this area. One of the important principles of the MSDF that is mentioned very often in the document is that *development* should take place inside the Urban Edge of George. This property is not inside the Urban Edge, but then, *no development* is proposed.

It is mentioned in the document that there are 3 drivers that give form to the George MSDF. One of these drivers which is relevant to this property, is the first driver namely that the natural and rural environment which

must be protected. To support the spatial planning approach and to direct and manage development in the Greater George, a number of strategies and supporting policies were identified. Most of these are not relevant to this application.

Policy D1 is, however, relevant to this application where inter alia it is mentioned that natural landscape corridors should be kept intact and that conservation worthy areas should be consolidated as far as possible. Policy D2 further mention inter alia that development along the coast should be managed in terms of a set of development parameters and also that no new development of hard protective structures should be allowed. Coastal residential developments which are not integrated within existing settlements, will not be supported.

In studying the MSDF specifically with the proposed subdivision in mind, it becomes clear that the document warns against **developments** in the coastal regions and that care must be taken but it does not specifically forbid an application such as proposed here namely the subdivision of privately owned land where it is not intended to develop any of the 2 proposed portions at all.

In the second last chapter (5) of the document under the heading *Implementation Framework*, it is mentioned that the MSDF's implementation is supported by a series of Local Spatial Development Frameworks (LSDF's) and the one relevant to this area, is the Draft LSDF for Victoria Bay/ Kraaibosch South area. See paragraph 6.3.3.2 below.

6.3.3.2 Victoria Bay/ Kraaibosch South LSDF

The Victoria Bay/ Kraaibosch South LSDF forms an integral part of the MSDF. Although the document is only a Draft and as such not been approved by the Municipality, it was mentioned in the Pre Application consultation with the Planning Department, that the deviation from this document should be motivated.

In the LSDF reference is often made to the George SDF (now MSDF) specifically to the vision and mission of the MSDF and the 5 Spatial Development Strategies. Each of the 5 Strategies and Objectives are then discussed individually in the LSDF as far as it has relevance to the Victoria Bay/ Kraaibosch South Area. In the following paragraphs, only those items that refer directly to this application and may have an influence on the outcome thereof, will be dealt with. Please note that by far the majority of the strategies and objectives are not applicable to this

property or the application. For example Spatial Development Objective 1 (SD01) deals with *“Restructuring and Integrating the Dysfunctional Urban Fabric”* and SD02 deals with *“Strengthening of the Economic Vitality”* and as such have no relevance to this application for subdivision where no development is envisaged.

Spatial Development Objective 3, *creating quality living environments* is relevant to the application specifically where it is mentioned that the present environmental and rural character of the Victoria Bay/Kraaibosch South area must be maintained. It is specifically mentioned in the document that the municipality will manage applications and land use in the surrounding area (“of Victoria Bay”) in a manner that maintains the rural and scenic character of the area and do not place an additional burden on service infrastructure. Later in this Objective it is mentioned that no densification for the Kraaibosch South area is proposed. Again it must be emphasized that no development is proposed in this application.

Spatial Development Objective 5: *enhance the rural character and livelihood* is relevant to the area but as far as this application is concerned this Objective has the same influence on the application as SD03 in that development in the area should be managed and if necessary, be restricted.

In the Chapter dealing with the management proposals for the subject area, many statements are made i.r.o. the approach to manage the spatial pattern to guide future development of the area. Most of these are aimed at the way development in the area should be managed to maintain the rural and scenic character of the area. Prohibition on subdivision where mentioned, usually goes hand in hand with development of land which is normally the purpose of subdivision.

In the Section where the Spatial Pattern of the area is discussed, it is mentioned that for analysis purposes to achieve and enhance an effective rural structure, precinct areas have been identified in accordance with its characteristics, land use, functions and opportunities. Each Precinct has been assessed in accordance with its potential and capacity for densification and redevelopment within the context of the rural character of the area. The subject property falls into Precinct H for which it is inter alia proposed, in the context of this application, that “no subdivision of erven (must obviously also read in farm portions) will be allowed”.

As already mentioned before, subdivision of land almost always imply that a new land unit or units are created and that further development

automatically follows after such subdivision. When prohibition on subdivision is proposed, it is in our opinion to limit or prevent further development from taking place. In the context of the contents of the LSDF for this area, it is therefore understandable that a prohibition on subdivision is proposed.

In the case of this application however, subdivision will not lead to further development of any of the proposed subdivided portions. Both portions have already been developed and can only be developed further if new building plans are approved by the municipality which in this case cannot happen as there are already 2 existing dwelling units on each of the 2 portions as proposed.

The subdivision will furthermore not lead to **physical** fragmentation of the area as no fences will be erected, “in order to keep the natural habitation area open (see pre-application comments)”. In short, the only result of this application, is that it will enable the two beneficiaries of the will as mentioned before, to take transfer of their shares.

At the moment two dwellings are visible from Dolphins Point and Wilderness Heights. ***See photo's No. 8 and 9***



Photo 8 *Two main dwellings on Ptn.1 (on the right) and Remainder (on the left) as seen from Dolphin's Point. Note the flat area where dwellings exist and steep slope toward Dolphin's Point*



Photo 9 ***The two dwellings as seen from Wilderness Heights***

After subdivision, these buildings will still be the only ones visible from Dolphin's Point and Wild. Heights, as the subdivision line cannot be seen on a property unless a new fence is erected on the subdivision line. A condition can be laid down in the approval to manage this.

From the above it is clear that the present environmental, rural and settlement character will be maintained as mentioned in the SDF even if this application is approved.

6.3.3.3 Applicable Structure Plans

Only the Draft Victoria Bay / Kraaibosch South Local Structure Plan applicable to the area. See para. 6.3.3.2 above.

6.3.3.4 Principles of Chapter 6 of LUPA

The land use planning principles of LUPA as set out in Section 59, are in essence an expansion of the 5 development principles of SPLUMA.

In applications that are more complicated than this subdivision application, more of these principles will need to be dealt with. For this application, it seems that no further comment regarding these planning principles is necessary.

6.3.3.4 Desirability

The desirability of the application will be dealt with in paragraph 6.3.4.1.

6.3.3.5 Guidelines by Provincial Minister

As far as can be ascertained, there are no guide lines in this regard from the Provincial Minister.

6.3.4 Land Use Planning By – Law for George Municipality, 2015 (By – Law)

In Chapter 5 (Regulation 65) of the By – Law a number of general criteria are listed that must be taken into account when an application for land development is considered inter alia:

- Desirability of the proposed land uses / subdivision
- Impact on municipal services
- Relevant planning policies
- Local structure plans and SDF
- SPLUMA – Section 42
- LUPA – Chapter 6
- Zoning scheme

6.3.4.1 Desirability

The whole of paragraph 6 of this report deals with the desirability of the application. In short, it was already mentioned that the proposed subdivision will have absolutely no effect on any of the neighbours or the environment as no development will take place on the property.

6.3.4.2 Impact on Municipal Services

The application will not impact on municipal services as no additional services are required.

6.3.4.3 Relevant Planning Policies

Policies of the municipality in terms of subdivisions in the area, are included in the MSDF and Kraaibosch/ Victoria Bay LSDP which have been dealt with elsewhere already.

6.3.4.4 Local Structure Plans, SDF

See paragraphs 6.3.3.1 and 6.3.3.2.

6.3.4.5 SPLUMA and LUPA

See paragraph 6.3.2 and 6.3.3.

6.3.4.6 Zoning Scheme

The Municipality's Integrated Zoning Scheme is applicable to this area. The property is zoned Agricultural Zone II at present. This zoning does not address the subdivision of the property.

The subdivision is therefore not affected by the Zoning Scheme for the area.

The zoning scheme determines that the building line for properties between 2 ha and 4 ha in size, is 20m. As already mentioned before, the owner's erected a tool shed on Ptn 1 of the proposed subdivision without the necessary approved building plans. This building is 19 m from the western boundary of the property. A relaxation of the building line is therefore necessary and a building plan must also be submitted to legalize the structure. On the proposed subdivision plan this structure is indicated as building No 6 and it is also clear that the structure is further away from the western boundary than 2 of the other existing buildings are from this boundary. We are of opinion that this proposed relaxation will have no negative effect on any neighboring property or the environment and can be approved on condition that the owners submit a building plan for approval by Council for this structure.

6.4 Consistency with the Character of the Area

The property is situated on the hill to the north of Victoria Bay. The surrounding area is characterized by many small holdings of which the areas are predominantly approximately 3ha in size. These 3ha small holdings were created through subdivisions that were approved by the Municipality in the past 10 to 15 years. Most of these small holdings are being developed already and are occupied by residences similar to those on Ptn 19. Should this application be approved, the sizes of the two proposed portions as well as the existing developments thereon will be similar to that of the surrounding area.

We are of the opinion that the proposed subdivision will without any doubt be consistent with the character of the area where it is situated. No change in the character of the area will take place as no development is proposed. The development already took place many years ago. Please see the attached aerial photographs of the area in the immediate vicinity of Ptn. 19.

6.5 Potential of the Property

The property is 8ha in size and outside the Municipal Urban Edge. This implies that the property is too small to economically farm thereon and it can also not be developed like a property that is located inside the urban edge. The potential of the property is to use it for the purpose that it is being used already for the last decade and longer.

6.6 Accessibility

The property has an existing access from the Victoria Bay Road via a servitude road that crosses a few other properties in the area. ***See photo 10.*** No alternative accesses are envisaged except that an additional servitude needs to be registered across proposed Ptn 1 to provide legal access to the Remainder. See Subdivision Plan.



Photo 10 Existing Servitude access road to the property.

6.7 Services

No further services are required from the municipality as the property is already provided with services.

6.8 Parking

More than adequate parking is available on the property.

7. CONCLUSION

The present owners of Ptn 19 of Farm Kraaibosch No 195 consist of two separate shareholder parties. They each now wish to take transfer of their share in the property which can only be done if the property is subdivided in two portions.

The purpose of this application is therefore not to further develop the property at all. The only visible change to the property should the application be approved, will be a line on the plans. The property itself will stay exactly the same as it is now. The municipality can even lay down a condition that no fences may be erected on the subdivision line to keep the property open to movement of flora and fauna.

We are of the opinion that the municipality can approved this application for the reasons as set out above. Approval will be in line with the objectives as set out in the MSDF namely that the character of the area will be maintained and not be altered at all.

**COPY OF DEED OF
TRANSFER**

T 10825

1976

DEED OF TRANSFER

By virtue of a Power of Attorney

Executed by me,

Shumme
CONVEYANCER

KNOW ALL MEN WHOM IT MAY CONCERN

THAT

JOSE LIONEL BURNMAN

appeared before me, Registrar of Deeds at Cape Town,
He the said Appearer being duly authorised thereto by a
Power of Attorney executed at EAST LONDON on the 20th
day of MARCH 1976, by

JOHANNE MAGDALENE SICHANI ANSELL
(born Heiberg on 10th. October 1911)

Divorcee

- WITTE PRINIP 1

AND/

AND the Appearer declared that his said Principal had truly and legally sold on 10th November 1975 and that He in his capacity as attorney aforesaid did by these presents, cede and transfer, in full and free property to and on behalf of

AKELA KRAAI BOSCH ESTATES (PROPRIETARY) LIMITED

Co. No. 76/1068

- WHITE GROUP -

or its assigns :-

CERTAIN piece of abolished quitrent land situate in the Division of George being PORTION 19 (AKELA) (portion of Portion 15) of the FARM KRAAI BOSCH NO. 195

MEASURING Eight comma five five eight five (8,5585) Hectares

EXTENDING as the Deed of Transfer with a diagram thereto annexed made in favour of Richard Edmond Humfrey on 10th December 1930, No. 10268 and subsequent deeds of transfer the last two of which made in favour of Appearer's Principal No. 11039 on 16th June 1964 (in respect of a one-half ($\frac{1}{2}$) share) and No. 55779 dated 4th December 1969 (in respect of the other half ($\frac{1}{2}$) share) (para. 3) will more fully point out

- A. SUBJECT to such conditions as are referred to in Deed of Transfer No. 10268 dated 10th December 1930.
- B. SUBJECT FURTHER to the following special condition mentioned in Certificate of Amended Title dated 23rd April 1915 (George Quitrents Volume 15 No. 11) reading as follows :-

"The said land being subject, moreover, to all such duties and regulations as either are already or shall in future be established respecting lands held on similar tenure."

- C. SUBJECT FURTHER and ENTITLED to benefits under the following special condition mentioned in Deed of Transfer dated 10th December 1930, No. 10268 :-

"The/

"The Transferee and his successors in title shall have the right to construct use and maintain at his own expense a road, not less than 9,45 metres wide, across the remaining extent of Lot H of the farm "Kraaibosch", registered in the names of the Appearer's Constituents as aforesaid by Deed of Transfer dated 15th February, 1928, No. 1258 from the existing road at the point "x" along the track or right of way leading to the said farm "Akala", for the purpose of access thereto and egress therefrom, as shown on the diagram (A4842/1927) of the aforesaid Lot H of the farm "Kraaibosch".

- D. SUBJECT FURTHER to the servitude referred to in the endorsement dated 10th February 1941 on Deed of Transfer dated 10th December 1930, No. 10268, the terms of which endorsement read as follows :-

"REGISTRATION OF SERVITUDE"

By Notarial Deed No. 25/1941 dated 21.1.1941 the Municipality of George has been granted the right to construct a dam and other works incidental thereto in the Swart River and to use the water of the said river to which the property described herein is riparian, subject to conditions as will more fully appear on reference to the said Notarial Deed, registered in the Servitude Register Book 1. Folio 90."

- E. SUBJECT FURTHER to the terms of the following servitude endorsement dated 7th January 1972 on said Deeds of Transfer Nos. 11039/1964 and 33779/1969, viz :-

" The within described land is subject to a servitude with regard to apportionment of water in terms of an Order of the Water Court (Water Court District Cape dated 26/5/1971 as will more fully appear on reference to the copy of the said order filed as Serv. 15/72. "

WHEREFORE/

WHEREFORE the Appearer, renouncing all the right and title his Principal heretofore had to the premises on behalf as aforesaid did in consequence, also acknowledge his said Principal as aforesaid to be entirely dispossessed of, and disentitled to the same; and that by virtue of these Presents, the said

TRANSFERS COMPANY

or its assigns, now is and henceforth shall be entitled thereto conformably to local custom, State, however, reserving its right; and finally acknowledging his Principal to have been satisfactorily paid the whole of the purchase money amounting to the sum of

EIGHTY THOUSAND RAND (R20 000.00)

IN WITNESS WHEREOF, I, the said Registrar, together with the Appearer have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THIS DONE AND EXECUTED at the Office of the Registrar of Deeds at CAPE TOWN on the 15th day of the month of April in the year of Our Lord, One thousand nine hundred and seventy-six (1976)

[Signature]
9-9.

In my presence,

[Signature]
REGISTRAR OF DEEDS

Registered in the FRANS ✓
Register
of GEORGE ✓
Book
Folio 1931.91 ✓

Md.T.

CLERK-IN-CHARGE.

[Signature]

EXTRACT FROM AGREEMENT BETWEEN THE PARTIES


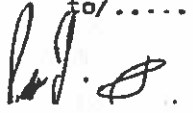
Page 6

- e) Should the Holders fail to pay the Company within 14 days of demand by the Secretary/Auditor any instalment or any amount due as in this Agreement provided or cause a breach of any of the provisions of this Agreement, the Company shall have the right to sue for the instalments or other amounts due.

4.

The parties agree that there is an obligation on both Holders to take all reasonable and necessary steps to obtain either subdivision of the property or the implementation of the Sectional Titles Act, 1971, to this property, in which event both Holders shall take transfer of their portion of the Company's property, subject to the following:

- a) Should it become legally possible for the Company by reason of the provisions of the Sectional Titles Act, 1971, or any Act substituted therefor, to transfer ownership of the property to the registered holder of the said Share Block the Company shall, subject to the rights contained and the obligations imposed herein, on application by such registered holder and subject to the consent of any appropriate authority, transfer ownership to such shareholder of that portion of the Company's property to which such Shareholder is entitled to the right of occupation in terms of this Agreement under and subject always to the provisions of the said Act and subject to the payment by such registered shareholder of his pro rata share of all costs of and incidental

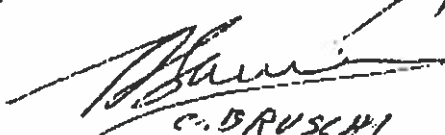
 S.B.W.  to/.....

23-2-CH

Mr. S. J. W. & Co. Moore,
Mela Krambach Estates (Pty) Ltd.

Dear Sirs,

As per our telephone conversation
of yesterday, I hereby authorize you to take over
the negotiations relating to the subdivision of
above-named property.

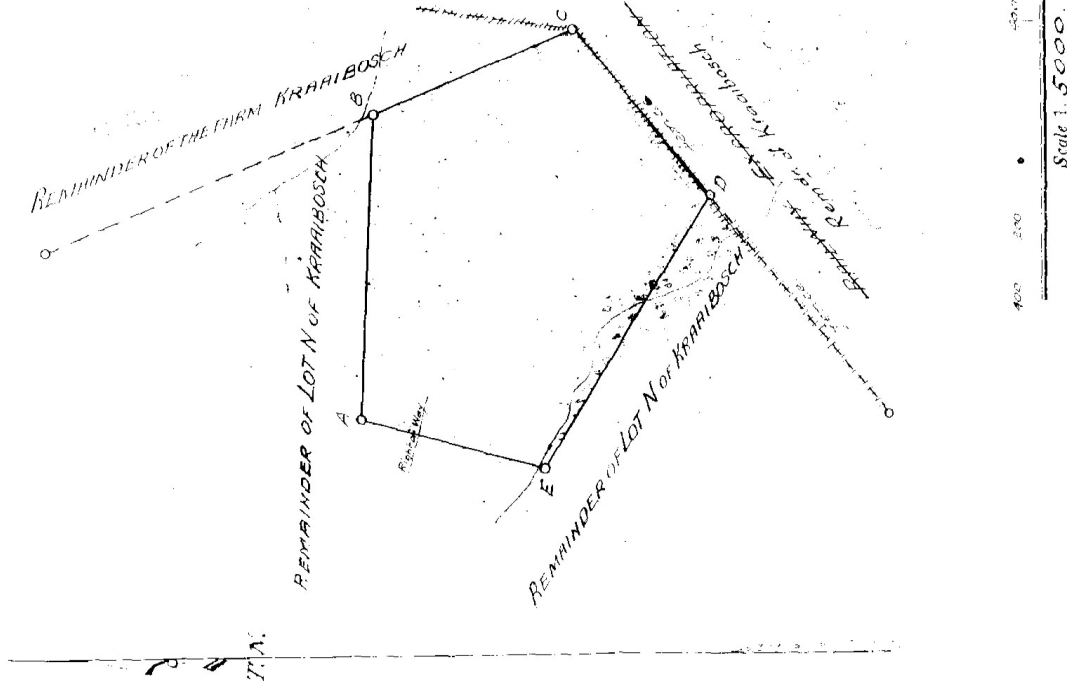
Yours sincerely,

C. BRUSCHI

Annexure G - SG Diagram_Portion 19 Farm 195, Division George

Approved
A. J. B. Smith
Surveyor-General,
17/10/1930

SIDES Cape Feet	ANGLES OF DIRECTION	SYSTEM L ₀ CO-ORDINATES	X
AB 880.2	272 55 50	A + 72782.3 + 56165.7	
BC 626.5	337 37 20	B + 71903.3 + 56210.7	
CD 623.5	51 4 50	C + 71664.8 + 56790.0	
DE 925.8	121 59 30	D + 72149.9 + 57181.7	
EA 547.3	196 12 50	E + 72935.1 + 56691.2	

The beacons A, B, D, E, are single stones planted in the ground in accordance with regulations. The beacon C is a heavy rail section, (being a corner beacon of the railway expropriation.)



Portion 19 of *Albion*
is a portion of *Albion* of the farm
KRAAI BOSCH No. 125
George

Figure *A. B. C. D. E* represents *9* Morgen *85708* Square Feet of land, called
KELA
being that portion of the farm "KRAAI BOSCH" which is referred to hereunder,
in the Field Cornetcy of *GEORGE*
DIVISION of *GEORGE*
VINCE of CAPE OF GOOD HOPE.

Surveyed in *July 1930.* by me *R. E. Dumbell* Land Surveyor.
This diagram is annexed to Deed No. *14* of *1930* in favour of *Jacobus D. du Plessis*
dated *14* of *1930* in favour of *Jacobus D. du Plessis*
in favour of *Jacobus D. du Plessis* } co-shares
Johannes G. du Plessis }
Maria S. du Plessis }

Registrar of Deeds.



LANDSCAPE EAST – CONSERVATION
INTELLIGENCE MANAGEMENT UNIT

postal Private Bag X6546, George, 6530
physical 4th Floor, York Park Building, York Street, George 6530
website www.capenature.co.za
enquiries Megan Simons
telephone +27 87 087 3060 fax +27 44 802 5313
email msimons@capenature.co.za
reference LE14/2/6/1/6/2/195-19_subdiv. & departure
date 18 May 2021

George Municipality
71 York Street
George,
6530

Attention: Marina Welman
By email: mwelman@george.gov.za

Dear: Ms Marina Welman

**APPLICATION FOR THE PROPOSED SUBDIVISION AND DEPARTURE ON
PORTION 19 OF FARM KRAAIBOSCH 195, GEORGE LOCAL MUNICIPALITY,
WESTERN CAPE**

CapeNature would like to thank you for the opportunity to provide comments on the land use planning application on portion 19 of the farm Kraaibosch 195 in George. *The application is made in terms of Section 15(2)(d) 15(2)(b) of George Land Use Planning By-Law, 2015 for subdivision of portion 19 of farm Kraaibosch No. 195 into two portions as well as for a relaxation of building line.* Please note that our comments only pertain to the biodiversity related impacts and not to the overall desirability of the application. CapeNature wishes to make the following comments:

According to the Western Cape Biodiversity Spatial Plan (WCBSP 2017)¹ the proposed site has Critical Biodiversity Areas (CBA 1: Terrestrial and Forest; degraded CBA 2: Terrestrial). The site is within the National Strategic Water Source Area for surface water in the Outeniqua region and serves as watercourse protection for the South Eastern Coastal Belt. However, the site does not have any aquatic ecosystems.

The reasons behind WCBSP delineation on the site are the following:

- Bontebok Extended Distribution Range;
- Coastal resource protection-Eden;
- Garden Route Shale Fynbos (EN);
- Indigenous Forest Type;
- Water source protection- Kaaimans;
- Kaaimans (Core) Estuary;
- Coastal Habitat;

¹ Pool-Stanvliet, R., Duffell-Canham, A., Pence, G. & Smart, R. 2017. The Western Cape Biodiversity Spatial Plan Handbook. Stellenbosch: CapeNature.

The Western Cape Nature Conservation Board trading as **CapeNature**

Board Members: Associate Prof Denver Hendricks (Chairperson), Prof Gavin Maneveldt (Vice Chairperson), Ms Marguerite Loubser, Mr Mervyn Burton, Dr Colin Johnson, Prof Aubrey Redlinghuis, Mr Paul Slack

- FEPA River Corridor.

The vegetation unit on the property is classified as **Vulnerable** Garden Route Shale Fynbos as listed in the 2011 NEM:BA threatened ecosystems gazette². According to Mucina and Rutherford (2006)³ only 4% is formally conserved and 44% of its original extent remaining in a natural condition. The conservation target for Garden Route Shale Fynbos vegetation unit is listed as 23% of its original extent.

CapeNature reminds the applicant that the property does have CBA and these areas should be maintained in a functional, near-natural state as CapeNature will not approve any development within CBA. These areas are defined as:

CBA 1 areas are defined as: *"Areas in a natural condition that are required to meet biodiversity targets, for species, ecosystems or ecological processes and infrastructure."*

CBA 1 objectives are: *"Degraded areas should be rehabilitated. Only low-impact, biodiversity-sensitive land uses are appropriate."*

Indigenous Forest vegetation are present at the proposed site and we recommend that comment from the Department of Forestry, Fisheries and Environment (DFFE) be obtained regarding clarity on the extent of the forestry vegetation communities present or not present within the extent of the property. CapeNature will not object to the findings/recommendations as DFFE is a custodian of forestry resources in South Africa.

The property can be fenced, but not with fencing that will limit faunal movement. The applicant should consider faunal permeable fencing. Fences should be visible to wildlife, including birds, by fitting reflective or colorful weather-resistant flags (e.g., aluminum or plastic strips) to the wire.

The risks and vulnerability layers of CapeFarm Mapper indicate that the vegetation on site is highly flammable by nature and the owners will need to ensure that there are no ignition sources located near the buildings and infrastructure. CapeNature would like to remind the landowners that in terms of section 12 (1) and 2 (a) of National Veld and Forest Act⁴ that an adequate firebreak must be prepared and maintained around the property to reasonably prevent the spread of unwanted fires in the area. We recommend that the owner, if not registered yet, apply for membership with the Southern Cape Fire Protection Association (SCFPA) as they can also provide guidance on fire management.

In conclusion, for any future planned development applications on the property we refer the landowners to the guidelines stipulated in the Land Use Advice (LUA) Handbook (Pool-Stanvliet *et al.* 2017) in particular to Table 4.7 in the LUA Handbook in terms of what is defined as suitable land use practise for various WCBSP regions.

CapeNature reserves the right to revise initial comments and request further information based on any additional information that may be received.

Yours sincerely,



Megan Simons
For: Manager (Landscape Conservation Intelligence)

² National Environmental Management: Biodiversity Act (10/2004): National list of ecosystems that are threatened and in need of protection. 2011.

³ Mucina, L. & Rutherford, M. C. (EDS) 2006. The Vegetation of South Africa, Lesotho and Swaziland. Strelitzia 19. South African National Biodiversity Institute, Pretoria. (revised 2012)

⁴ National Veld and Forest Act 1998 (Act 101 of 1998) Government Gazette: 19515



**Western Cape
Government**

Agriculture

Cor Van Der Walt
LandUse Management
Email: LandUse.Elsenburg@elsenburg.com
tel: +27 21 808 5099 fax: +27 21 808 5092

OUR REFERENCE : 20/9/2/4/3/179
YOUR REFERENCE : Ptn 19 of farm Kraaibosch 195, George
ENQUIRIES : Cor van der Walt

George Municipality
PO Box 19
GEORGE
6530

Att: Marina Welman

PROPOSED SUBDIVISION AND DEPARTURE: DIVISION GEORGE
PORTION 19 OF THE FARM KRAAIBOSCH NO 195

Your application of 18 March 2021 has reference.

The Western Cape Department of Agriculture: Land Use Management has no objection to the proposed subdivision of Remainder of Portion 19 of the Farm Kraaibosch No. 195, George into two portions:

- Portion 1 (≥3 ha) and
- Remainder of Portion 19 of the Farm kraaibosch No. 195 (± 5.5ha)

on condition that Remainder of Portion 19 of the Farm Kraaibosch No. 195 not be further subdivided. The decision is based on the Local Spatial Development Framework (SDF) that allows for subdivisions with a minimum of 3 Ha.

Please note:

- That this is comment to the relevant deciding authorities in terms of the Subdivision of Agricultural Land Act 70 of 1970.

- Kindly quote the above-mentioned reference number in any future correspondence in respect of the application.
- The Department reserves the right to revise initial comments and request further information based on the information received.

Yours sincerely



Mr. CJ van der Walt

LANDUSE MANAGER: LANDUSE MANAGEMENT

2021-06-14

Copies:

Directorate Land Use and Sustainable Resource Management
National Department of Agriculture
Private Bag X 120
PRETORIA
0001

FormaPlan Town & Regional Planners
PO Box 9824
GEORGE
6530

Our Ref.: 1089/GEO/20
Your Ref.: Kraaibosch 195/19, George

14 April 2021

The Acting Municipal Manager
George Municipality
PO Box 19
GEORGE
6530

ATTENTION: MR. CLINTON PETERSEN

BY HAND

Dear Mr. Petersen,

PROPOSED SUBDIVISION & DEPARTURE: KRAAIBOSCH 195/19, GEORGE MUNICIPALITY AND DIVISION

1. We act on behalf of the Van der Merwe Family Trust (the Trust) and Ms. Elizabeth Catherine Daniel in her capacity as a director of the Applicant and representative of the Van der Merwe Family Trust on the board of directors of Akela Kraaibosch Estates (Pty) Ltd. We attach trust resolution and a power of attorney.
2. A notice for the subdivision and departure of the property in terms of Sections 15(2)(b) & (d) was placed on the George Municipality's website under Land Use Planning Submissions during the week of the 26th of March 2021. This invited any interested and affected parties to comment on the application. No other notice was served as far as we know on the Trust or Ms. Daniel in person. What make this case unique is that one of the shareholders (Van der Merwe Family Trust) that is now applying, is actually objecting. This is because the High Court forced the Trust to waive the right of "the Trust" to co-sign a trust agreement giving the applicant a power of attorney.
3. The Trust is a shareholder of Akela Kraaibosch Estates (PTY) LTD who owns the property. On the 18th of September 2019 the High Court, in Cape Town, ordered that the property be subdivided as per the then application of *Formaplan Town & Regional Planners* dated 12 April 2017. This was "*Subject to due compliance with all statutory requirements, regulations, and deeds office practise and the consent of the minister of Agriculture in terms of Act 70 of 1970*".

A new land use application was submitted during February 2021 and this is now the subject of the objection. We are not aware if an application was submitted to the Minister of Agriculture in terms of Act 70 of 1970.

4. Our client's grounds of objection are as follows:

- 4.1 The proposal is to subdivide the property into a western Portion 1 (3Ha) and an eastern Remainder ($\pm 5,5585$ Ha). The subdivision line is in a north-south line approximately 20-m east of the existing main dwelling on Portion 1 as per the Subdivision Plan Kraai.19.1.3 dated July 2020 by Formaplan. The 3Ha portion will then be transferred to "the Trust" with the current road to the Remainder becoming a servitude right of way in favour of the Remainder.

Our client's main objection is that when the properties are transferred as such and the servitude is registered in favour of the Remainder, they as current co-shareholder will lose any say and authority in the maintenance and safe use of this road. Currently the road and use of it is co-managed by the land owner and if any issue arises it could be sorted out by a shareholder meeting and agreement.

If the remainder is sold in future, they will lose this right and the new users and owners will be able to use the road to the objector's detriment. The maintenance and security of the road and the properties will be compromised. If the new owners of the Remainder do not keep to the servitude agreement, our clients will be forced to go to court every time there is a dispute. This will be to our client's detriment.

This proposed servitude on the current route runs very close to the main dwelling on the Portion 1. This is currently tolerated, as our clients are co-owners in the total land, but when it becomes a servitude in favour of the Remainder, new users will start using the road so close to their house.

The applicant has not investigated to our knowledge an alternative option for a road that would not affect our client's privacy and use of the Portion 1.

The new owners could in future apply to have enhanced rights and use their property as tourist accommodation, which means that different users will now use the road across Portion 1. This will include guests and deliveries. This will be to the inconvenience of the objector. There are already a number of guest lodges in this part of the area, and there is a good chance, due to the unique setting of the Remainder with wonderful views of the ocean and lakes east of Wilderness, that a tourist accommodation establishment will be approved.

- 4.2 Our client's also question the way the subdivision line or new eastern boundary was drawn or decided upon, as the new northern SG beacon will be directly north-east of our client's main dwelling. This would mean that the new owners of the Remainder can in future erect structures or buildings allowed as far west as allowed which could compromise our client's privacy and views from their main dwelling. If the new northern SG beacon was moved more to the east, this could be solved.

- 4.3 The applicant mentions in their report under Point 1 in paragraph 3, that *"It is now necessary to subdivide the property..."*. Our clients do not see the necessity to subdivide as they still feel that both parties will be better off with the status quo. Each will have equal say on the property and the use of it.
- 4.4 In their report the applicant mentions that a Pre-Application consultation was done as far back as December 2019, and that the officials mentioned that according to the Local Spatial Development Framework, no further subdivision is allowed in the area and a deviation must be applied for and motivated.

The applicant motivates the deviation on pages 15-18 of their report and the conclusion is that the subdivision will not lead to more development. This could be true for the current owners, but they could either themselves or, if they sell the Remainder, apply for enhanced rights. A new development could therefore be considered and approved by the authorities at the time. This is the precedent the subdivision will create.

The LSDF also mentions that no fences can be erected, which will furthermore compromise the security and privacy of the owners of Portion 1. As mentioned, they will lose control of who will be allowed to visit the Remainder.

We are of the opinion, in terms of SPLUMA and the delegations, that if an application deviates from the LSDF the Authorised Official can either refuse the application outright or refer it to the Planning Tribunal for a decision.

- 4.5 Our clients hereby request that the current application be refused based on the comments above and the deviation from the LSDF.

Yours Faithfully
DELPLAN Consulting



DELAREY VILJOEN Pr. Pln

C:\Users\Delplan\Desktop\Reports\CommentsSub195.19.doc

**Cc: VAN DER MERWE FAMILY TRUST
ELIZABETH DANIELS
BRAND & VAN DER BERGH ATTORNEYS**



REFERENCE: 16/3/3/6/6/D2/19/0041/21
ENQUIRIES: Steve Kleinhans
DATE OF ISSUE: 6-MAY-2021

The Municipal Manager
George Municipality
PO Box 19
GEORGE
6530

Attention: Ms. Marina Welman

Tel: (044) 801 9416
E-mail: mhwelman@george.gov.za

Dear Madam

**COMMENT ON AN APPLICATION FOR LAND DEVELOPMENT: APPLICATION FOR
SUBDIVISION AND DEPARTURE ON PORTION 19 OF THE FARM KRAAIBOSCH NO. 195,
GEORGE**

1. The information regarding the abovementioned matter, submitted to the Department via e-mail on 18 March 2021, refers.
2. In accordance with Section 50 and 51 of the George Municipality: Land Use Planning By-Law (2015), the environmental impact management services ("EIMS") component of the Directorate: Development Management (Region 3) (hereinafter referred to as "this Directorate") provides the following comment on the proposed development.
3. It is understood that the land use application entails:
 - ❖ Application in terms of Section 15(2)(d) of the George Municipality: Land Use Planning By-Law, 2015 for the subdivision of Portion 19 of the Farm Kraaibosch No. 195, George into two portions, namely: Portion 1 (1ha in extent) and the Remainder (5.5585ha in extent); and
 - ❖ Application in terms of Section 15(2)(b) of the George Municipality: Land Use Planning By-Law, 2015 for the relaxation of the 20m building line in respect of a tool shed on the proposed Portion 1

It is understood that Portion 19 of the Farm Kraaibosch No. 195, George ("the property") is owned by shareholders and that the proposed subdivision into two portions is proposed to achieve the agreement that has been reached between the parties. Furthermore, a departure from the 20m building line restriction is required for a shed that was development on the proposed Portion 1 which has been constructed within 19m of the boundary. It is understood that no further development is proposed on the properties at this stage.

4. *Applicability of the Environmental Impact Assessment Regulations, 2014:*

Based on this information provided to this Department, you are hereby informed that on the date of this response, the proposed subdivision and departure application involving Portion 19 of the Farm Kraaibosch No. 195, George, does not constitute an activity listed in terms of GN No. R. 983 / 984 / 985 of 4 December 2014 (as amended 7 April 2017), as promulgated under Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA").

Written authorisation is therefore not required from the relevant competent authority (as defined in GN No R.982 of 4 December 2014, as amended 7 April 2017), prior to the undertaking of the said activity.

5. Kindly be advised that the determination in Point 4 above only relates to the proposed subdivision and departure application on Portion 19 of the Farm Kraaibosch No. 195, George and does not apply to any structures or infrastructure that may be developed in future. As such please advise the owners of each property (subject to the outcome of the land use application) that the applicability of the EIA Regulations, 2014 for any future development of structures or infrastructure must be confirmed. It is advised that this should be done before physically commencing with any activity on the properties.

6. General comment

- 6.1. With reference to the proposed subdivision and departure application on Portion 19 of the Farm Kraaibosch No. 195 in George, this Directorate hereby reminds you that NEMA specifically states that the principles set out in section 2 apply throughout the Republic to the actions of all organs of state that may significantly affect the environment. The above-mentioned principles must therefore be considered and applied by approving authority in the taking of the decision to approve the Application for Land Development in terms of the George Municipality: Land Use Planning By-Law (2015).

- 6.2. Spatial Sustainability

The applicant motivates that the proposal will not affect the spatial sustainability of this area, furthermore that the property will not be further physically fragmented. One of the reasons provided for the latter is that a condition of approval should be that no boundary fences should be allowed between the properties once subdivided. The view is held that a condition not to allow fences to be erected between the proposed properties, will be difficult to defend, especially if ownership is transferred to new owners. The proposal does not state how security aspects, access control and the right to secure a property will be addressed. It is therefore reasonable to expect that a boundary fence may be established between the two new properties and this will lead to the physical fragmentation of the biodiversity and ecological processes. This motivation is not a practical or reasonable consideration to justify the application. The contrary is in fact applicable, namely the motivation to exclude the erection of boundary fencing between the property and the reasons listed in the Draft Victoria Bay / Kraaibosch South LSDF regarding the promotion of biodiversity and ecological connectivity, is in fact a justified reason not to subdivide the property and to rather manage it as a single unit.

The current proposal does not provide a clear benefit to promote the biodiversity of the area and the connectivity issues raised in the Draft LSDF. No legally binding mechanism has been proposed to ensure that the property (proposed properties) will be managed as a place of residence for a rural lifestyle with a clear conservation purpose. A mechanism to achieve this could be to identify the development footprint and to register a

conservation servitude on the remaining portion of land. It appears that an agreement can be reached between the respective shareholders to effectively manage the property as a single parcel of land.

The report states that the Environmental Impact Assessment Regulations, 2014 will not be triggered; however, it fails to confirm whether the necessary permits were obtained in terms of the OSCAE Regulations for the activities related to the more recent establishment and erection of structures on the property. It appears that these activities may have also taken place without the necessary permits in terms of the OSCAE Regulations.

6.3. Surrounding land uses

The report fails to inform the reader that the property is in fact abutted on the east and southern property boundary by the *Kleinbaai Private Nature Reserve* and that the property and surrounding land also forms part of the Outeniqua Sensitive Coastal Area Extension and a critical biodiversity area (CBA). It is reasonable to expect that the land-uses in such an area would be limited to residential areas and the remainder of a property would form a natural occurring or indigenous vegetation of a threatened ecosystem, *Garden Route Shale Fynbos*. The report creates the impression that "*all other properties in the area are used as residential small holdings*" and have been transformed; however, it is mentioned that some are vacant, and one property is used as a guest house. Although the properties are zoned as *Agricultural Zone II* for smallholdings; this area forms an important ecological and biodiversity corridor as well as an important cultural landscape.

6.4. Relaxation of the 20-metre building line on the proposed new 'Portion 1':

Based on the information presented, two of the buildings may have been constructed on this portion of the property prior to building line restrictions being implemented on such properties; however, from the information presented it is apparent that the building referred to as a 'tool shed' (No. 6 on the sub-division plan) is an unlawful structure as it has no approved building plans and it is stated that this building was erected recently. Please be reminded that this structure was erected far beyond the current 30-metre building line, this fact is amiss in the report. The need and desirability of this structure will apparently only be decided in a separate application when the building plans are considered. Relaxing the building line before the aforementioned is finalised is not supported and these decisions must form part of an integrated process. It is also not evident that the necessary permit was obtained in terms of the OSCAE Regulations for the activities related to the erection of the structure.

Should the application for sub-division be approved, the departure from the 20-metre building line is not supported. This structure should be removed, and the area rehabilitated. If it remains necessary to rebuild a similar structure, this could be considered within the applicable building line restrictions. There appears to be sufficient space on the property, outside of the building lines which has already been disturbed and could be suitable for the relocation of the building.

6.5. In light of the above aspects, the proposed subdivision and permanent departure on Portion 19 of the Farm Kraaibosch No. 195, George cannot be supported as presented.

7. Notwithstanding the content of this letter, the proponent must comply with any other statutory requirements that may be applicable to the undertaking of the proposed activities.

8. Kindly quote the abovementioned reference number in any future correspondence in respect of this matter.
9. This Directorate reserves the right to revise or withdraw initial comments or request further information from you based on any information received.

Yours faithfully

pp Francois Naudé Digitally signed by Francois Naudé
Date: 2021.05.06 12:44:18 +02'00'

HEAD OF COMPONENT
ENVIRONMENTAL IMPACT MANAGEMENT SERVICES: REGION 3
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

Ref: 16/3/3/6/6/D2/19/0041/21

Copied to:

Town planner: Formaplan

E-mail: philip@formaplan.co.za



REFERENCE: 15/3/2/12/BG1

ENQUIRIES: G Benjamin

The Municipal Manager

George Municipality

P O Box 19

GEORGE

6530

Dear Sir

**GEORGE MUNICIPALITY: PROPOSED SUBDIVISION AND BUILDING LINE DEPARTURE OF
PORTION 19 OF FARM KRAAIBOSCH NO 195, GEORGE**

1. The request for comment, dated 18 March 2021, on the application for subdivision of and departure on Portion 19 of Farm Kraaibosch No 195, George in terms of Section 15(2)(b) and (d) of the George Municipality: By Law on Municipal Land Use Planning (2015), refers.
2. The application entails the following:
 - 2.1 Subdivision of Portion 19 of the Farm Kraaibosch No 195 into portion 1 (3 ha) and the Remainder (5,5585 ha);
 - 2.2 Relaxation of the 20m building line on proposed Ptn 1 for an existing tool shed 19m from the boundary (relaxation from 20m to 19m).
3. The subject property is zoned Agriculture Zone II (small holdings) within the Kraaibosch area near Victoria Bay. It is noted that according to the Victoria Bay/Kraaibosch South LSDF (although only a draft document) no further subdivision is allowed in the area. However, according to the applicant both properties (if subdivision is approved) already have two existing residential buildings on it and no further buildings are proposed on any of the two properties. It can therefore be

assumed that there will be no impact on the character of the area as no physical changes are proposed.

4. Although the subdivision of Agricultural land is not generally supported due to the fragmentation of these land parcels, in this instance the deviation from this provision can be acceptable due to the fact that the land is not being used for any agricultural activities and no physical changes are proposed to the subdivided properties.
5. Based on the available information, this Department has no objection to the proposed subdivision as stipulated in the motivational report, in terms of a Provincial Development Planning point of view.
6. If the Municipality is in support of this application then appropriate conditions should be imposed to limit any further subdivision or development on these properties.

Yours faithfully

Gavin Benjamin Digitally signed by Gavin Benjamin
Date: 2021.04.14 16:14:15 +02'00'

HEAD OF DEPARTMENT

DATE: 14 APRIL 2021

ENDORSEMENT

FORMAPLAN Town & Regional Planners

P O Box 9824

GEORGE

6530

Copy for your attention.

Yours faithfully

Gavin Benjamin  Digitally signed by Gavin Benjamin
Date: 2021.04.14 16:14:28 +02'00'

HEAD OF DEPARTMENT

DATE: 14 APRIL 2021



REFERENCE: 16/3/3/6/6/D2/19/0041/21
ENQUIRIES: Steve Kleinhans
DATE OF ISSUE: 31-MAY-2021

The Municipal Manager
George Municipality
PO Box 19
GEORGE
6530

Attention: Ms. Marina Welman

Tel: (044) 801 9416
E-mail: mhwelman@george.gov.za

Dear Madam

RE: ADDITIONAL INFORMATION IN RESPECT OF THE APPLICATION FOR SUBDIVISION AND DEPARTURE ON PORTION 19 OF THE FARM KRAAIBOSCH NO. 195, GEORGE

1. The following documentation and information in respect of the abovementioned matter refer:
 - 1.1. The information submitted to the Department via e-mail on 18 March 2021;
 - 1.2. This Directorate's letter dated 6 May 2021; and
 - 1.3. The additional information, submitted to this Directorate via e-mail on 13 May 2021
2. The environmental impact management services ("EIMS") component of the Directorate: Development Management (Region 3) (hereinafter referred to as "*this Directorate*") has reviewed the additional information (i.e. Subdivision Plan No. Kraai. 19 1.4, dated *October 2020*) which was submitted by the appointed Town Planner (*Formaplan*) on 13 May 2021. According to the information the layout plan is merely a corrected plan in order to comply with the required building line for an existing building which was not shown previously.
3. In light of the above, it this Directorate's considered view that the additional information will not result in a material difference which will change the outcome of this Directorate's previous determination in respect of this matter. As such, this Directorate has no further comment and the previous comment of 6 May 2021 on the matter remain valid.

4. Notwithstanding the content of this letter, the proponent must comply with any other statutory requirements that may be applicable to the undertaking of the proposed activities.
5. Kindly quote the abovementioned reference number in any future correspondence in respect of this matter.
6. This Directorate reserves the right to revise or withdraw initial comments or request further information from you based on any information received.

Yours faithfully

 **Francois Naudé** Digitally signed by Francois Naudé
pp _____ Date: 2021.05.31 10:17:37 +02'00'
HEAD OF COMPONENT
ENVIRONMENTAL IMPACT MANAGEMENT SERVICES: REGION 3
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING
Ref: 16/3/3/6/6/D2/19/0041/21

Copied to:

Town planner: Formaplan

E-mail: philip@formaplan.co.za

8 ST. JOHN'S STREET
ST. JOHNS' PLACE
BOX 9824
GEORGE 6530
☎ : 044 – 873 0305
☎ : 044 – 874 5632
✉ : info@formaplan.co.za



11 July 2021

MUNICIPAL MANAGER
GEORGE MUNICIPALITY
GEORGE

BY HAND

Att.: Me Welman & Mr. Clinton Petersen

PROPOSED SUBDIVISION AND DEPARTURE OF PTN 19 OF FARM KRAAIBOSCH NO 195:
COMMENTS TO OBJECTION AND COMMENTS

I refer to the above application and the one objection from Delplan and 3 comments from DEADP, Agriculture Western Cape and Cape Nature. We wish to respond to the above as follows:

1. Objection Delplan dated 14 April 2021

1.1 We are of the opinion that Council should not take this objection in consideration for the following reasons:

1.1.1 Attached hereto are three documents from the High Court of South Africa.

1.1.1.1 The first document states that Delplan's client, Ms E.C. Daniel also one of the shareholders of the Akela Kraaibosch Estate (Pty) Ltd, the registered owner of Ptn 19 of Kraaibosch, gave "NOTICE TO OPPOSE the Applicants Notice of Motion" and is dated 24 August 2018. In short the "Motion" was to approach the Court i.r.o. the fact that Ms. Daniel refused to sign the Power of Attorney (POA) authorizing Formaplan to lodge the application for subdivision.

1.1.1.2 The second document states that the Respondent, Ms. Daniel, gave "NOTICE OF WITHDRAWAL OF OPPOSITION" and is dated 19 September 2018.

1.1.1.3 The third document "ORDER" authorizes Ms. L.N. Cope and L.A. Spence to sign the POA and to take all steps to effect the subdivision of the property as if such steps are authorized by a resolution of the Interested Party. The Interested Party is Akela Kraaibosch Estate (Pty) Ltd.

1.1.2 In our opinion the above documents clearly points to the fact that the 'total' owner of the property, Akela Kraaibosch Estate, can apply for the subdivision of the property. As such we further feel that a section of the owner cannot on its own opposed the action of the total owner without the permission of the other shareholders of the company to file such an objection on behalf of the Trust.

1.1.3 In para 2 of Delplan's letter, the statement is made that the Trust (Ms. Daniel) was forced by the High Court to waive the right of the Trust to co-sign a trust agreement giving the applicant a power of attorney. Our opinion is that the Trust (Ms. Daniel) willingly submitted the notice to withdraw the opposition of the Motion by the applicants. The statement that the Trust was forced is in our opinion not correct.

1.2 Although we are of the opinion that Council should not take the objection into consideration, we were advised by the attorney of Ms. Cope and Spence, that it is necessary to comment to the objection. Comments to the objections, are as follows:

1.2.1 Application must be submitted in terms of Act 70 of 1970 to the Minister of Agriculture.

The application was referred to the Dept of Agriculture-Western Cape. In their comments dated 14 June 2021, the Department confirmed that in terms of the Subdivision of Agricultural Land Act 70 of 1970, there is no objection to the subdivision of the property. After the resolution of the Municipality iro the application, is available, the National Department of Agriculture will be approached for a formal approval in terms of Act 70 of 1970.

1.2.2 Maintenance, Position and future use of Proposed Servitude Road.

1.2.2.1 The objector is concerned that she will lose any say and authority in the maintenance and safe use of the access road to the proposed Remainder, now proposed as a servitude right of way.

According to the "owners" of the proposed remainder of Ptn 19, there is an existing agreement between the parties i.r.o. the maintenance of the existing road. This road has been there since the beginning ie approximately 25 to 30 years already. The subdivision has no relevance to the road as the use or operation of the road will remain exactly as it is now. In this respect we propose that the municipality lays down as a condition of approval that the existing agreement i.r.o. maintenance and use of the road be carried forward, to safe guard both parties in future.

1.2.2.2 The objector is concerned about the fact that the route of the road runs very close to her dwelling on proposed Ptn 1. It is by implication suggested that the road be diverted away from its present route which is close to the objector's house. The "owners" of the proposed remainder indicated that they would not have any objection if the road is moved away from the objector's house, but insist that the full cost of the moving of the road will have to be for the objector's account.

1.2.2.3 Enhanced rights could lead to different users of the road like guests and deliveries.

The objector is concerned that the owners of proposed Remainder could obtain enhanced rights like for example a guest house which would lead to more vehicles using the servitude road and the resulting nuisance factor and added maintenance problems.

This statement could be true, but it must be kept in mind that any enhanced rights would require an application process which includes a public participation process at which point the objector can bring up this point of concern. At this stage the owners of Remainder have no intention of applying for enhanced rights and the current application should not be refused on the grounds that enhanced rights "*may be obtained in future*".

1.2.3 Objector questions the route/direction of the subdivision line.

The concern is that the owners of proposed Remainder can in future erect structures next to this subdivision line which could compromise the objector's privacy and views from her dwelling. If the northern beacon of the subdivision line was moved more to the east, the problem could be solved.

It should be noted that the northern beacon was already moved eastwards and this should solve the objector's concern. See proposed subdivision line.

1.2.4 There is no "necessity" to subdivide.

The objector is of opinion that it is not necessary to subdivide the property. The other share holders, however are of opinion that it is necessary to subdivide the property so that each shareholder can take possession of the portion that was inherited from their parents. The parents on both sides, signed an agreement whereby it was clearly stated that "there is an obligation on both Holders to take all reasonable and necessary steps to obtain either subdivision of the property..... in which event both Holders shall take transfer of their portion of the Company's property".

This application is to comply with the undertaking in the Agreement.

1.2.5 Subdivision will create a precedent for enhanced rights. This point was already addressed above.

2. Agriculture - Western Cape

The Departement of Agriculture - Western Cape has no objection to the proposed subdivision of the property as proposed.

3. Cape Nature

Cape Nature offers no objection to the subdivision of the property. The owners' attention is drawn to a few recommendations to take into consideration such as to maintain the CBA in its natural state, that no development will be approved in these areas and that the area is highly flammable. It is mentioned that fences could be permitted but not with fences that will limit faunal movement and fences should be visible to animals and birds by fitting reflective/ colorful flags to the wire. The owners will take these recommendations into consideration in future.

4. DEADP

In paragraph 4 of DEADP's letter dated 6 May 2021, it is confirmed that the application (subdivision and building line relaxation) does not constitute any activity listed in terms of NEMA. Authorization is therefore not required.

In paragraph 5 of the comments, the owners are reminded that should any further development be envisaged in future, the applicability of the EIA Regulations for such activity must first be confirmed. In reaction hereto, please note that the owners have no intention to develop the property any further at this stage. Studying the LSDF for the area, it seems in any case highly unlikely that any further development would be considered by the Municipality.

In paragraph 6.2, DEADP is concerned about statements in the application i.r.o. the "no fencing" of the proposed 2 units, security and access control. It is mentioned that it could be expected that a boundary fence will be erected between the 2 properties. It must be noted at this stage that a fence

already exists between the 2 sections of the property for many years. The owners do not intend to change or move this fence. This fact does however, show that subdivision of the property or no subdivision, does not determine aspects such as fences. The same goes for access control. All these aspects are already in place without the subdivision being approved or not.

In our opinion, it seems as though DEADP is unnecessary negative about this subdivision. As mentioned repeatedly in the application, this application is only to allow the two parties to take transfer of their respective sections of the property and not for any other reason whatsoever. For any further development or activity to take place on any of the 2 portion, the owners, whether current or future, will have to go through the full application procedure at which time the relevant authority or other interested or affected parties, will again be offered opportunity to comment or object to such new application. Even if the property is not subdivided and the two shareholders wish to apply for enhanced rights, such application will have to go through such a public participation process.

In paragraph 6.3 mention is made of the land uses in the area that are not technically correctly mentioned in the report. We fail to see how the land uses in the vicinity could have any bearing on the outcome of this application which is not for a development.

In paragraph 6.4 DEADP is of opinion that building plans for the tool shed should first be considered before the application for the relaxation of the building line by 1m, is considered. We are of opinion that the building plan for the shed in its present position, cannot be considered before the relaxation is approved by the municipality as it encroaches the building line. The building line must first be relaxed before the building plan can be considered. The municipality can afterwards still be of opinion that the building plan for the shed is not acceptable for example because of the building material used.

It is furthermore mentioned in Para 6.4 that the relaxation is not supported and that this structure should be removed and the area be rehabilitated. By implication this means that the building must be removed, the area be planted with grass like the surrounding area, and after approval of a building plan for the shed 20m from the boundary, the shed can again be erected in the same area 1m away from where it stands now so that it then complies with the building line of 20m and this while there are 2 other existing structures in the same area that are more or less 5m from the same boundary as the shed. We are of opinion that council can first consider the relaxation of the building line from 20m to 19m and if not approved, the structure can be moved by 1m after approval of the building plan.

The recommendation that the "area be rehabilitated", is in our opinion unreasonable as the area surrounding the structure consists of a grassed lawn. Moving the building by 1m away from the boundary, in other words to its right, would most probably lead to unnecessary removal of existing shrubs. See *photo 6* in the memorandum.

5. Summary

We are of opinion that there is nothing substantial in the objection and comments offered by Interested and Affected parties as mentioned above, why this application for the subdivision of Ptn 19 of Farm Kraaibosch No 195 and a departure of a building line from 20m to 19m cannot be approved. The owners will not have any objection should Council lay down conditions i.r.o. the further development of the 2 properties or limit the further fencing of the property.


P C J Theron Pr. Pln