NOTICE OF LAND DEVELOPMENT APPLICATION

APPLICATION FOR REMOVAL & AMENDMENT OF CONDITIONS: FARM 90/20, STELLENBOSCH DIVISION

The following land use application in terms of the Stellenbosch Land Use Planning Bylaw refers:

Application Property Address: 20 Bloomberg Drive, Stellenbosch

Application Property Number: Portion 20 of Farm 90, Stellenbosch Division

Applicant: André Roux, ARoux Town Planning, andre@arouxplanning.co.za

Owner: Kap Vino CC, info@kapvino.co.za

Application Reference: LU/16237 (TP473/2023)

Description of land development proposal:

Application is made in terms of Section 15(2)(h) of the Stellenbosch Municipal By-Law on Land Use Management 2023 to:

(i) Remove condition 4.8 of the appeal outcome letter dated 25/11/2022 in order to remove the requirement for noise barriers to be erected at the venue.

(ii) Amend condition 4.9 of the appeal outcome letter dated 25/11/2022 in order to amend the condition of approval to read as follows:

"4.9 – The operating hours of the restaurant for the preparation of food and refreshments to be served to seated patrons, will be restricted from 08h30 till 18h00 seven days a week. The operating hours may be extended to 22h00 for two days per month. On these days, the kitchen must be closed by 21h00 and the restaurant must be vacated by all patrons by 22h00."

Notice is hereby given in terms of the provisions of the said Bylaw that the above-mentioned application has been submitted to the Stellenbosch Municipality for consideration. The application is available for inspection on the Planning Portal of the Stellenbosch Municipal Website for the duration of the public participation process at the following address: https://www.stellenbosch.gov.za/planning/documents/planning-notices/land-use-applications-advertisements. If the website or documents cannot be accessed, an electronic copy of the application must be requested from the Applicant.

You are hereby invited to submit comments and / or objections on the application in terms of Section 50 of the said bylaw. Written comment, which must include the reference to the application, the name, contact details and physical address of the person to submit the comments, the reasons for the comments, and the interest of the person who submits the comment in the application, may be submitted to the Applicant by electronic mail as follows: André Roux andre@arouxplanning.co.za. By lodging an objection, comment or representation, the person doing so acknowledges that information may be made available to the public and to the applicant.

The comments must be submitted within 30 days from the date of this notice to be received on or before the closing date of **9 December 2023**.

The Municipality, in terms of Section 50(5) of the said Bylaw, may refuse to accept any comments/ objection received after the closing date.

For any enquiries on the Application or the above requirements, or if you are unable to write and /or submit your comments as provided for, you may contact the Applicant for assistance at the e-mail address provided or telephonically at 021 180 3171 during normal office hours.

Yours faithfully

André Roux

ARoux Town Planning

KENNISGEWING VAN GRONDONTWIKKELINGS AANSOEK

AANSEK VIR OPHEFFIING & WYSIGING VAN WOORWAARDS: PLAAS 90/20, STELLENBOSCH AFDELING

Die volgende grondgebruiksaansoek in terme van Stellenbosch se Verordeninge op Grondgebruikbeplanning verwys:

Adres van aansoek eiendom: 20 Bloomberg Drive, Stellenbosch

Aansoek eiendom beskrywing: Gedeelte 20 van Plaas 90, Stellenbosch Afdeling

Aansoeker: André Roux, Aroux Town Planning, andre@arouxplanning.co.za

Eienaar: Kap Vino CC, info@kapvino.co.za

Aansoek Verwysing: LU/16237 (TP473/2023)

Besonderhede van die grondgebruiksaansoek:

Aansoek word ingevole Artikel 15(2)(h) van die Stellenbosch Munisipale Verordening op Grondgebruiksbestuur 2023 gedoen om:

(i) Opheffing van voorwaarde 4.8 van die appèluitslagbrief gedateer 25/11/2022 om die vereieste vir installasie van geraashindernisse by die lokaal te kanseleer.

(ii) Wysiging van voorwaarde 4.9 van die appèluitslagbrief gedateer 25/11/2022 ten einde die voorwaarde van goedkeuring te wysig om soos volg te lees:

"4.9 – The operating hours of the restaurant for the preparation of food and refreshments to be served to seated patrons, will be restricted from 08h30 till 18h00 seven days a week. The operating hours may be extended to 22h00 for two days per month. On these days, the kitchen must be closed by 21h00 and the restaurant must be vacated by all patrons by 22h00."

Kennis word hiermee gegee in terme van die voorskrifte van die genoemde Verordeninge dat bovermelde aansoek by die Stellenbosch Munisipaliteit ingedien is vir oorweging. Die aansoek is beskikbaar vir insae op die Beplannings Portaal van die Stellenbosch Munisipaliteit se Webtuiste vir die tydsduur van die publieke deelname proses by die volgende adres: https://www.stellenbosch.gov.za/planning/documents/planning-notices/land-use-applications-advertisements. Indien die webtuiste of tersaaklike dokumente nie toeganglik is nie, moet die Aansoeker versoek word om 'n elektroniese kopie van die aansoek beskikbaar te stel.

Kommentaar en/ of besware kan vervolgens gedien word op die aansoek in terms van Artikel 50 van die tersaaklike Verordening. Skriftelike kommentaar, wat besonderhede ten opsigte van die verwysings nommer van de aansoek, die name, fisiese adres en kontak besonderhede van die persoon wat die kommentaar lewer, die redes vir die kommentaar, en die belang van die persoon wat die kommentaar lewer in die aansoek, by die Aansoeker ingedien word by wyse van elektroniese pos as volg: André Roux andre@arouxplanning.co.za. Deur 'n beswaar, kommentaar of vertoë te rig, erken die persoon wat dit doen dat inligting aan die publiek en aan die aansoeker beskikbaar gestel kan word.

Die kommentaar moet binne 30 dae vanaf die datum van hierdie kennisgewing gestuur word en moet ontvang word voor of op die laaste dag van die sluitings datum van **9 Desember 2023**.

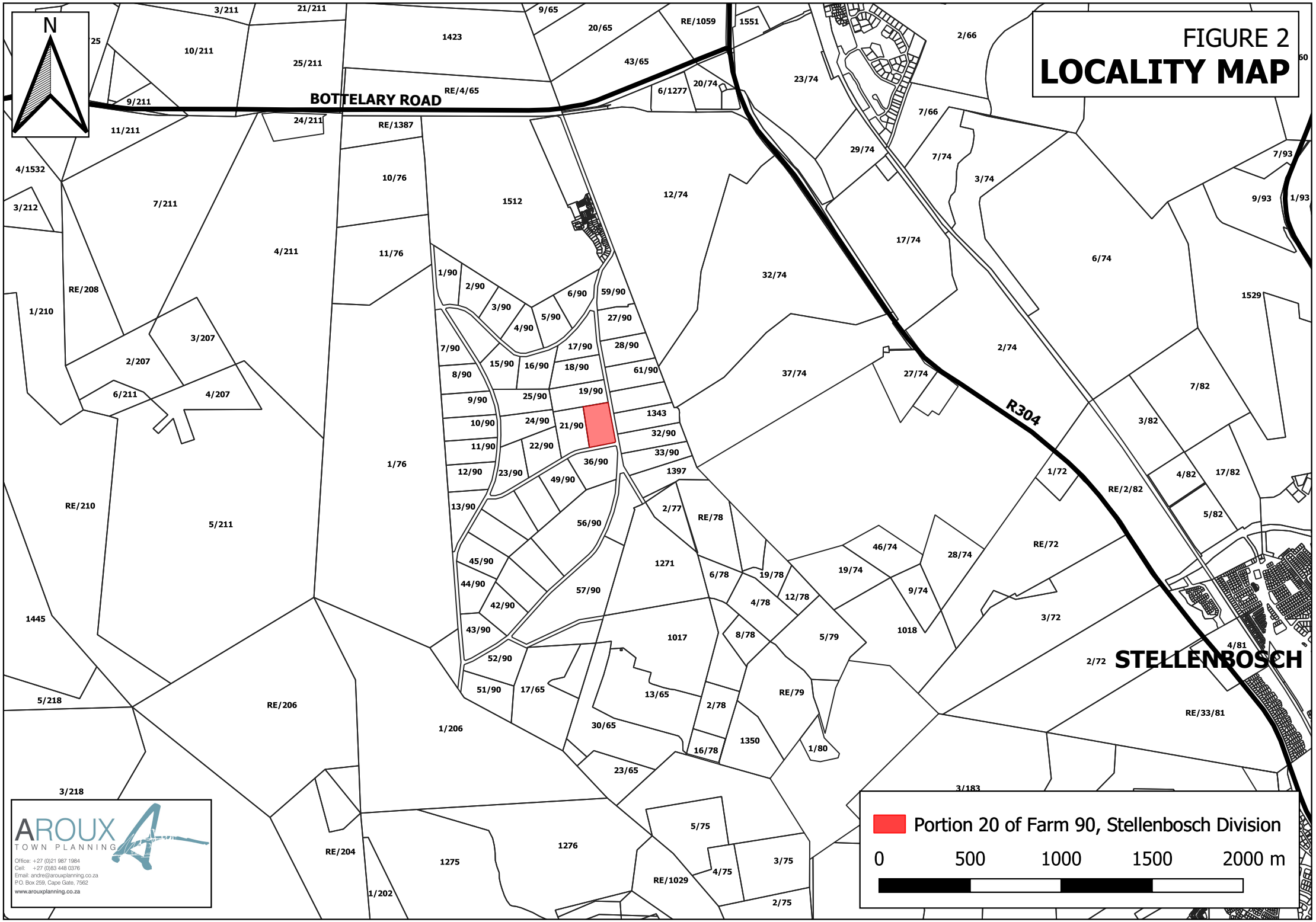
Daar moet kennis geneem word dat die Munisipaliteit, in terme van Artikel 50(5) van die vermelde Verordeninge, mag weier om enige kommentaar / beswaar te aanvaar wat na die sluitingsdatum ontvang word.

Indien daar enige navrae op die aansoek of bovermelde vereistes vir die lewer van kommentaar is, of indien dit nie moontlik is om geskrewe kommentaar te lewer of die kommentaar op die wyse te lewer soos voorsienning gemaak is nie, kan die Aansoeker geskakel word vir bystand by die vermelde elektroniese pos adres of telefonies by 021 180 3171 gedurende normale kantoor ure.

Die uwe

André Roux

Aroux Town Planning


FIGURE 2
LOCALITY MAP
N
BOTTELARY ROAD
R304
STELLENBOSCH
Portion 20 of Farm 90, Stellenbosch Division
0 500 1000 1500 2000 m
AROUX TOWN PLANNING
Office: +27 (0)21 987 1984
Cell: +27 (0)83 448 0376
Email: andre@arouxplanning.co.za
P.O. Box 259, Cape Gate, 7562
www.arouxplanning.co.za

AROUX TOWN PLANNING

Office: +27 (0)21 180 3171 | Cell: +27 (0)83 448 0376
Email: andre@arouxplanning.co.za
Office B1, La Concorde Building, 57 Main Road, Paarl 7646

www.arouxplanning.co.za

18 August 2023

Our reference: 17009

Stellenbosch Municipality
Department of Planning and Economic Development
Plein Street
Stellenbosch
7600

Attention: Mr Stiaan Carstens

Dear Mr Carstens

APPLICATION FOR THE REMOVAL AND AMENDMENT OF CONDITIONS OF APPROVAL: PORTION 20 OF THE FARM DEVONVALE NO.90, STELLENBOSCH DIVISION

The letter of decision issued by the Stellenbosch Municipality on 25 November 2022 for an application for the removal of a restrictive title deed condition, consent use for a tourist facility and departure to permit a restaurant on Portion 20 of Farm 90, Stellenbosch Division, refers.

Kindly find herewith an application for the removal and amendment of conditions of approval (the removal of clause 4.8 and amendment of clause 4.9 of the above-mentioned decision letter) in terms of Section 15(2)(h) of the Stellenbosch Municipality: Land Use Planning By-Law, 2015, on behalf of the property owner, being Kap Vino Estate CC.

The following supporting documents are attached hereto for your perusal:

- **Annexure A** – Application Form
- **Annexure B** – Power of Attorney & Resolution
- **Annexure C** – Title Deed
- **Annexure D** – General Plan
- **Annexure E** – Locality Map
- **Annexure F** – Land Use Approval dated 25 November 2022
- **Annexure G** – 2023 Noise Impact Assessment

1.0 BACKGROUND

Application was made to the Stellenbosch Municipality for the removal of restrictive title deed conditions, consent use and permanent departure to permit a restaurant on Portion 20 of Farm 90, Stellenbosch. This application was partially approved on 18 May 2021, with applications for Council's consent and the removal of a title deed condition approved, subject to conditions. The application for a departure to permit a reduced off-street parking provision was refused.

The above-mentioned letter of decision included a condition which requires that the services of a registered Acoustics Engineer be hired to design and calculate noise barriers and implement the barriers before occupation certificates for the restaurant be issued. This condition was based on a recommendation from a noise impact assessment that was done by a noise specialist as part of the application in 2018.

This condition is however very onerous as the required noise barriers have a significant cost implication which is unaffordable to the owners of the restaurant. It is also believed to be unnecessary as the noise generated by the restaurant is at relatively low levels and mostly restricted to day-time hours. An appeal was therefore submitted against this condition, but the appeal was dismissed and the final decision letter was issued by the Stellenbosch Municipality on 25 November 2022, which reaffirmed the letter of decision issued in May 2021, including its conditions.

The property owners appointed a noise impact specialist to advise on this matter and to assist with compliance with the above-mentioned condition (unless deemed to not be necessary). Another noise impact assessment was then undertaken and concluded that the restaurant complies with the applicable noise regulations and that additional noise barriers are not required.

With reference to the findings of the latest Noise Impact Assessment, application is hereby made to the Stellenbosch Municipality to remove condition 4.8 of the Municipality's land use approval letter dated 25 November 2022 to waive the requirement for the noise barriers, and also to amend condition 4.9 to place a further limit on the operation hours as mitigation.

2.0 THE APPLICATION

Application is hereby made for the removal of condition 4.8 and amendment of condition 4.9, as contained in Decision Letter (LU/9046) dated 25 November 2022, in terms of Section 15(2)(h) of the Stellenbosch Municipality Land Use Planning By-Law, 2015.

Condition 4.8 states the following (proposed to be deleted):

4.8 "The owners hire the services of a registered Acoustics Engineer to design and calculate the required noise barriers and implement it before occupation certificates are issued for the operation of a restaurant on Farm No. 90/20, Stellenbosch, in order for the venue to reduce its overall noise emissions."

Conditions 4.9 is proposed to be amended as follows:

4.9 "The operating hours of the restaurant for the preparation of food and refreshments to be served to seated patrons, will be restricted from 08h30 till ~~22h00~~ 18h00 seven days a week. The operating hours may be extended to 22h00 for two days per month. On these days, the kitchen must be closed by 21h00 and the restaurant must be vacated by all patrons by 22h00".

3.0 MOTIVATION

We submit the following as motivation for this application:

3.1 The above-mentioned letter of decision confirms amongst its reasons for the decision (paragraph 5) that "*the proposed restaurant land use on an agricultural property is not prohibit(ed), but encourage(d) by the principles of the Municipal Spatial Development Framework*" and that "*similar tourist related activities exist in the area and this application should add to the tourist industry,*

without impacting negatively on the cultural landscape of the area if in compliance with conditions of approval". A restaurant on the property is therefore clearly supported by the Municipality, provided it complies with the conditions to mitigate its impact and is considered to be aligned with Council policy.

3.2 The letter of decision contains a number of conditions which limit the impact of the restaurant, particularly the noise generated by the facility. This includes:

- 4.3 - The restriction of the total floor space of the restaurant (±587m^2).
- 4.9 - The restaurant's operating hours for the preparation of food and refreshments to be served to patrons are restricted to 08h30 to 22h00 seven days a week.
- 4.10 – No audio equipment may be set up outside on the open deck of the facility and background music is only allowed within the building.
- 4.11 – No special events and functions may be hosted in the building and on the property without prior approval of the local authority (unless it is a primary right on the subject property).

Note that none of the above conditions are being objected to, particularly clause 4.9 as the restaurant is generally open between 8h30 and 17h00 only (except on maximum two evenings per month, but still complying with the condition and closing doors no later than 22h00).

3.3 However, the implementation of condition 4.8, which requires the restaurant owners to install additional noise barriers, in addition to the other conditions mentioned in paragraph 3.2 above, is unreasonably onerous.

3.4 The initial Noise Impact Assessment report, prepared by Mackenzie Hoy Consulting Acoustic Engineers, dated 12 April 2018, and which was submitted to the Municipality with the land use application, confirms that the restaurant is not considered a "disturbing noise" in terms of the Western Cape Noise Control Regulations 2013. Although the noise levels can be considered to be a "noise nuisance" in terms of said regulations, the noise levels do not exceed the maximum allowable day-time level. The report's recommendation to install additional noise barriers was to reduce the noise levels of unamplified human voice. However, the barriers are not required to comply with noise regulations and by-laws as the existing restaurant is compliant with the applicable regulations.

3.5 An updated Noise Impact Assessment was recently done by another noise impact specialist (Mr Gerry Kuhn). A copy of the report is attached as **Annexure G**. Noise measurements were taken in April 2023 at various positions at and varying times during the operation of the restaurant, including at the boundary of the neighbouring property. The measurements confirmed that the restaurant complies with all applicable noise regulations. The Noise Impact Assessment report concludes that additional noise barriers are not required and that the previous recommendation for the installation of noise barriers is not supported by the measurements.

3.6 The restaurant owners respect the surrounding neighbours and certainly do not want to create a disturbance to the neighbouring property owners and as such have implemented measures to minimise noise impact. They also have no objection to the other conditions of approval to ensure that the restaurant does not create excessive noise. However, additional noise barriers are not reasonable. The installation of additional noise barriers has been investigated previously and the cost thereof (more than R 220 000) is simply not affordable.

3.7 The only reason why additional noise barriers were previously suggested was in response to a complaint received from the neighbouring property owner of Farm 90/21. It should however be

noted that the objector's dwelling house is situated approximately 100m from the restaurant. It is thus questioned whether it is reasonable to expect additional noise barriers to be installed (at significant cost) in response to a complaint from a neighbouring property situated so far away from the facility. It should also be noted that, since the objector's complaints, additional structures were built on his property adjacent to the common boundary, which is likely to obstruct potential noise, while a water feature installed on Farm 20/90 near the common boundary further reduces potential noise impact.

3.8 The requirement for additional noise barriers is not a standard requirement for tourist facilities and restaurants of this nature in agricultural and rural areas. None of the tourist facilities in this area were required to implement such measures. Note that concerned restaurant does not accommodate any functions or events that may generate higher than normal noise levels that may warrant such additional requirements (this is also prevented by the Municipality's conditions of approval).

3.9 To further mitigate potential noise impact after hours, it is also proposed to amend condition 4.9. by reducing the permitted operating hours from 08h300 till 22h00 to 08h30 to 18h00. It is however proposed that the condition still allows the restaurant to operate until 22h00 for a maximum of two nights a month only, to accommodate the occasional dinner for specific clients by pre-arrangement, or for specific events (such as Valentine's Day). Note that these after-hour dinners are not functions and will not have any live music or any other type of activity that generate unreasonable noise. These activities are in any event prevented by conditions 4.10 and 4.11.

4.0 CONCLUSION

It has been demonstrated that additional noise barriers are not necessary at the restaurant, as confirmed in a recent Noise Impact Assessment. Noise level measurements confirmed that the restaurant complies with all applicable noise regulations and by-laws and that additional noise mitigation measures are not necessary or reasonable.

The subject restaurant is a low-key facility which mostly operates during the times of 08h30 – 17h00. Despite previous claims by the objector, a specialist assessment determined that that restaurant does not result in any unreasonable noise disturbances.

The restaurant operates on narrow profit margins and have been detrimentally affected by the recent COVID pandemic and resultant lockdowns. The substantial additional expense of noise barriers, which is deemed unnecessary, will be difficult for the restaurant owners to absorb.

We trust that application will meet your approval and will readily provide any additional information should it be required.

Your sincerely



André Roux
ARoux Town Planning

TAX INVOICE

STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

PO BOX 17, STELLENBOSCH, 7599
PLANNING & ECONOMIC DEVELOPMENT: PLANNING

DATE:	2023-10-09	**DOCUMENT NO:**	757280
ERF / FARM NO:	90/20	**CREATED BY:**	Nicole Katts
LOCALITY:	57 Main Road , STELLENBOSCH FARMS	**APPLICATION NO:**	LU/16237
OWNER'S NAME:	Kap Vino CC	**APPLICATION VAT NO:**	0
ADDRESS:	Office B1 La Concorde Building 57 Main Road Paarl	**VAT NO:**	4700102181
		APPLICANT:	Andre Roux Town Planning
		TEL NO:	0211803171

FEE DESCRIPTION	AMOUNT PER UNIT (R)	NUMBER OF UNITS	VOTE NUMBER	AMOUNT (R)
AMENDMENT, DELETION OR IMPOSITION OF CONDITIONS IN RESPECT OF AN EXISTING APPROVAL - Amendment of conditions of approval (by the deletion, imposition or amendment of conditions), Per application	5200.00	1	20220630081392	5200.00
	0.00	1		0.00
	0.00	1		0.00
	0.00	1		0.00
	0.00	1		0.00
	0.00	1		0.00
	0.00	1		0.00
	0.00	1		0.00
	0.00	1		0.00
	0.00	1		0.00
	0.00	1		0.00
			TOTAL AMOUNT PAYABLE	**5200.00**
			VAT INCLUDED @ 15%	**678.26**

FILE NR: F90/20 S
SCAN NR:
COLLABORATOR NR:

NEW TARIFFS IMPLEMENTED ON 1 JULY ANUALLY

CALCULATED BY
NAME: Nicole Katts
SIGNATURE N Katts
DATE: 09.10.2023

VERIFIED BY
NAME:
SIGNATURE
DATE:

STELLENBOSCH MUNICIPALITY
PLANNING AND DEVELPOMENT SERVICES
25 OCT 2023
RECEIVED

PAYMENTS MUST BE MADE AT THE APPLICABLE DISTRICT OFFICE CHEQUES TO BE MADE PAYABLE TO STELLENBOSCH MUNICIPALITY

APPLICANT TO RETURN THIS FORM TO THE ADVICE CENTRE FOR DIRECTOR: PLANNING & ECONOMIC DEVELOPMENT

BANKING DETAILS FOR EFT PAYMENT:

ACCOUNT HOLDER: Stellenbosch Municipality
BANK: First National Bank (FNB)
ACCOUNT NUMBER: 62869253684
BRANCH CODE: 210554
REFERENCE: LU/_____ and ERF/FARM_____

Please use both the Land Use Application number and the Erf/Farm number indicated on this invoice as a reference when making EFT payment.

0.00

0



Receipt Nr: 239581

Enquiries	Phone Number	E-mail
Nicole Katts		Nicole.Katts@stellenbosch.gov.za

BTW/VAT Invoice No: 14567

Invoice VAT Reference: 4700102181

Name: André Roux

Reference No: TP473/2023

Client Street address: Office B1, La Concorde Building, 57 Main Road Paarl Paarl Western Cape South Africa 7646

Client Postal address: Office B1, La Concorde Building, 57 Main Road Paarl Paarl Western Cape South Africa 7646

Client VAT No:

Invoice Date: 2023/10/9

Payment Due Date: 2023/11/8

Municipality street address: PLEIN STREET STELLENBOSCH STELLENBOSCH Western Cape 7600

Municipality postal address: PLEIN STREET STELLENBOSCH STELLENBOSCH Western Cape 7600

Town Planning Application Fees

Vote No	Description	Qty	Rate	UoM	Amount (Incl VAT)
20220630081392	Amendment of conditions of approval (by the deletion, imposition or amendment of conditions)	1	5 200.00	Per application	5 200.00
				Total Excl VAT	4 521.74
				VAT	678.26
				Invoice Total	**5 200.00**

*VAT Exempt

Created By: Petersen, Nicole

Signature: _____

Verified By: Petersen, Nicole

Signature: _____

Please note that application fees that are paid to the municipality are non-refundable and proof of payment must accompany the application. It is the responsibility of the applicant to ensure that the payment is made into the correct account.

Bank Details: First National Bank Acc# 62869253684 Branch Code 250655

Please use the following as reference number: TP473/2023

To expedite the application, please send proof of payment by e-mail or fax as per the detail above.


STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK
MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

Nicole Katts

From: Bulelwa Mdoda
Sent: Wednesday, 18 October 2023 10:35
To: Sharise De Klerk; Nolusindiso Momoti; Nicole Katts
Subject: RE: INVOICE
Attachments: TP494.pdf

From: Sharise De Klerk <Sharise.Deklerk@stellenbosch.gov.za>
Sent: Wednesday, October 18, 2023 10:32 AM
To: Nolusindiso Momoti <Nolusindiso.Momoti@stellenbosch.gov.za>; Bulelwa Mdoda <Bulelwa.Mdoda@stellenbosch.gov.za>; Nicolene Erasmus <Nicolene.Erasmus@stellenbosch.gov.za>
Subject:

Hi ladies

I need the invoice for TP494/2023
Thanks

```
;-Q010A   1:01:03          Votes History Enquiry Listing          Page:    1
:/10/18

ocal Authority : STB    Stellenbosch Municipality LIVE    Vote : 122001034500000
inancial Year  : 2023   Period :  4    Level : 4

r Post.Date  TC LV Reference      Amount     Lt.       Comment

4 05/10/2023 11 4 0000378123        2260.87- N A:CASH1    1729B202310050016
4 09/10/2023 11 4 1000238974        4521.74- N A:DIR1     4331 TP465/2023 T
4 09/10/2023 11 4 1000238975        8956.53- N A:DIR1     4331 TP499/2023TO
4 09/10/2023 11 4 1000238999        2260.87- N A:DIR1     4331 TP493/2023 T
4 09/10/2023 11 4 1000239081        2260.87- N A:DIR1     4331 TP472/2023 F
4 09/10/2023 11 4 1000239100        4521.74- N A:DIR1     4331 LU/16225 ERF
4 10/10/2023 11 4 1000239139         478.27- N A:DIR1     4331 ERF 5156 LAN
4 10/10/2023 11 4 1000239188        2260.87- N A:DIR1     4331 TP466/2023 T
4 10/10/2023 11 4 1000239189        2260.87- N A:DIR1     4331 TP495/2023 T
4 11/10/2023 11 4 1000239240         478.27- N A:DIR1     4331 LU/16261 ERF
4 11/10/2023 11 4 1000239264         478.27- N A:DIR1     4331 LU/16259 ERF
4 12/10/2023 11 4 1000239375         478.27- N A:DIR1     4331 FARM 400 LAN
4 12/10/2023 11 4 0000397671         478.26- N A:CASH3    2559B202310120016
4 13/10/2023 12 4 1000238950        2260.87- N TP366/2023 ERF B202310130013
4 16/10/2023 11 4 1000239541        2260.87- N A:DIR1     4331 TP480/2023 T
4 16/10/2023 11 4 1000239555         550.00- N A:DIR1     4331 LU/16267 ERF
4 16/10/2023 11 4 1000239575        2260.87- N A:DIR1     4331 TP845/2023 T
4 16/10/2023 11 4 1000239580        4521.74- N A:DIR1     4331 TP514/2023 T
4 16/10/2023 11 4 1000239581        4521.74- N A:DIR1     4331 TP473/2023 T
4 17/10/2023 11 4 1000239622         478.27- N A:DIR1     4331 LU/16276 FAR
                                ------------
                Total:            48550.06-
                                ------------
                                ------------
                Grand Total:      48550.06-
                                ============

nd of Report: Stellenbosch Municipality
```

Payment successful

Recipient
Stellenbosch Municipality

Bank
FNB SOUTH AFRICA - 62869253684

Amount
R5 200.00

Pay from
CURRENT AC

Your reference
Stellenbosch Municip

Their reference
TP473/2023

Transaction no
20231016/Nedbank/004266842281

Payment date
16 October 2023

Proof of payment •••

Record of payment •••

STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK
MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

DIRECTORATE: PLANNING & ECONOMIC DEVELOPMENT

TP473/2023

LAND USE APPLICATION COMPLIANCE CHECKLIST ITO S38 OF THE LAND USE PLANNING BYLAW, 2015				Date of Submission of Application	28/08/2023
Erf No		Town		Suburb	
Farm No	90	Farm Portion	20	Nearest Town	Stellenbosch
Owner / Applicant	Andre Roux – Aroux Town Planning		Contact number		0834480376
Email address	andre@arouxplanning.co.za				

INDICATE WHICH OF THE FOLLOWING FORM PART OF THE DOCUMENTATION	ADMIN TO VERIFY[1]		PLANNER TO EVALUATE[2]
	YES	NO	
1. Completed application form that is signed	✓		
2. Power of Attorney / Owners' Consent if the applicant is an agent and Company Resolution	✓		
3. Bondholders' consent			
4. Proof that applicant is authorized to act on behalf of an entity			
5. Proof of ownership or rights held in land			
6. Motivation based on criteria in s65	✓		
7. SG diagram or General Plan	✓		
8. Locality plan	✓		
9. Site development plan or plan showing the land development			
10. Subdivision plan			
11. Permission for required servitude			
12. Title Deed	✓		
13. Conveyancer's certificate			

[1] *Verification by Admin only of the documentation attached and completeness of application and not the correctness thereof.*

[2] *Technical evaluation by Planner of the documentation attached for completeness and correctness thereof.*

14. Feedback on Pre-application scrutiny			
15. Minutes of Pre-consultation Meeting			
16. Consolidation plan			
17. Street name and numbering plan			
INDICATE WHICH OF THE FOLLOWING FORM PART OF THE DOCUMENTATION	**ADMIN TO VERIFY**		**PLANNER TO EVALUATE**
18. Land use plan / zoning plan			
19. Landscaping / tree plan			
20. Flood line plan			
21. Neighbours' consent			
22. HOA / Body Corporate consent			
23. Assessments: EIA, HIA, **TIA**, TIS, MHIA, EA/ROD			
24. Services report (Engineers report)			
25. Previous approvals	✓		
26. Proof of failure of HOA			
27. Proof of lawful use right / zoning certificate			
28. Other documents Specify:			

VERIFIED & SIGNED BY ADMIN	NAME **Nicole Katts**	SIGNATURE	DATE **06/09/2023**

Outstanding information (to be completed by Planner):

Applications to be invoiced (to be completed by Planner):

Amendment and deletion of a condition of approval i.t.o 15(2)(h)

EVALUATED & SIGNED BY PLANNER	NAME Pedro April (08.09.2023)	SIGNATURE	DATE 03/10/2023

NOTES:

1. ***The documentation is not considered as a registered application until such time as it has been scrutinized, all outstanding information (if any) has been submitted and payment is reflected in Council's bank account, after Applicant has been requested by Admin to make payment.***
2. ***Should it be found that the application is not complete, the Applicant will be notified of outstanding information [s41(1)(c)(ii)].***
3. ***Once payment has been confirmed and the application has been registered, the Applicant will be notified of the complete application [s41(1)(c)(i)] and will receive instructions to advertise [s48(4)].***
4. ***Should the outstanding information and/or payment of fees not be received, the applicant will be notified that the application will not proceed due to failure to submit required information [s41(4)].***

STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK
MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

DIRECTORATE: PLANNING & ECONOMIC DEVELOPMENT

www.stellenbosch.gov.za/planning-portal/
SUBMIT COMPLETED FORM TO landuse.applications@stellenbosch.gov.za

LAND USE PLANNING APPLICATION FORM

(Section 15 of the Stellenbosch Municipal Land Use Planning By-Law (2015) and other relevant legislation)

KINDLY NOTE: Please complete this form using BLOCK letters and ticking the appropriate boxes.

PART A: APPLICANT DETAILS

First name(s)	ANDRÉ				
Surname	ROUX				
Company name *(if applicable)*	AROUX TOWN PLANNING				
Postal Address	OFFICE B1, LA CONCORDE BUILDING, 57 MAIN ROAD, PAARL				
				Postal Code	7646
Email	andre@arouxplanning.co.za				
Tel	021 180 3171	Fax		Cell	083 448 0376

PART B: REGISTERED OWNER(S) DETAILS *(If different from applicant)*

Registered owner(s)	KAP VINO CC				
Physical address	BLOOMBERG DRIVE, DEVONVALLEY, STELLENBOSCH				
				Postal code	7600
E-mail	info@kapvino.co.za				
Tel		Fax		Cell	082 261 0339

PART C: PROPERTY DETAILS *(in accordance with title deed)*

~~Erf / Erven~~ / Farm No.	90	Portion(s) if Farm	20	Allotment area	STELLENBOSCH
Physical Address	BLOOMBERG DRIVE, DEVONVALLEY, STELLENBOSCH				
Current Zoning	AGRICULTURE	Extent	3,3281 ~~m²~~/ ha	Are there existing buildings?	X N
Applicable Zoning Scheme	STELLENBOSCH ZONING SCHEME BY-LAW				

Current Land Use	AGRICULTURE AND TOURIST FACILITIES									
Title Deed number and date	T	94448/1998								
Attached Conveyance's Certificate	X	N	Any Restrictions ito the Attached Conveyance's Certificate? If yes, please list condition(s) as per certificate							
Are the restrictive conditions in favour of a third party(ies)?	X	N	If Yes, list the party(ies):							
Is the property encumbered by a bond?	Y	X	If Yes, list the bondholder(s):							
Is the property owned by Council?	Y	X	If Yes, kindly attach a power of attorney from the Manager Property Management							
Is the building located within the historical core?	Y	X	Is the building older than 60 years?	Y	X	Is the application triggered by the National Heritage Resources Act, 1999 (Act 25 of 1999)[1]	Y	X	If Yes, kindly indicate which section are triggered and attached the relevant permit if applicable.	
Any existing unauthorized buildings and/or land use on the subject property(ies)?			Y	X	If yes, is this application to legalize the building / land use[2]?		Y	X		
Are there any pending court case(s) / order(s) relating to the subject property(ies)?			Y	X	Are there any land claim(s) registered on the subject property(ies)?		Y	X		

PART D: PRE-APPLICATION CONSULTATION AND OR SCRUTINY

Has there been any pre-application consultation?	Y	X	If Yes, please attach the minutes of the pre-application consultation.
Has the pre-application scrutiny form been submitted?	Y	X	If yes, please attach the written feedback received.

** The submission of a pre-application scrutiny form is compulsory for this type of application as listed below and written feedback must be attached to the land use planning application.*

PART E: LAND USE PLANNING APPLICATIONS AND APPLICATION FEES PAYABLE

APPLICATIONS IN TERMS OF SECTION 15 OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015)

Type of application: *Cost are obtainable from the Council Approved tariffs*	**Tick**
15(2)(a) rezoning of land*	
15(2)(b) a permanent departure from the development parameters of the zoning scheme	
15(2)(c) a departure granted on a temporary basis to utilise land for a purpose not permitted in terms of the primary rights of the zoning applicable to the land	
15(2)(d) a subdivision of land that is not exempted in terms of section 24, including the registration of a servitude or lease agreement*	
15(2)(e) a consolidation of land that is not exempted in terms of section 24*	
15(2)(f) a removal, suspension or amendment of restrictive conditions in respect of a land unit*	

[1] All applications triggered by section 38(1)(a) - (e) in terms of the National Heritage Resources Act, 1999 (Act 25 of 1999) may not be processed without a permit issued by the relevant department

[2] No application may be submitted to legalize unauthorised building work and or land use on the property if a notice has been served in terms of Section 87(2)(a), and until such time a Section 91 Compliance Certificate have been issued in terms of the Stellenbosch Land Use Planning By-law (2015)

15(2)(g) a permission required in terms of the zoning scheme	
15(2)(h) an amendment, deletion or imposition of conditions in respect of an existing approval*	✓
15(2)(i) an extension of the validity period of an approval	
15(2)(j) an approval of an overlay zone as contemplated in the zoning scheme	
15(2)(k) an amendment or cancellation of an approved subdivision plan or part thereof, including a general plan or diagram*	
15(2)(l) a permission required in terms of a condition of approval	
15(2)(m) a determination of a zoning*	
15(2)(n) a closure of a public place or part thereof	
15(2)(o) a consent use contemplated in the zoning scheme	
15(2)(p) an occasional use of land	
15(2)(q) to disestablish a home owner's association	
15(2)(r) to rectify a failure by a home owner's association to meet its obligations in respect of the control over or maintenance of services	
15(2)(s) a permission required for the reconstruction of an existing building that constitutes a non-conforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building	
15(2)(6) when the Municipality on its own initiative intends to conduct land development or an activity	
15(2)(l) amendment of Site Development Plan	
15(2)(l) Compilation / Establishment of a Home Owners Association Constitution / Design Guidelines	

OTHER APPLICATIONS		
	Deviation from Council Policies/By-laws	R
	Consent / Permission required in terms of a title deed	R
	Technical approval in terms of the Zoning Scheme Bylaw, 2019	R
	Other (specify): _____	R
	TOTAL A:	**R**

PRESCRIBED NOTICE AND FEES* *(for completion and use by official)*

Tick	Notification of application in media	Type of application	Cost
	SERVING OF NOTICES	Delivering by hand; registered post; electronic communication methods	R
	PUBLICATION OF NOTICES	Local Newspaper(s); *Provincial Gazette*; site notice; Municipality's website	R
	ADDITIONAL PUBLICATION OF NOTICES	Site notice, public meeting, local radio station, Municipality's website, letters of consent or objection	R
	NOTICE OF DECISION	*Provincial Gazette*	R
	INTEGRATED PROCEDURES	T.B.C	R
		TOTAL B:	**R**
		TOTAL APPLICATION FEES (TOTAL A + B)**	**R**

***The complete application should first be submitted without the payment of any applicable application fees. Only when satisfied that a complete and accurate application has been submitted, will a proforma invoice be submitted to the applicant with payment instructions. Application fees that are paid to the Municipality are non-refundable and once proof of payment is received, the application will be regarded as duly submitted.*

****All indigent residents who are registered as such with the Municipality and with proof submitted together with application will be exempted from applicable fees for Permanent Departure applications including but not limited to building lines, coverage, height, bulk, parking. Contact: Indigent.office@stellenbosch.gov.za or 021 808 8501 or 021 808 8579*

***** The applicant is liable for the cost of publishing and serving notice of an application. Additional fees may become applicable and the applicant will be informed accordingly.*

BANKING DETAILS	
Account Holder Name:	Stellenbosch Municipality
Bank:	FIRST NATIONAL BANK (FNB)
Branch no.:	210554
Account no.:	62869253684
Payment reference:	LU/_____ and ERF/FARM _____

Please use both the Land Use Application number and the Erf/Farm number indicated on the invoice as a reference when making EFT payment

DETAILS FOR INVOICE	
Name & Surname/Company name (details of party responsible for payment)	
Postal Address	
Vat Number (where applicable)	

PART F: DETAILS OF PROPOSAL

	Building line encroachment	Street		From	m	To	m
		Street		From	m	To	m
		Side		From	m	To	m
		Side		From	m	To	m
		Aggregate side		From	m	To	m
		Rear		From	m	To	m
	Exceeding permissible site coverage			From	%	To	%
	Exceeding maximum permitted bulk / floor factor / no of habitable rooms			From		To	
	Exceeding height restriction			From	m	To	m
	Exceeding maximum storey height			From	m	To	m
	Consent/Conditional Use/Special Development To permit..... in terms of Section.....of the.....Zoning Scheme Regulations						
	Other (please specify)	_____ _____ _____					

Brief description of proposed development / intent of application:
SEE ATTACHED MOTIVATION REPORT

PART G: ATTACHMENTS AND SUPPORTING INFORMATION AND DOCUMENTATION FOR LAND USE PLANNING APPLICATION

Complete the following checklist and attach all the information and documentation relevant to the proposal. Failure to submit all information and documentation required will result in the application being deemed incomplete.

Information and documentation required							
X	N		Power of attorney / Owner's consent if applicant is not owner	Y	X		Bondholder's consent (if applicable)
X	N		Resolution or other proof that applicant is authorised to act on behalf of a juristic person	Y	X		Proof of any other relevant right held in the land concerned
X	N		Written motivation pertaining to the need and desirability of the proposal	X	N		S.G. diagram / General plan extract (A4 or A3 only)
X	N		Locality plan (A4 or A3 only) to scale	Y	X		Site development plan or conceptual layout plan (A4 or A3 only) to scale
Y	X		Proposed subdivision plan (A4 or A3 only) to scale	Y	X		Proof of agreement or permission for required servitude
Y	X		Proof of payment of application fees	X	N		Proof of registered ownership **(Full copy of the title deed)**
Y	X		Conveyancer's certificate	Y	X		Written feedback of pre-application scrutiny and Minutes of pre-application consultation meeting (if applicable)
Y	N	X	Consolidation plan (A4 or A3 only) to scale	Y	N	X	Land use plan / Zoning plan (A4 or A3 only) to scale
Y	N	X	Street name and numbering plan (A4 or A3 only) to scale				
Y	N	X	Landscaping / Tree plan (A4 or A3 only) to scale	Y	N	X	1 : 50 / 1:100 Flood line determination (plan / report) (A4 or A3 only) to scale
Y	N	X	Abutting owner's consent	Y	N	X	Home Owners' Association consent
X	N	N/A	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)	Y	N	X	Services Report or indication of all municipal services / registered servitudes
X	N	N/A	Copy of original approval and conditions of approval	Y	N	X	Proof of failure of Home owner's association

Y	N	N/A X	Proof of lawful use right		Y	N	N/A X	Any additional documents or information required as listed in the pre-application consultation form / minutes
Y	N	N/A X	Required number of documentation copies		X	N	N/A	Other (specify) NOISE IMPACT ASSESSMENT

PART H: AUTHORISATION(S) SUBJECT TO OR BEING CONSIDERED IN TERMS OF OTHER LEGISLATION

Y	X	If required, has application for EIA / HIA / TIA / TIS / MHIA approval been made? If yes, attach documents / plans / proof of submission etc.		Specific Environmental Management Act(s) (SEMA) (e.g. Environmental Conservation Act, 1989 (Act 73 of 1989)			
				Y	N/A X	National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004)	
Y	N/A X	Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970)		Y	N/A X	National Environmental Management: Waste Act, 2008 (Act 59 of 2008)	
Y	N/A X	Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)(SPLUMA)		Y	N/A X	National Water Act, 1998 (Act 36 of 1998)	
Y	N/A X	Occupational Health and Safety Act, 1993 (Act 85 of 1993): Major Hazard Installations Regulations		Y	N/A X	Other (specify)	
Y	N/A X	Land Use Planning Act, 2014 (Act 3 of 2014) (LUPA)					
Y	X	Do you want to follow an integrated application procedure in terms of section 44(1) of the Stellenbosch Municipality Land Use Planning By-Law? If yes, please attach motivation.					

SECTION I: DECLARATION

I hereby wish to confirm the following :

1. *That the information contained in this application form and accompanying documentation is complete and correct.*
2. *I'm aware that it is an offense in terms of section 86(1)(e) to supply particulars, information or answers knowing the particulars, information or answers to be false, incorrect or misleading or not believing them to be correct.*
3. *I am properly authorized to make this application on behalf of the owner and that a copy of the relevant power of attorney or consent is attached hereto.*
4. *Where an agent is appointed to submit this application on the owner's behalf, it is accepted that correspondence from and notifications by the Municipality in terms of the by-law will be sent only to the agent and that the owner will regularly consult with the agent in this regard.*
5. *I confirm that the relevant title deed(s) have been read and that there are no restrictive title deed restrictions, which impact on this application, or alternatively an application for removal/suspension or amendment forms part of this submission.*
6. *I confirm that I have made known all information relating to possible Land / Restitution Claims against the application property.*
7. *It is the owner's responsibility to ensure that approval is not sought for a building or land use which will be in conflict with any applicable law.*
8. *The Municipality assesses an application on the information submitted and declarations made by the owner or on his behalf on the basis that it accepts the information so submitted and declarations so made to be correct, true and accurate.*

9. *Approval granted by the Municipality on information or declarations that are incorrect, false or misleading may be liable to be declared invalid and set aside which may render any building or development pursuant thereto illegal.*
10. *The Municipality will not be liable to the owner for any economic loss suffered in consequence of approval granted on incorrect, false or misleading information or declarations being set aside.*
11. *Information and declarations include any information submitted or declarations made on behalf of the owner by a Competent Person/professional person including such information submitted or declarations made as to his or her qualification as a Competent person and/or registration as a professional.*
12. *A person who provides any information or certificate required in terms of Regulation A19 of the National Building Regulations and Building Standards Act No 103 of 1977 which he or she knows to be incomplete or false shall be guilty of an offence and shall be prosecuted accordingly.*
13. *A person who supplies particulars, information or answers in a land use application in terms of the Stellenbosch Municipality Land Use Planning By-law knowing it to be incorrect, false or misleading or not believing them to be correct shall be guilty of an offence and shall be prosecuted accordingly.*
14. *The Municipality will refer a complaint to the professional council or similar body with whom a Competent Person/professional person is registered in the event that it has reason to believe that information submitted or declaration/s made by such Competent Person/professional person is incorrect, false or misleading.*
15. *I am aware that by lodging an application, the information in the application and obtained during the process may be made available to the public.*

Applicant's signature: _____ Date: 2023-03-24

Full name: ANDRÉ ROUX

Professional capacity: TOWN PLANNER

FOR OFFICE USE ONLY

Date received: _____

Received By: _____

Municipal Stamp

The Municipal Manager
Stellenbosch Municipality
Plein Street
Stellenbosch
7600

TO WHOM IT MAY CONCERN

I, PIA-LEENTJE WATERMEYER, authorised to act on behalf of Kap Vino Estate CC, registered owner of Portion 20 of Farm 90, Stellenbosch, hereby certify that authority has been granted to ARoux Town Planning (represented by André Roux) to facilitate the land use application to the Stellenbosch Municipality, including the removal of restrictive title deed condition and application for Council's consent, to permit a restaurant on Portion 20 of Farm 90, Stellenbosch.

The undersigned therefore, nominates, constitutes and appoints the applicant with the power of substitution to be the company's legal representative/agent and to act in the name, place and stead of the company in the above regard. Power of attorney is accordingly hereby granted to the applicant to sign all correspondence in respect of the matter referred to above.

Yours sincerely

RESOLUTION
PASSED AT THE MEETING OF THE MEMBERS OF KAP VINO ESTATE CC (IT REG NO 1998/032395/23)

HELD AT STELLENBOSCH

ON 28 NOVEMBER 2018

That Pia Watermeyer , in her capacity as Member, is hereby authorized to sign on behalf of the CC in respect of all matters pertaining to the land use application on Portion 20 of Farm 90, Stellenbosch.

MEMBER



Pia Watermeyer

AROUX TOWN PLANNING

Office: +27 (0)21 180 3171 | Cell: +27 (0)83 448 0376
Email: andre@arouxplanning.co.za
Office B1, La Concorde Building, 57 Main Road, Paarl 7646

www.arouxplanning.co.za

18 August 2023

Our reference: 17009

Stellenbosch Municipality
Department of Planning and Economic Development
Plein Street
Stellenbosch
7600

Attention: Mr Stiaan Carstens

Dear Mr Carstens

APPLICATION FOR THE REMOVAL AND AMENDMENT OF CONDITIONS OF APPROVAL: PORTION 20 OF THE FARM DEVONVALE NO.90, STELLENBOSCH DIVISION

The letter of decision issued by the Stellenbosch Municipality on 25 November 2022 for an application for the removal of a restrictive title deed condition, consent use for a tourist facility and departure to permit a restaurant on Portion 20 of Farm 90, Stellenbosch Division, refers.

Kindly find herewith an application for the removal and amendment of conditions of approval (the removal of clause 4.8 and amendment of clause 4.9 of the above-mentioned decision letter) in terms of Section 15(2)(h) of the Stellenbosch Municipality: Land Use Planning By-Law, 2015, on behalf of the property owner, being Kap Vino Estate CC.

The following supporting documents are attached hereto for your perusal:

- **Annexure A** – Application Form
- **Annexure B** – Power of Attorney & Resolution
- **Annexure C** – Title Deed
- **Annexure D** – General Plan
- **Annexure E** – Locality Map
- **Annexure F** – Land Use Approval dated 25 November 2022
- **Annexure G** – 2023 Noise Impact Assessment

1.0 BACKGROUND

Application was made to the Stellenbosch Municipality for the removal of restrictive title deed conditions, consent use and permanent departure to permit a restaurant on Portion 20 of Farm 90, Stellenbosch. This application was partially approved on 18 May 2021, with applications for Council's consent and the removal of a title deed condition approved, subject to conditions. The application for a departure to permit a reduced off-street parking provision was refused.

The above-mentioned letter of decision included a condition which requires that the services of a registered Acoustics Engineer be hired to design and calculate noise barriers and implement the barriers before occupation certificates for the restaurant be issued. This condition was based on a recommendation from a noise impact assessment that was done by a noise specialist as part of the application in 2018.

This condition is however very onerous as the required noise barriers have a significant cost implication which is unaffordable to the owners of the restaurant. It is also believed to be unnecessary as the noise generated by the restaurant is at relatively low levels and mostly restricted to day-time hours. An appeal was therefore submitted against this condition, but the appeal was dismissed and the final decision letter was issued by the Stellenbosch Municipality on 25 November 2022, which reaffirmed the letter of decision issued in May 2021, including its conditions.

The property owners appointed a noise impact specialist to advise on this matter and to assist with compliance with the above-mentioned condition (unless deemed to not be necessary). Another noise impact assessment was then undertaken and concluded that the restaurant complies with the applicable noise regulations and that additional noise barriers are not required.

With reference to the findings of the latest Noise Impact Assessment, application is hereby made to the Stellenbosch Municipality to remove condition 4.8 of the Municipality's land use approval letter dated 25 November 2022 to waive the requirement for the noise barriers, and also to amend condition 4.9 to place a further limit on the operation hours as mitigation.

2.0 THE APPLICATION

Application is hereby made for the removal of condition 4.8 and amendment of condition 4.9, as contained in Decision Letter (LU/9046) dated 25 November 2022, in terms of Section 15(2)(h) of the Stellenbosch Municipality Land Use Planning By-Law, 2015.

Condition 4.8 states the following (proposed to be deleted):

4.8 *"The owners hire the services of a registered Acoustics Engineer to design and calculate the required noise barriers and implement it before occupation certificates are issued for the operation of a restaurant on Farm No. 90/20, Stellenbosch, in order for the venue to reduce its overall noise emissions."*

Conditions 4.9 is proposed to be amended as follows:

4.9 *"The operating hours of the restaurant for the preparation of food and refreshments to be served to seated patrons, will be restricted from 08h30 till ~~22h00~~ 18h00 seven days a week. The operating hours may be extended to 22h00 for two days per month. On these days, the kitchen must be closed by 21h00 and the restaurant must be vacated by all patrons by 22h00".*

3.0 MOTIVATION

We submit the following as motivation for this application:

3.1 The above-mentioned letter of decision confirms amongst its reasons for the decision (paragraph 5) that *"the proposed restaurant land use on an agricultural property is not prohibit(ed), but encourage(d) by the principles of the Municipal Spatial Development Framework"* and that *"similar tourist related activities exist in the area and this application should add to the tourist industry,*

without impacting negatively on the cultural landscape of the area if in compliance with conditions of approval". A restaurant on the property is therefore clearly supported by the Municipality, provided it complies with the conditions to mitigate its impact and is considered to be aligned with Council policy.

3.2 The letter of decision contains a number of conditions which limit the impact of the restaurant, particularly the noise generated by the facility. This includes:

- 4.3 - The restriction of the total floor space of the restaurant (±587m^2).
- 4.9 - The restaurant's operating hours for the preparation of food and refreshments to be served to patrons are restricted to 08h30 to 22h00 seven days a week.
- 4.10 – No audio equipment may be set up outside on the open deck of the facility and background music is only allowed within the building.
- 4.11 – No special events and functions may be hosted in the building and on the property without prior approval of the local authority (unless it is a primary right on the subject property).

Note that none of the above conditions are being objected to, particularly clause 4.9 as the restaurant is generally open between 8h30 and 17h00 only (except on maximum two evenings per month, but still complying with the condition and closing doors no later than 22h00).

3.3 However, the implementation of condition 4.8, which requires the restaurant owners to install additional noise barriers, in addition to the other conditions mentioned in paragraph 3.2 above, is unreasonably onerous.

3.4 The initial Noise Impact Assessment report, prepared by Mackenzie Hoy Consulting Acoustic Engineers, dated 12 April 2018, and which was submitted to the Municipality with the land use application, confirms that the restaurant is not considered a "disturbing noise" in terms of the Western Cape Noise Control Regulations 2013. Although the noise levels can be considered to be a "noise nuisance" in terms of said regulations, the noise levels do not exceed the maximum allowable day-time level. The report's recommendation to install additional noise barriers was to reduce the noise levels of unamplified human voice. However, the barriers are not required to comply with noise regulations and by-laws as the existing restaurant is compliant with the applicable regulations.

3.5 An updated Noise Impact Assessment was recently done by another noise impact specialist (Mr Gerry Kuhn). A copy of the report is attached as **Annexure G**. Noise measurements were taken in April 2023 at various positions at and varying times during the operation of the restaurant, including at the boundary of the neighbouring property. The measurements confirmed that the restaurant complies with all applicable noise regulations. The Noise Impact Assessment report concludes that additional noise barriers are not required and that the previous recommendation for the installation of noise barriers is not supported by the measurements.

3.6 The restaurant owners respect the surrounding neighbours and certainly do not want to create a disturbance to the neighbouring property owners and as such have implemented measures to minimise noise impact. They also have no objection to the other conditions of approval to ensure that the restaurant does not create excessive noise. However, additional noise barriers are not reasonable. The installation of additional noise barriers has been investigated previously and the cost thereof (more than R 220 000) is simply not affordable.

3.7 The only reason why additional noise barriers were previously suggested was in response to a complaint received from the neighbouring property owner of Farm 90/21. It should however be

noted that the objector's dwelling house is situated approximately 100m from the restaurant. It is thus questioned whether it is reasonable to expect additional noise barriers to be installed (at significant cost) in response to a complaint from a neighbouring property situated so far away from the facility. It should also be noted that, since the objector's complaints, additional structures were built on his property adjacent to the common boundary, which is likely to obstruct potential noise, while a water feature installed on Farm 20/90 near the common boundary further reduces potential noise impact.

3.8 The requirement for additional noise barriers is not a standard requirement for tourist facilities and restaurants of this nature in agricultural and rural areas. None of the tourist facilities in this area were required to implement such measures. Note that concerned restaurant does not accommodate any functions or events that may generate higher than normal noise levels that may warrant such additional requirements (this is also prevented by the Municipality's conditions of approval).

3.9 To further mitigate potential noise impact after hours, it is also proposed to amend condition 4.9. by reducing the permitted operating hours from 08h300 till 22h00 to 08h30 to 18h00. It is however proposed that the condition still allows the restaurant to operate until 22h00 for a maximum of two nights a month only, to accommodate the occasional dinner for specific clients by pre-arrangement, or for specific events (such as Valentine's Day). Note that these after-hour dinners are not functions and will not have any live music or any other type of activity that generate unreasonable noise. These activities are in any event prevented by conditions 4.10 and 4.11.

4.0 CONCLUSION

It has been demonstrated that additional noise barriers are not necessary at the restaurant, as confirmed in a recent Noise Impact Assessment. Noise level measurements confirmed that the restaurant complies with all applicable noise regulations and by-laws and that additional noise mitigation measures are not necessary or reasonable.

The subject restaurant is a low-key facility which mostly operates during the times of 08h30 – 17h00. Despite previous claims by the objector, a specialist assessment determined that that restaurant does not result in any unreasonable noise disturbances.

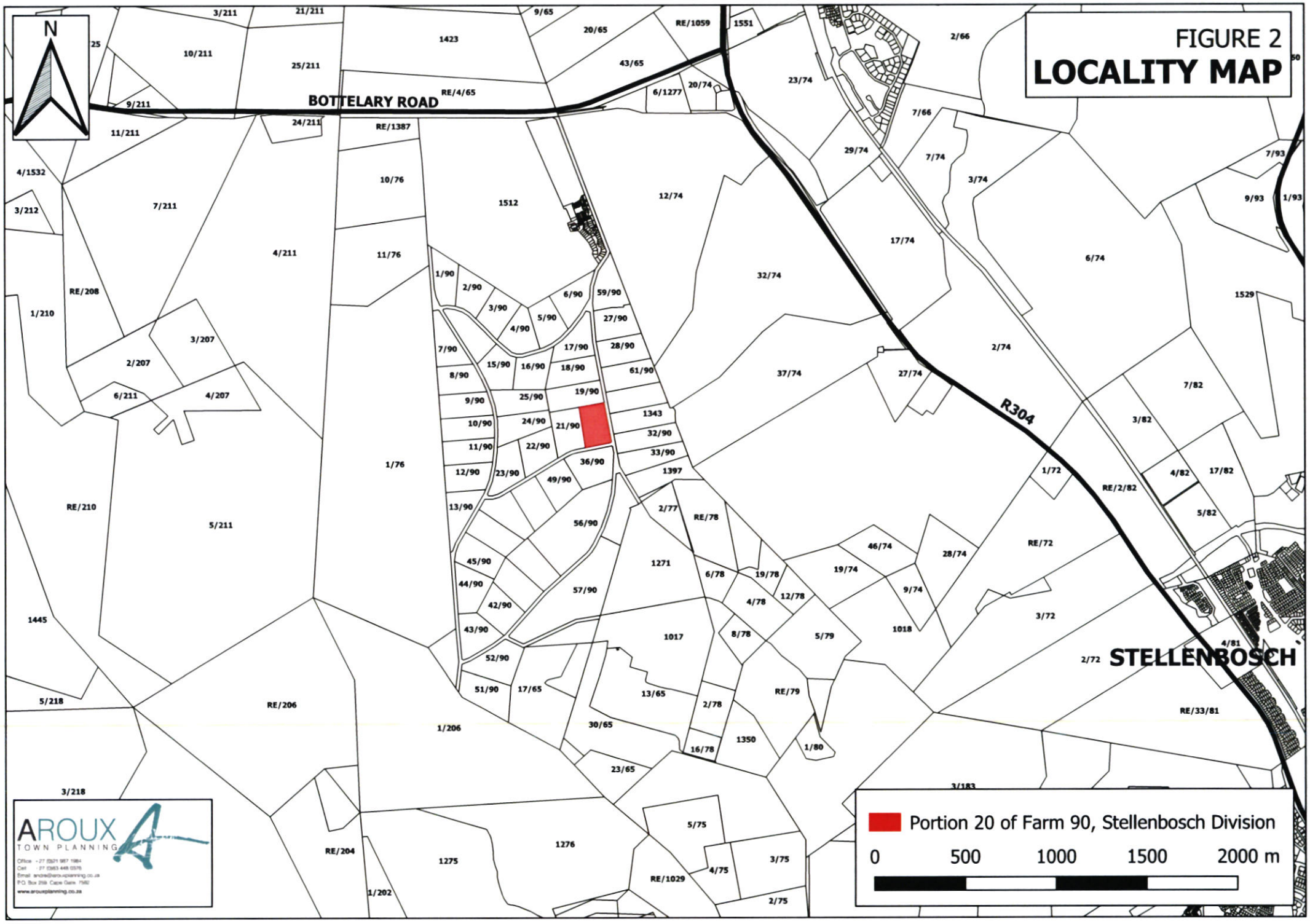
The restaurant operates on narrow profit margins and have been detrimentally affected by the recent COVID pandemic and resultant lockdowns. The substantial additional expense of noise barriers, which is deemed unnecessary, will be difficult for the restaurant owners to absorb.

We trust that application will meet your approval and will readily provide any additional information should it be required.

Your sincerely



André Roux
ARoux Town Planning


FIGURE 2
LOCALITY MAP
N
BOTTELARY ROAD
R304
STELLENBOSCH
Portion 20 of Farm 90, Stellenbosch Division
0 500 1000 1500 2000 m
AROUX
TOWN PLANNING
3/211
21/211
9/65
20/65
RE/1059
1551
2/66
1423
43/65
23/74
10/211
25/211
RE/4/65
6/1277
20/74
9/211
24/211
RE/1387
7/66
29/74
7/74
3/74
7/93
9/93
1/93
11/211
4/1532
10/76
1512
12/74
3/212
7/211
17/74
6/74
4/211
11/76
32/74
1529
RE/208
1/90
2/90
3/90
4/90
5/90
6/90
59/90
27/90
28/90
1/210
3/207
7/90
17/90
61/90
2/207
8/90
15/90
16/90
18/90
37/74
27/74
2/74
7/82
6/211
4/207
9/90
25/90
19/90
1343
3/82
10/90
24/90
21/90
32/90
11/90
22/90
33/90
1/72
4/82
17/82
1/76
12/90
23/90
49/90
36/90
1397
RE/2/82
RE/210
13/90
2/77
RE/78
5/82
5/211
56/90
46/74
45/90
1271
6/78
19/78
19/74
28/74
RE/72
44/90
57/90
12/78
9/74
4/78
42/90
3/72
1445
43/90
1017
8/78
5/79
1018
4/81
52/90
2/72
51/90
17/65
13/65
2/78
RE/79
5/218
RE/206
1/206
30/65
1350
1/80
16/78
23/65
3/218
3/183
5/75
RE/204
1276
1275
3/75
4/75
RE/1029
1/202
2/75
RE/33/81

80 Miller Gruss Katz & Traub
26th Floor, Trust Bank Centre
HEERENGRACHT

Prepared by me

CONVEYANCER
DREW D F

FEE = 165,00

VERBIND MORTGAGED
R 1 600 000,00

B 58895 98

1998 -10- 06

BC 0000 1397 / 2013
GEKANSELLEER
CANCELLED
REGISTRATEUR/REGISTRAR
17 JAN 2013

94448 98

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT:

KATHERINE MARY COLMAN

appeared before me, Registrar of Deeds at **Cape Town**, she the said Appearer, being duly authorised thereto by a Power of Attorney executed at CAPE TOWN on the 6 JULY 1998 granted to her by

LASUR PARK PROPERTY HOLDINGS CC
NO. CK 94/09790/23

AND the said Appearer declared that his principal/s had, on 4 MAY 1998 truly and legally sold, and that she, the said Appearer, in her capacity aforesaid, did, by these presents, cede and transfer in full and free property to and on behalf of:

ALLEMANN PROPERTIES CC
NO.CK 98/32395/23

or its Assigns, the following property namely:

PORTION 20 OF THE FARM DEVON VALE NO.90, Division of Stellenbosch, Province of Western Cape

IN EXTENT 3,3281 (THREE COMMA THREE TWO EIGHT ONE) Hectares

FIRST TRANSFERRED by Deed of Transfer No.T9555/1960 and diagram No.11466/52 relating thereto and held by Deed of Transfer NO.T33248/1994.

I. INSOFAR AS the figure A.B.y.x.on Diagram No.11466/52:-

A. SUBJECT to such conditions as are referred to in Certificate of Uniform Title No.3582 dated 17 March 1955.

B. SUBJECT FURTHER and ENTITLED to the benefit of the following conditions contained in Deed of Transfer No.T3922/1922, namely:-

"1. That the purchaser and his successors in title of the above property shall have the right of road 11,33 metres wide over the remaining extent of the aforesaid properties held under diagram attached to transfer dated 1 November 1876 in favour of J P Bosman and 29 February 1692 in favour of H Rutgertroost to the Main Road from Cape Town to Stellenbosch as indicated on Diagram of "Hartenberg", such road to be

1. That the purchaser and his successors in title of the property shall have the right of road 11,33 metres wide over the remaining extent of the aforesaid properties held under diagram attached to transfer dated 1 November 1876 in favour of J P Bosman and 29 February 1692 in favour of H Rutgertroost to the Main Road from Cape Town to Stellenbosch as indicated on Diagram of "Hartenberg", such road to be a direct extension of the existing road.

2. That the sellers and their successors in title as owners of the remaining extent of the properties held under said Transfers No.1903 dated 20 October 1890 and 16 October 1880, No.339 undertake to erect no buildings on that portion of the remaining extent situate to the south of the Main Road held under diagram dated 1 November 1876 and 29 February 1692 except a dwelling house and such outbuildings as may be required in connection with the farming operations on the remaining extent.

3. That on the said piece of ground portion of the remaining extent situate to the South of the said Main Road, as referred to in paragraphs 1 and 2 above, no labourers' cottages shall be erected and any other building or buildings shall at least be distant 7,87 metres from the servitude road referred to in paragraph 1 above.

4. That the owners of the remaining extent as set out in paragraph 2 above and their successors in title shall not place nay gates over the servitude road referred to in paragraph 1 above, nor over the said Main Road.

5. That the purchaser of his successors in title of the above property, shall be responsible for payment in respect of any fencing erected by him, in so far as such fence runs alongside of the said Main Road.

The Transferee and his successors in title shall be obliged to allow electricity and water mains and/or pipes and the sewage and drainage including storm water of any other portion or portions of the farm Devon Vale to be conveyed across the land hereby conveyed if deemed necessary by the Devon Valley Corporation Limited or any local authority and in such manner and in such position as may from time to time be reasonably required. This shall include the rights of access to the land hereby conveyed at any reasonable time in order to construct, maintain, alter, remove or inspect any sewer, manhole, channel, conduit or other works pertaining thereto.

No cesspit or other sewerage arrangements may be constructed within 31,49 metres of the nearest borehole unless such cesspit or other sewerage arrangements are constructed prior to the sinking of such borehole.

The Transferee and his successors in title shall be obliged to accept and/or permit the passage over the land hereby conveyed of stormwater from the adjoining portion.

WHEREFORE the said Appearer, renouncing all right and title which the said TRANSFEROR heretofore had to the premises, did in consequence also acknowledge TRANSFEROR to be entirely dispossessed of, and disentitled to the same and that by virtue of these presents, the said TRANSFEREE its Successors or Assigns now and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging that the whole of the Purchase Price amounting to R2 000 000.00 (TWO MILLION RAND) has been satisfactorily paid or secured.

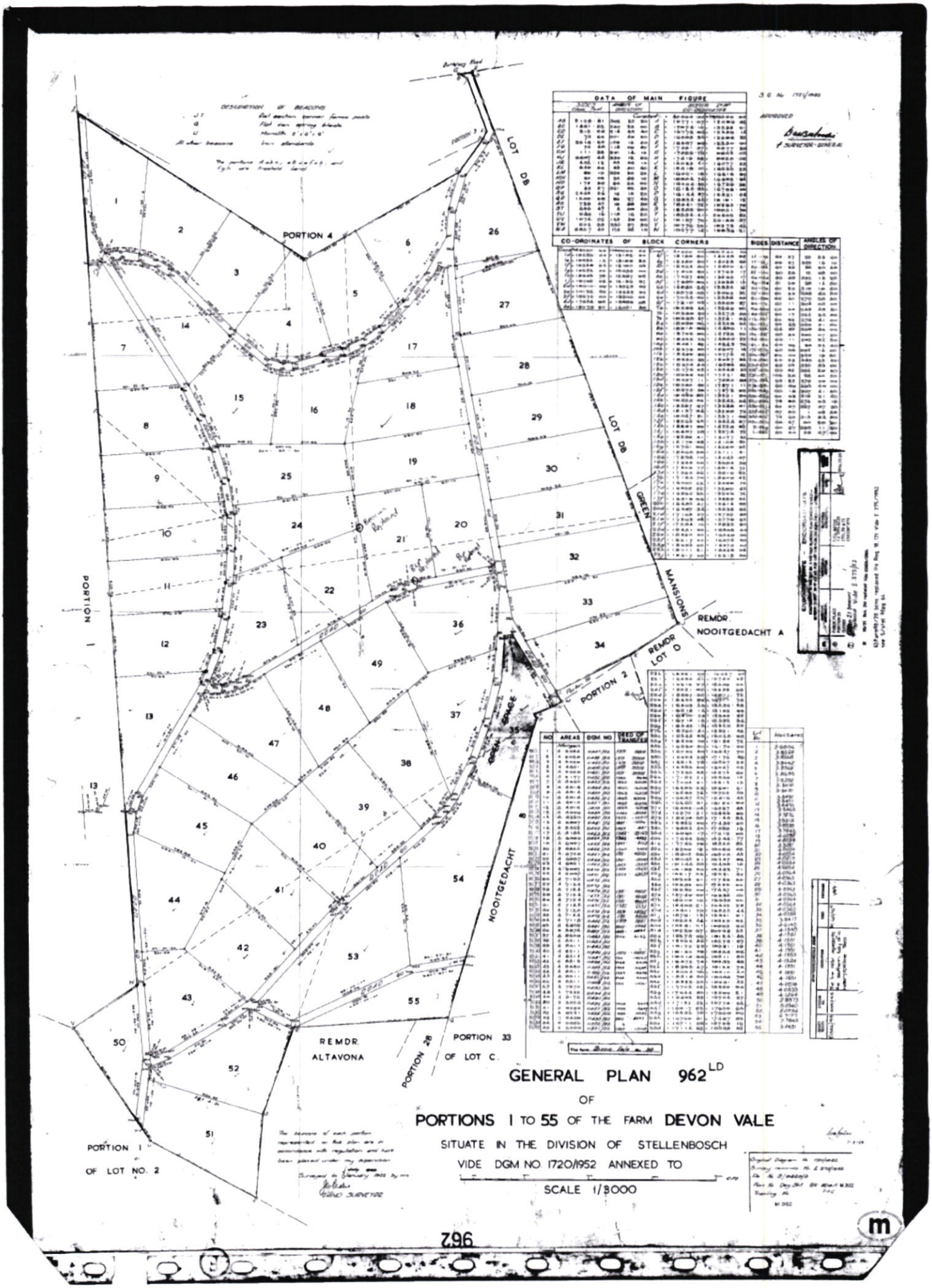
IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the Registrar of Deeds at Cape Town on 6 October 1998.

q.q.

In my presence

REGISTRAR OF DEEDS



GENERAL PLAN 962 LD

OF

PORTIONS 1 TO 55 OF THE FARM DEVON VALE

SITUATE IN THE DIVISION OF STELLENBOSCH

VIDE DGM NO. 1720/1952 ANNEXED TO

SCALE 1/3000

962

m

SUB-DIVISIONAL DIAGRAM
Sect. 24 (b), Act No. 9 of 1927

Deducted from General Plan 962 LD

OFFICE COPY

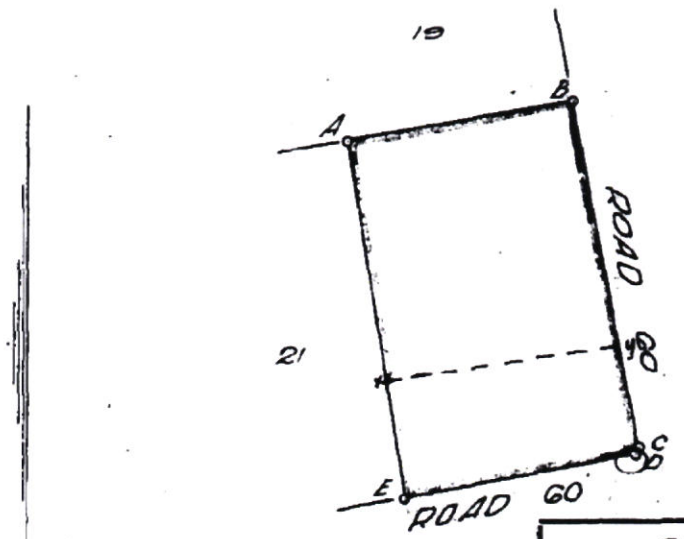
No. 11466/52

SIDES Cape Feet		ANGLES of Direction		
		°	'	"
AB	451.10	260	12	50
BC	704.53	349	19	50
CD	21.31	34	02	30
DE	460.00	78	47	20
EA	731.37	171	12	10

Approved

Surveyor-General.

26 FEB 1953



T. N.

Portion 20 (.....)

(a portion of Portion.....) of the farm

DEVON VALE No. 90

BEACONS D ito Reg 18(2)
REPLACED, VIDE E. 275/1952
See Stel '90 pg 64

Description of Beacons.
A.B.C.D.E. Iron standards.

Scale 1: 4,000

The figure A. B. C. D. E.

represents 3.8855 Morgen of land being

PORTION 20 of the farm DEVON VALE

situate in the Division of Stellenbosch, Province of Cape of Good Hope.

Surveyed in January 1952 by me

Land Surveyor.

C B S

This diagram is annexed to	The original diagram is	File No. S/9469/3
D/T 9555/1960	No. 1720/1952 annexed to	S.R. No. E. 275/1952
		Plan No. Deg. Sht. BH-8D
		General Plan No. 962 LD
Registrar of Deeds.		VN 90/20.

S.P.C.T. 8 6465

STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK
MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

Application Number: LU/9046
Our File Reference Number: Farm 90/20, Stellenbosch Division
Enquiries: Lenacia Kamineth / Pedro April
Contact No: 021 – 808 8697
E-mail address: Landuse.Appeals@stellenbosch.gov.za /Pedro.April@stellenbosch.gov.za

PER E-MAIL: andre@arouxplanning.co.za

Dear Mr Roux

APPEAL LODGED IN TERMS OF SECTION 79(2) OF THE STELLENBOSCH MUNICIPAL LAND USE PLANNING BY-LAW (2015): APPLICATION APPLICATION FOR THE REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION, CONSENT USE FOR A TOURIST FACILITY (RESTAURANT) AND DEPARTURE (UNDER PROVISION OF PARKING) IN TERMS OF THE ZONING SCHEME BY-LAW: FARM NO. 90/20, STELLENBOSCH

1. This Municipality's decision letter dated 18 May 2021, refers. The appeal process has now been concluded.

2. The Appeal Authority resolved on 15 November 2022 that the appeal submitted against the condition 2.4.8 of the subject application by the Authorised Official on 18 May 2021, BE DISMISSED and that the subject decision BE VARIED in terms of section 81(7)(b) of the Stellenbosch Municipal Land Use Planning By-law, 2015.

   2.1 That the following applications in terms of the Stellenbosch Municipal Land Use Planning By-Law, promulgated by notice number 354/2015, dated 20 October 2015, on Farm No. 90/20, Stellenbosch Division, namely:

      2.1.1 The application made in terms of Section 15(2)(b) of the Stellenbosch Municipal Zoning Scheme By-law (2015) for a departure to allow an under-provision of parking for the proposed restaurant and the approved wine tasting and sales facility (±586m² GLA in total), 20 parking bays in lieu of 24 parking bays.

NOT BE APPROVED in terms of Section 60 of the said Bylaw for the following reasons:

(a) Sufficient onsite space exists to provide the required amount of parking bays.

(b) If an overflow of parking will occur on this site due to a lack of sufficient onsite parking, it is envisaged that unauthorized parking will be obtained from an area already cleared outside the properties access gate, which may influence traffic movement to adjacent properties.

3. The applications in terms of the Stellenbosch Municipal Land Use Planning By-Law, promulgated by notice number 354/2015, dated 20 October 2015, on Farm No. 90/20, Stellenbosch Division, namely:

3.1 The application made in terms of Section 15(2)(f) of the Stellenbosch Municipal Land Use Planning By-law (2015) for the removal of paragraph one of the Title Deed condition IIIB1 as contained in title deed T94448/1998 which limits the use of the property for agricultural and residential use only to allow the operation of a restaurant on Farm No. 90/20, Stellenbosch Division,

3.2 The application made in terms of Section 15(2)(o) of the Stellenbosch Municipal Zoning Scheme By-law (2015) for a tourist facility to operate a restaurant on Farm No. 90/20, Stellenbosch Division from the ground floor of an approved building.

BE APPROVED in terms of Section 60 of the said Bylaw. and subject to the following conditions of approval in terms of Section 66 of the said Bylaw:

4. That such approval be subject to the following conditions in terms of Section 66 of the said Bylaw:

4.1 The approval applies only to the removal of the restrictive title deed condition and the consent use for a restaurant in question (See **APPENDIX B**) and shall not be construed as authority to depart from any other legal prescriptions or requirements from Council and external authorities.

4.2 The approval will lapse if not implemented within 5 years from the date of final notification.

T: +27 21 808 8111 • F: +27 21 886 6899
Plein Street, Stellenbosch, 7600 • PO Box 17, Stellenbosch, 7599
www.stellenbosch.gov.za

4.3 The floor area of the restaurant and wine tasting and sales area be restricted ±587m² (See **APPENDIX B** for building plan).

4.4 That a site development plan be submitted, which indicated the required onsite parking layout, all existing buildings, floor area of the restaurant and its uses and landscaping proposals that will assist with the mitigation of views onto the adjacent property, Farm No. 90/21, Stellenbosch Division for approval by the Authorized Employee.

4.5 Parking for the restaurant and wine tasting and sales facilities must at all times be provided on site, at the required ratio of 4 bays/100m² gross leasable area, which amounts to 23 parking bays for 587m².

4.6 Building Plans be submitted for approval for the proposed conversion and alteration to the existing building to also accommodate a restaurant.

4.7 The floor area of the restaurant area must be clearly indicated on the final building plan to enable the municipal engineering department to calculate the revised development contributions, excluding the existing wine tasting and sales area.

4.8 The owners hire the services of a registered Acoustics Engineer to design and calculate the required noise barriers and implement it before occupation certificates is issued for the operation of a restaurant on Farm No. 90/20, Stellenbosch, in order for the venue to reduce its overall noise emissions.

4.9 The operating hours of the restaurant for the preparation of food and refreshments to be served to seated patrons, will be restricted from 08h30 till 22h00 seven days a week. The kitchen must be closed by 21h00 and the restaurant must be vacated by all patrons by 22h00.

4.10 That no audio equipment is set-up outside on the open deck of the facility and background music only be allowed within the building, to prevent any negative impacts on the closest domestic dwelling.

4.11 No special events and functions may be hosted in the building and on the property without the prior approval of the local authority, unless it is a primary right on the subject property.

4.12 All electrical requirements must be directed to Eskom, considering that the property is outside the Stellenbosch area of supply.

T: +27 21 808 8111 • F: +27 21 886 6899
Plein Street, Stellenbosch, 7600 • PO Box 17, Stellenbosch, 7599
www.stellenbosch.gov.za

5. The above decision were made for the following reason(s) in terms of Section 81(7)(c) of the said By-law:

5.1. Notwithstanding the objection received, mitigating measures could be implemented as conditions of approval to minimize the impact of the restaurant activities on surrounding property owner's rights.

5.2. Sufficient parking could be provided onsite and addressed by the submission of revised parking layout plans.

5.3. The operation timeframes of the restaurant could be regulated by conditions of approval or the liquor licence to be approved.

5.4. The proposed restaurant land use on an agricultural property is not prohibit but encourage by the principles of the Municipal Spatial Development Framework.

5.5. Similar tourist related activities exist in the area and this application should add to the tourist industry, without impacting negatively on the cultural landscape of the area if in compliance with conditions of approval.

5.6. No municipal services will be impacted.

5.7. Sufficient landscaping exists and could be implemented to screen the adjacent properties private space viewed from the restaurant deck.

6. Matters to be noted.

After the publication of a notice by the municipality in the Provincial Gazette in terms of section 33(7) of the Stellenbosch Municipal Land Use Planning By-law (2015), the owners must apply to the Register of Deeds to make the appropriate entries in, and endorsement on, any relevant register or title deed to reflect the removal of the restrictive condition IIIB1 as contained in title deed T94448/1998.

7. Accordingly, the decision detailed in this letter may be implemented, subject to compliance with the conditions of approval.

Yours faithfully

FOR DIRECTOR PLANNING AND ECONOMIC DEVELOPMENT

DATE: 25/11/2022

T: +27 21 808 8111 • F: +27 21 886 6899
Plein Street, Stellenbosch, 7600 • PO Box 17, Stellenbosch, 7599
www.stellenbosch.gov.za

Copy to:

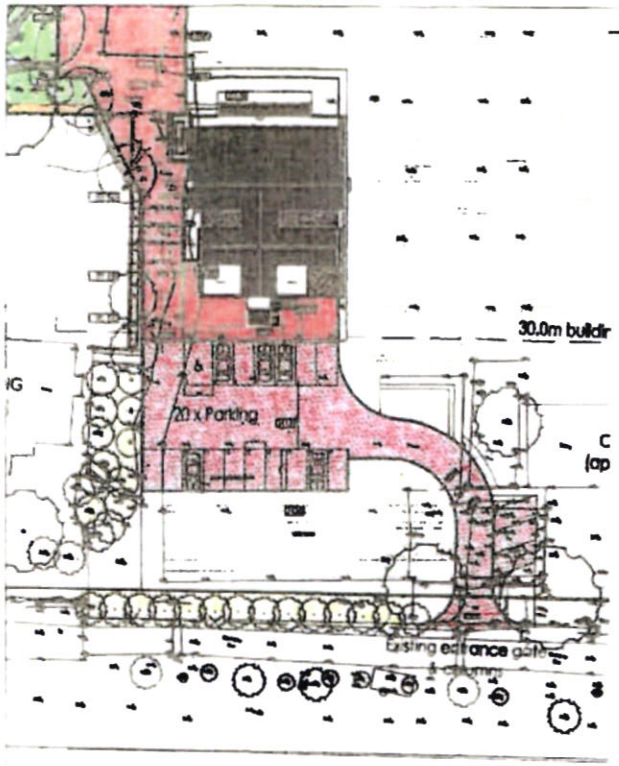
1. **BDP Attorneys**
   PO Box 3835
   Tyger Valley 7536
   Docex 5 Tygerberg

   E-mail: fred@bdplaw.co.za

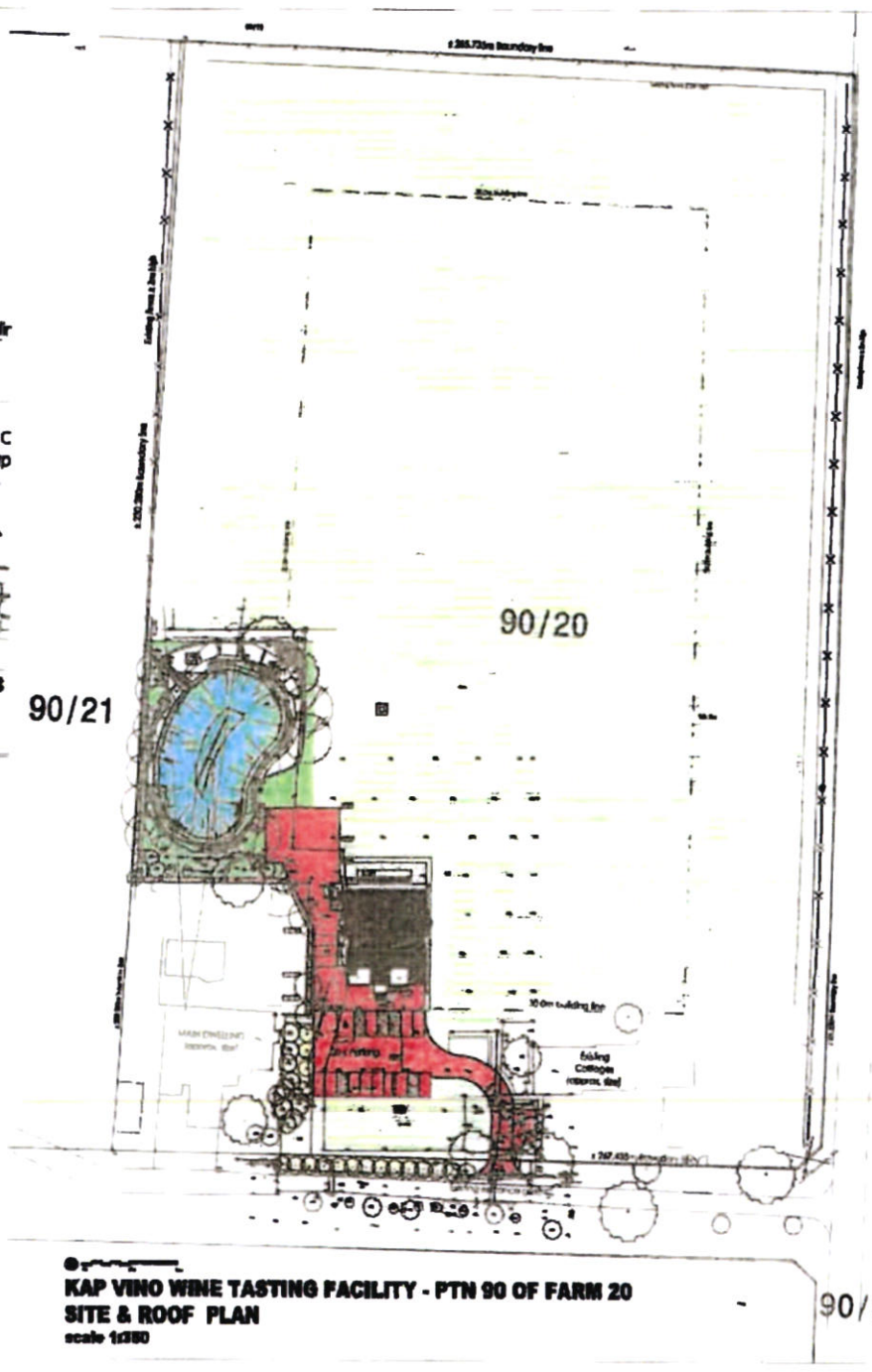
T: +27 21 808 8111 • F: +27 21 886 6899
Plein Street, Stellenbosch, 7600 • PO Box 17, Stellenbosch, 7599
www.stellenbosch.gov.za

APPENDIX B

Site and Building Plan



DETAIL PARKING LAYOUT
scale 1:200



KAP VINO WINE TASTING FACILITY - PTN 90 OF FARM 20
SITE & ROOF PLAN
scale 1:350

BUILDING HEIGHT LEVELS

CONSTRUCTION LANDAB

Existing Lower Ground Floor	371,00 m²
Existing Ground floor (excl.open balconies)	- 912,00 m²
TOTAL COVERED AREAS	- 923,00 m²

GROSS LEASABLE AREA:

Lower Ground Floor:

Managers Cottage	- 68,00 m²
Inpfoment Store	- 100,00 m²
Wine Store	- 76,00 m²
Wine Sook & Private Tasting	- 65,00 m²

Ground Floor:

Restaurant (Tasting Area)	- 150,00 m²
Kitchen	- 35,00 m²
Ablutions	- 13,00 m²
Admin Office	- 15,00 m²
Outside Seating Area (balconies)	- 144,00 m²
TOTAL - GLA	- 606,00 m²

COVERAGE

ERF AREA	- 3,5Ha
COVERED AREA	- 300,00m²
COVERAGE AREA	- 1,4%

General Notes:

1. Contractor and Sub-Contractors to check all levels and dimensions on site before any work is commenced and any discrepancies to be reported to the Architect immediately.
2. Figured dimensions to be taken in preference to scaled measurements and large scale details/reproduction used scale drawings.
3. All work to be done in accordance National Building Regulations SANS 10400 and all requirements of Municipal and Local Authorities concerned are to be adhered to.
4. Natural light and ventilation area of all openings in accordance of floor area and SANS 10400 Part O natural light area: min.10% of floor area and natural ventilation min. 5% of floor area.
5. All glazing to comply with requirements of SANS 0137 - doors & doors and sidelights to have safety glass. Windows lower than 800mm from floor, windows lower than 1500mm above pitch line of stairs and step-levels to have safety glass.
6. All safety glazing panels to be marked with glazing marking and are to be visible at all times.
7. All conflict below floor level to be filled with concrete and dpc/f to be stepped.
8. No part of buildings to encroach the build line.
9. All materials to be installed strictly in accordance with manufacturers specifications.

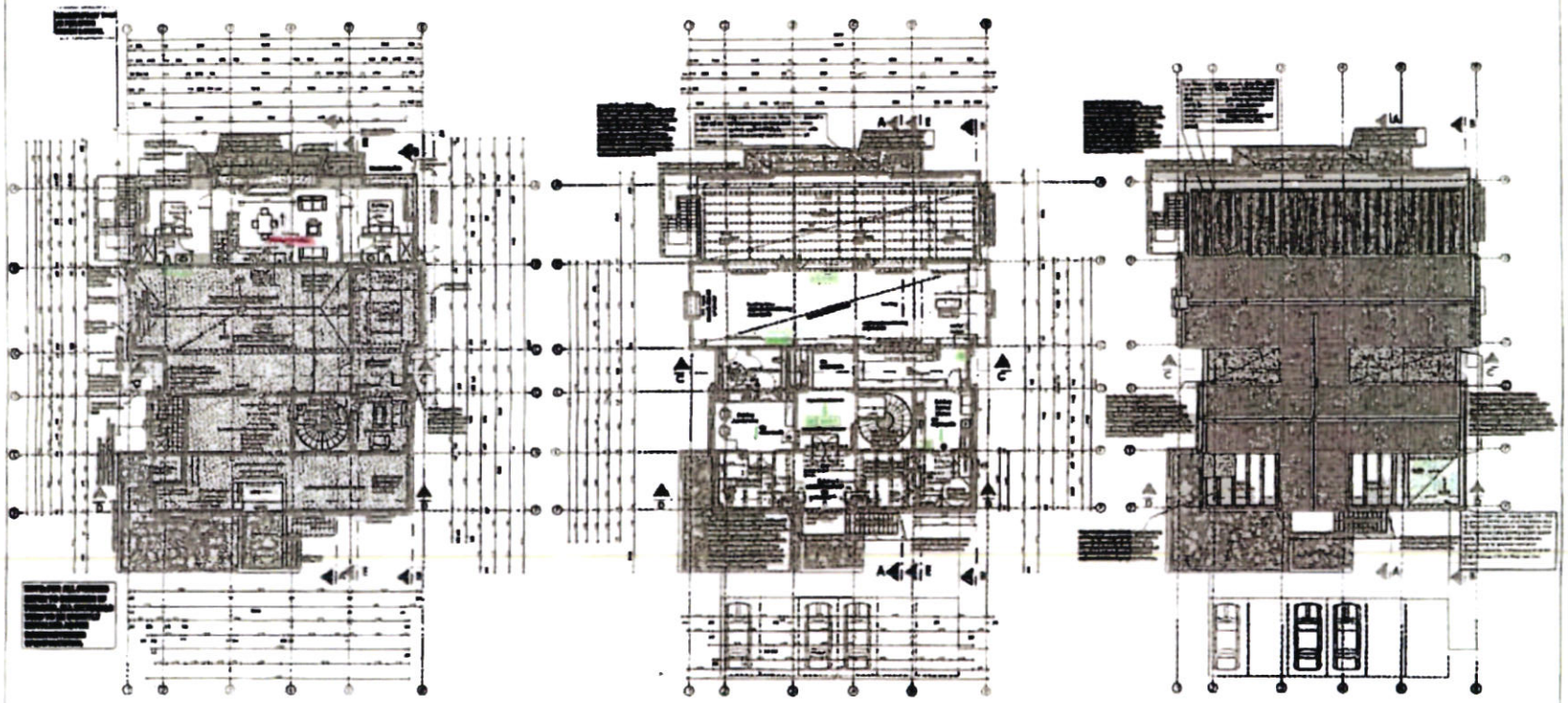
DENNIS MOSS PARTNERSHIP

PIA WATERMEYER

KAP VINO ESTATE
WINE TASTING FACILITY
& MANAGERS COTTAGE
PTN 90 OF FARM 20

UPDATED SITE AND ROOF PLAN WITH PROPOSED PARKING LAYOUT FOR RESTAURANT PLANNING APPLICATION

FOR PLANNING APPLICATION



General Notes:

1. Contractor and Sub-Contractors to check all levels and dimensions on site before any work is commenced and any discrepancies to be reported to the Architect immediately.
2. Figured dimensions to be strictly preference to scaled measurements and large scale details supersede small scale drawings.
3. All work to be done in accordance National Building Regulations SANS 10400 and all requirements of Stellenbosch Local Authorities concerned are to be adhered to.
4. Natural light and ventilation area of all openings to be minimum of floor area and SANS 10400 Part O natural light area min.10% of floor area and natural ventilation min. 5% of floor area.
5. All glazing to comply with requirements of SANS 0137 - access doors and windows to have safety glass. Windows lower than 800mm from floor, windows lower than 1500mm above glass line of stairs and shop fronts to have safety glass.
6. All safety glazing panels to be manufactured globally marking such that it is by two visible small items.
7. All cavities below/floor level to be filled with concrete and dpc's to be stepped.
8. No part of building to encroach the build line.
9. All materials to be installed strictly in accordance with manufacturers specifications.

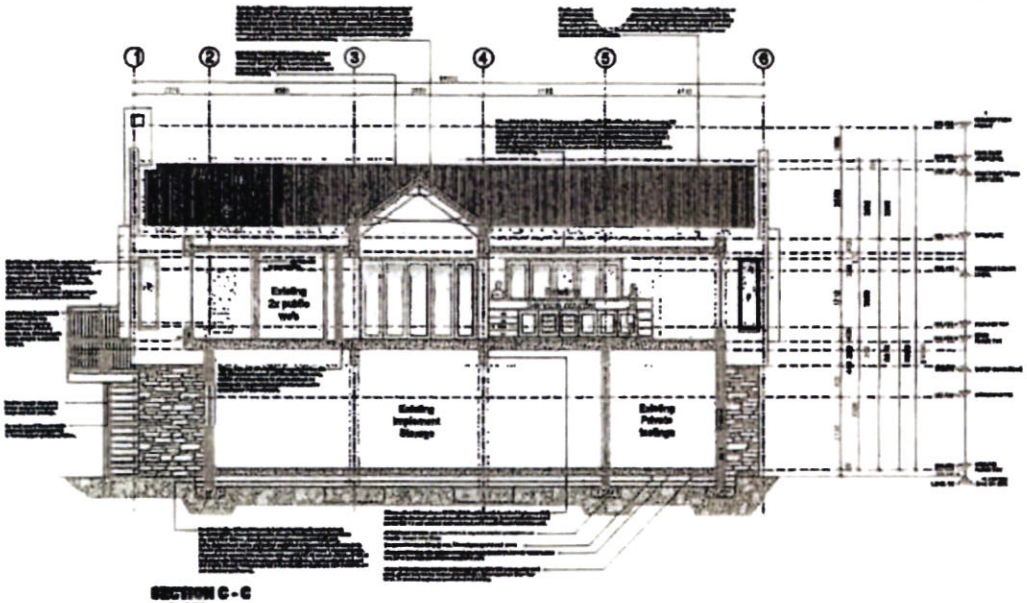
BENNIE HOSS PARTNERSHIP

PIA WATERMEYER

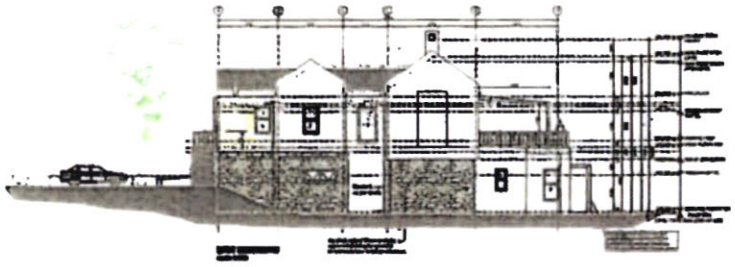
NEW SERVICE KITCHEN EXT
TO EXISTING WINE TASTING
FACILITY KAP VINO ESTATE
PTN 80 OF FARM 20

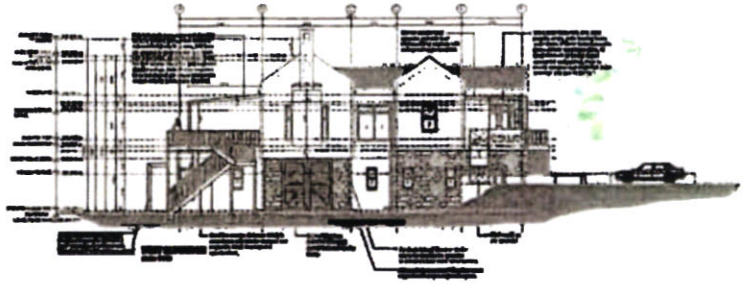
FLOOR PLANS
XA CALCULATIONS

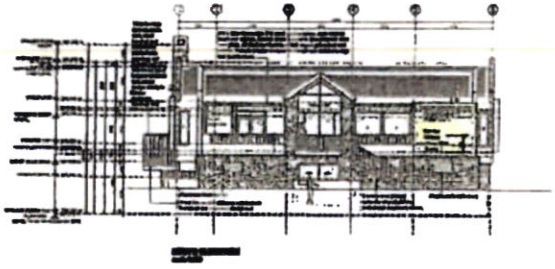
FOR COUNCIL APPROVAL

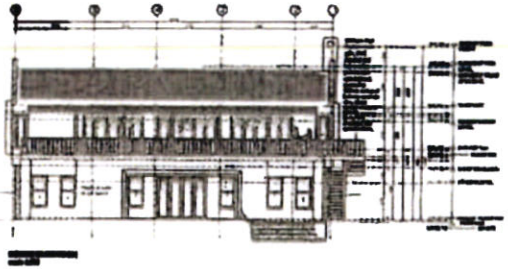


SECTION C - C









General Notes:

1. Contractor and Sub-Contractors to checked levels and dimensions on site before any work is commenced and any discrepancies to be reported to the Architect immediately.
2. Figured dimensions to be taken in preference to scaled measurements and large scale details supersede small scale drawings.
3. All work to be done in accordance National Building Regulations SANS 10400 and all requirements of Stellenbosch Local Authorities document are to be adhered to.
4. Natural light and ventilation area of all openings in accordance of floor area and SANS 10400 Part O natural light area min.10% of floor area and natural ventilation min. 5% of floor area.
5. All glazing to comply with requirements of SANS 0137 - access doors and sidelights to have safety glass. Windows lower than 800mm from floor,windows lower than 1500mm above pitch line of stairs and shop fronts to have safety glass.
6. All safety glazing panels to be marked with glazing markings and this is to be visible at all times.
7. All cavities below floor level to be filled with concrete and ajoin to be stepped.
8. No part of roof light to encroach the solid line.
9. All materials to be installed strictly in accordance with manufacturers specifications.

DENNIS MOSS PARTNERSHIP

PIA WATERMEYER

NEW SERVICE KITCHEN EXT. TO EXISTING WINE TASTING FACILITY KAP VINO ESTATE
PTN 90 OF FARM 20

SECTIONS & ELEVATIONS

DRAWN BY	NVDB	SCALE	1:100
CHECKED BY	DM	DATE	02.10.2017
JOB NO	09	ISSUED	RDC
		DRAWING NO	A05

FOR COUNCIL APPROVAL

This drawing and all the information contained therein is the property of Dennis Moss Partnership and may not be copied or disclosed to a third party without their written consent.

STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK
MUNISIPALITEIT • UMASIPALA • MUNICIPALITY

Application Number: LU/9046
Our File Reference Number: Farm 90/20, Stellenbosch Division
Your Reference Number: None
Enquiries: Ulrich von Molendorff
Contact No: 021 – 808 8682
Email address: Ulrich.Vonmolendorff@stellenbosch.gov.za

PER E-MAIL: andre@arouxplanning.co.za

Sir / Madam

APPLICATION FOR THE REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION, CONSENT USE FOR A TOURIST FACILITY (RESTAURANT) AND DEPARTURE (UNDER PROVISION OF PARKING) IN TERMS OF THE ZONING SCHEME BY-LAW: FARM NO. 90/20, STELLENBOSCH DIVISION

1. The above applications refer.

2. The duly authorised decision maker has decided on the above applications as follows:

   2.1 That the following applications in terms of the Stellenbosch Municipal Land Use Planning By-Law, promulgated by notice number 354/2015, dated 20 October 2015, on Farm No. 90/20, Stellenbosch Division, namely:

      2.1.1 The application made in terms of Section 15(2)(b) of the Stellenbosch Municipal Zoning Scheme By-law (2015) for a departure to allow an under-provision of parking for the proposed restaurant and the approved wine tasting and sales facility (±586m² GLA in total), 20 parking bays in lieu of 24 parking bays.

NOT BE APPROVED in terms of Section 60 of the said Bylaw for the following reasons:

(a) Sufficient onsite space exists to provide the required amount of parking bays.

(b) If an overflow of parking will occur on this site due to a lack of sufficient onsite parking, it is envisaged that unauthorized parking will be obtained from an

area already cleared outside the properties access gate, which may influence traffic movement to adjacent properties.

2.2 That the following applications in terms of the Stellenbosch Municipal Land Use Planning By-Law, promulgated by notice number 354/2015, dated 20 October 2015, on Farm No. 90/20, Stellenbosch Division, namely:

2.2.1 The application made in terms of Section 15(2)(f) of the Stellenbosch Municipal Land Use Planning By-law (2015) for the removal of paragraph one of the Tittle Deed condition IIIB1 as contained in title deed T94448/1998 which limits the use of the property for agricultural and residential use only to allow the operation of a restaurant on Farm No. 90/20, Stellenbosch Division,

2.2.2 The application made in terms of Section 15(2)(o) of the Stellenbosch Municipal Zoning Scheme By-law (2015) for a tourist facility to operate a restaurant on Farm No. 90/20, Stellenbosch Division from the ground floor of an approved building.

BE APPROVED in terms of Section 60 of the said Bylaw and subject to the following conditions of approval in terms of Section 66 of the said Bylaw:

2.3 **Reasons for the above Decision**

2.3.1 Notwithstanding the objection received, mitigating measures could be implemented as conditions of approval to minimize the impact of the restaurant activities on surrounding property owner's rights.

2.3.2 Sufficient parking could be provided onsite and addressed by the submission of revised parking layout plans.

2.3.3 The operation timeframes of the restaurant could be regulated by conditions of approval or the liquor licence to be approved.

2.3.4 The proposed restaurant land use on an agricultural property is not prohibit, but encourage by the principles of the Municipal Spatial Development Framework.

2.3.5 Similar tourist related activities exist in the area and this application should add to the tourist industry, without impacting negatively on the cultural landscape of the area if in compliance with conditions of approval.

2.3.6 No municipal services will be impacted.

2.3.7 Sufficient landscaping exists and could be implemented to screen the adjacent properties private space viewed from the restaurant deck.

2.4 **That such approval BE SUBJECT to the following conditions in terms of Section 66 of the said Bylaw:**

2.4.1 The approval applies only to the removal of the restrictive title deed condition and the consent use for a restaurant in question (See **APPENDIX B**) and shall not be construed as authority to depart from any other legal prescriptions or requirements from Council and external authorities.

2.4.2 The approval will lapse if not implemented within 5 years from the date of final notification.

2.4.3 The floor area of the restaurant and wine tasting and sales area be restricted ±587m² (See **APPENDIX B** for building plan).

2.4.4 That a site development plan be submitted, which indicated the required onsite parking layout, all existing buildings, floor area of the restaurant and its uses and landscaping proposals that will assist with the mitigation of views onto the adjacent property, Farm No. 90/21, Stellenbosch Division for approval by the Authorized Employee.

2.4.5 Parking for the restaurant and wine tasting and sales facilities must at all times be provided on site, at the required ratio of 4 bays/100m² gross leasable area, which amounts to 23 parking bays for 587m².

2.4.6 Building Plans be submitted for approval for the proposed conversion and alteration to the existing building to also accommodate a restaurant.

2.4.7 The floor area of the restaurant area must be clearly indicated on the final building plan to enable the municipal engineering department to calculate the revised development contributions, excluding the existing wine tasting and sales area.

2.4.8 The owners hire the services of a registered Acoustics Engineer to design and calculate the required noise barriers and implement it before occupation certificates is issued for the operation of a restaurant on Farm No. 90/20, Stellenbosch, in order for the venue to reduce its overall noise emissions.

2.4.9 The operating hours of the restaurant for the preparation of food and refreshments to be served to seated patrons, will be restricted from 08h30 till 22h00 seven days a week.

2.4.10 That no audio equipment is set-up outside on the open deck of the facility and background music only be allowed within the building, to prevent any negative impacts on the closest domestic dwelling.

2.4.11 No special events and functions may be hosted in the building and on the property without the prior approval of the local authority, unless it is a primary right on the subject property.

2.4.12 All electrical requirements must be directed to Eskom, considering that the property is outside the Stellenbosch area of supply.

3. **Matters to be noted.**

3.1 After the publication of a notice by the municipality in the Provincial Gazette in terms of section 33(7) of the Stellenbosch Municipal Land Use Planning By-law (2015), the owners must apply to the Register of Deeds to make the appropriate entries in, and endorsement on, any relevant register or title deed to reflect the removal of the restrictive condition IIIB1 as contained in title deed T94448/1998.

4. You are hereby informed in terms of section 79(2) of the Stellenbosch Municipal Land Use Planning Bylaw, 2015, of your right to appeal the above decision to the Appeal Authority within 21 days from the date of notification of the above decision. Please note that no late appeals or an extension of time for the submission of appeals are permitted in terms of Section 80(1)(a) of the said By-Law.

5. Appeals must be submitted with the prescribed information to satisfy the requirements of Section 80(2) of the said By-law, failing which the appeal will be invalid in terms of Section 81(1)(b) of the said By-Law. The following prescribed information is accordingly required:

(a) The personal particulars of the Appellant, including:

(I) First names and surname;
(II) ID number;
(III) Company of Legal person's name (if applicable)
(IV) Physical Address;
(V) Contact details, including a Cell number and E-Mail address;

(b) Reference to this correspondence and the relevant property details on which the appeal is submitted.

(c) The grounds of the appeal which may include the following grounds:

(i) that the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);

(ii) grounds relating to the merits of the land development or land use application on which the appellant believes the authorised decision maker erred in coming to the conclusion it did.

(d) whether the appeal is lodged against the whole decision or a part of the decision;

(e) if the appeal is lodged against a part of the decision, a description of the part;

(f) if the appeal is lodged against a condition of approval, a description of the condition;

(g) the factual or legal findings that the appellant relies on;

(h) the relief sought by the appellant; and

(i) any issue that the appellant wishes the Appeal Authority to consider in making its decision;

(j) That the appeal includes the following declaration by the Appellant:

(i) The Appellant confirms that the information contained in the subject appeal and accompanied information and documentation is complete and correct

(ii) That the Appellant is aware that it is and offence in terms of Section 86(1)(d) of the said By-Law to supply particulars, information or answers in an appeal against a decision on an application, or in any documentation or representation related to an appeal, knowing it to be false, incorrect or misleading or not believing them to be correct.

6. Appeals must be addressed to the Municipal Manager and submitted to his/ her designated official by means of E-mail at the following address: landuse.appeals@stellenbosch.gov.za.

7. An applicant who lodges an appeal must pay the applicable appeal fee in terms of the approved municipal tariffs and submit the proof of payment together with the appeal. The **LU** Reference number on this correspondence, or the applicable Erf/ Farm Number must be used as the reference for the payment of the appeal fee.

8. The approved tariff structure may be accessed and viewed on the municipal website (https://www.stellenbosch.gov.za/documents/finance/rates-and-tariffs) and the banking details for the General Account can also be accessed on the municipal website (https://www.stellenbosch.gov.za/documents/general/8314-stellenbosch-municipality-banking-details-1/file).

9. An applicant who lodge an appeal must also adhere to the following requirements stipulated in terms of section 80(3) to (7) of the said By-law:

(a) Simultaneously serve the appeal on any person who commented on the application concerned and any other person as the municipality may determine.

(b) The notice by the applicant must invite persons to comment on the appeal within 21 days from date of notification of the appeal.

(c) The notice must be served in accordance with section 35 of the said legislation and in accordance with the prescripts or such additional requirements as may be determined by the Municipality.

(d) Proof of serving the notification must be submitted to the Municipality at the above E-mail address within 14 days of serving the notification.

10. Kindly note that no appeal right exists in terms of Section 62 of the Local Government Municipal Systems Act, No 32 of 2000.

11. Kindly note the above decision is suspended, and in the case of any approval, may therefore not be acted on, until such time as the period for lodging appeals has lapsed, any appeal has been finalised and you've been advised accordingly.

Yours faithfully

FOR DIRECTOR: PLANNING AND ECONOMIC DEVELOPMENT

DATE: 18/5/2021

CC: OBJECTORS

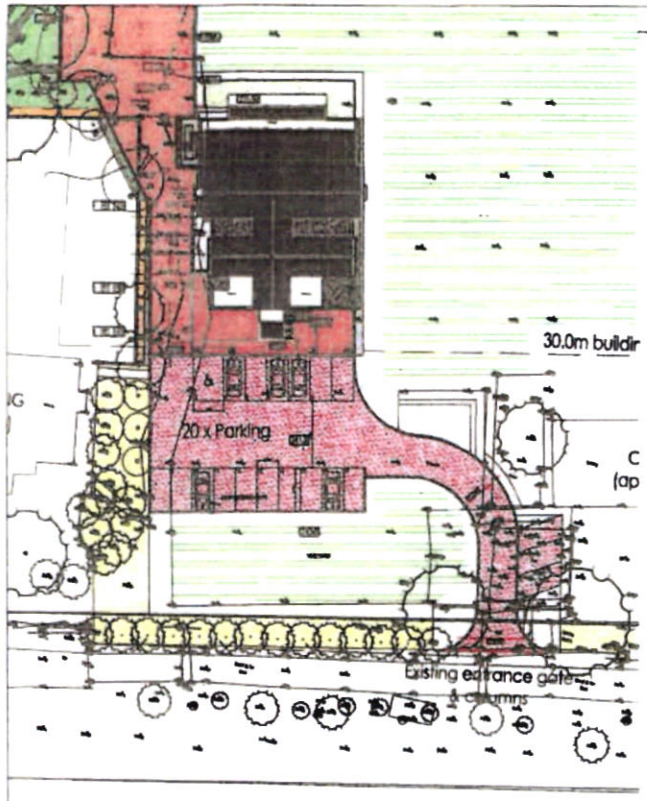
1. **BDP Attorneys**
   PO Box 3835
   Tyger Valley 7536
   Docex 5 Tygerberg

   E-mail: fred@bdplaw.co.za

2. **Marius Sullwald**
   E-mail: labels@coastallabels.co.za

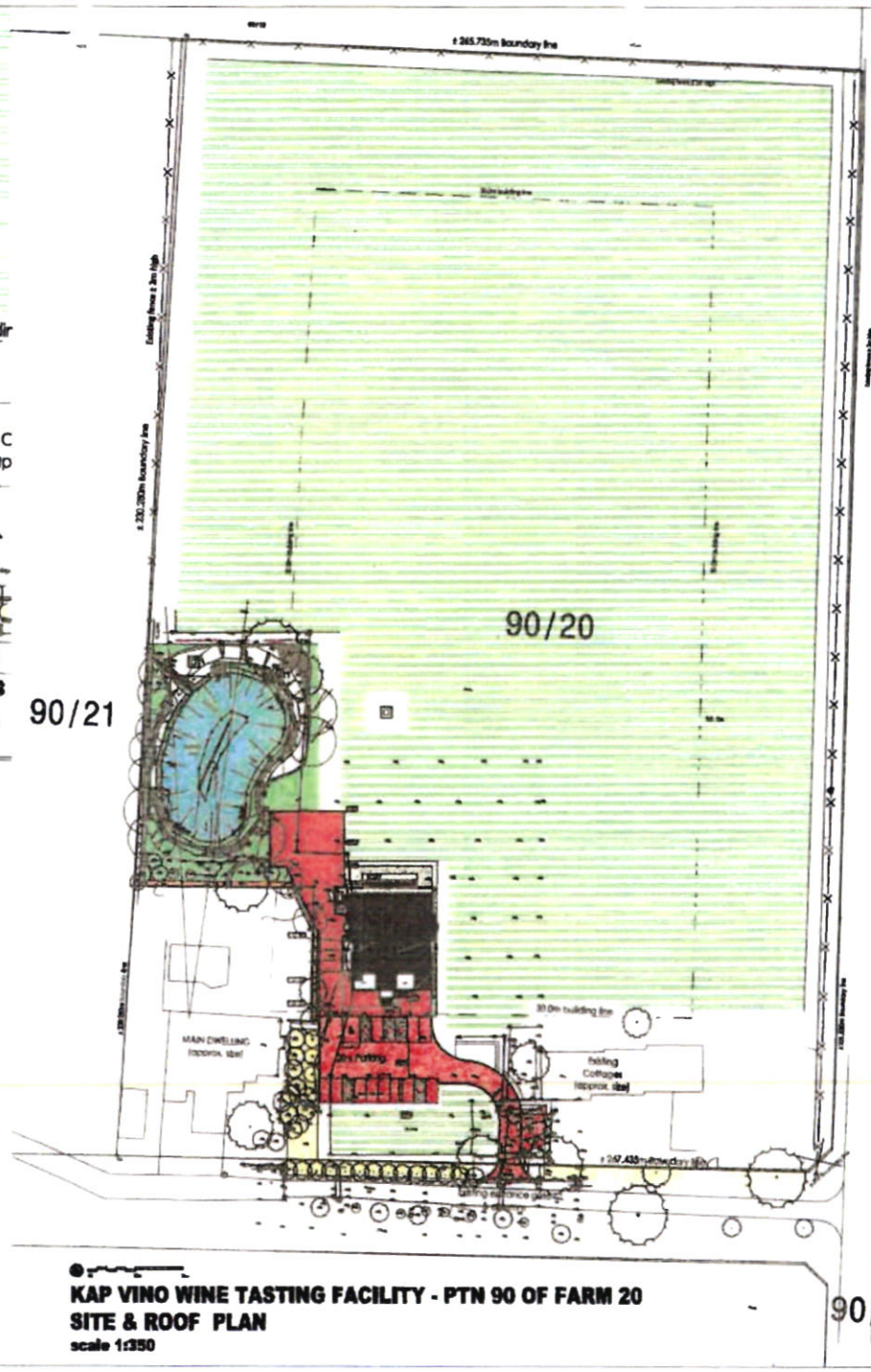
APPENDIX B

Site and Building Plan



DETAIL PARKING LAYOUT
scale 1:200

BUILDING HEIGHT LEVELS	
Base Level: Level = 259.000 = 0m	
Wallplate Level: Level = 995.000 = 7.01m	
Roof Apex Level: Level = 849.100 = 6.976m	
CONSTRUCTION AREAS:	
Existing Lower Ground Floor	- 971.00 m²
Existing Ground floor (excl.open balconies)	- 312.00 m²
TOTAL COVERED AREAS	- 683.00 m²
GROSS LEASABLE AREA:	
Lower Ground Floor:	
Managers Cottage	- 82.00 m²
Implement Store	- 108.00 m²
Wine Store	- 76.00 m²
Wine Bank & Private Tasting	- 55.00 m²
Ground Floor:	
Restaurant (Tasting Area)	- 160.00 m²
Kitchen	- 25.00 m²
Ablutions	- 13.00 m²
Admin Office	- 15.00 m²
Outside Seating Areas (balconies)	- 144.00 m²
TOTAL - GLA	- 688.00 m²
COVERAGE	
ERF AREA	- 5.3Ha
COVERED AREA	- 360.00m²
COVERAGE AREA	- 1.1%



KAP VINO WINE TASTING FACILITY - PTN 90 OF FARM 20
SITE & ROOF PLAN
scale 1:350

90/30

1343

90/32

General Notes:

1. Contractor and Sub-Contractors to check all levels and dimensions on site before any work is commenced and any discrepancies to be reported to the Architect immediately.
2. Figured dimensions to be taken in preference to scaled measurements and large scale details supersede small scale drawings.
3. All work to be done in accordance National Building Regulations SANS 10400 and all requirements of Municipal and Local Authorities concerned are to be adhered to.
4. Natural light and ventilation area of all openings in accordance of floor area and SANS 10400 Part O natural light area: min.10% of floor area and natural ventilation: min. 5% of floor area.
5. All glazing to comply with requirements of SANS 0137 - access doors and sidelights to have safety glass. Windows lower than 800mm from floor, windows lower than 1800mm above pitch line of stairs and shop-fronts to have safety glass.
6. All entry glazing panels to be etched with glazing marking and this is to be visible at all times.
7. All cavities below floor level to be filled with concrete and dpc's to be stepped.
8. No part of building is to encroach the build line.
9. All materials to be installed strictly in accordance with manufacturers specifications.

DENNIS MOSS PARTNERSHIP

PIA WATERMEYER

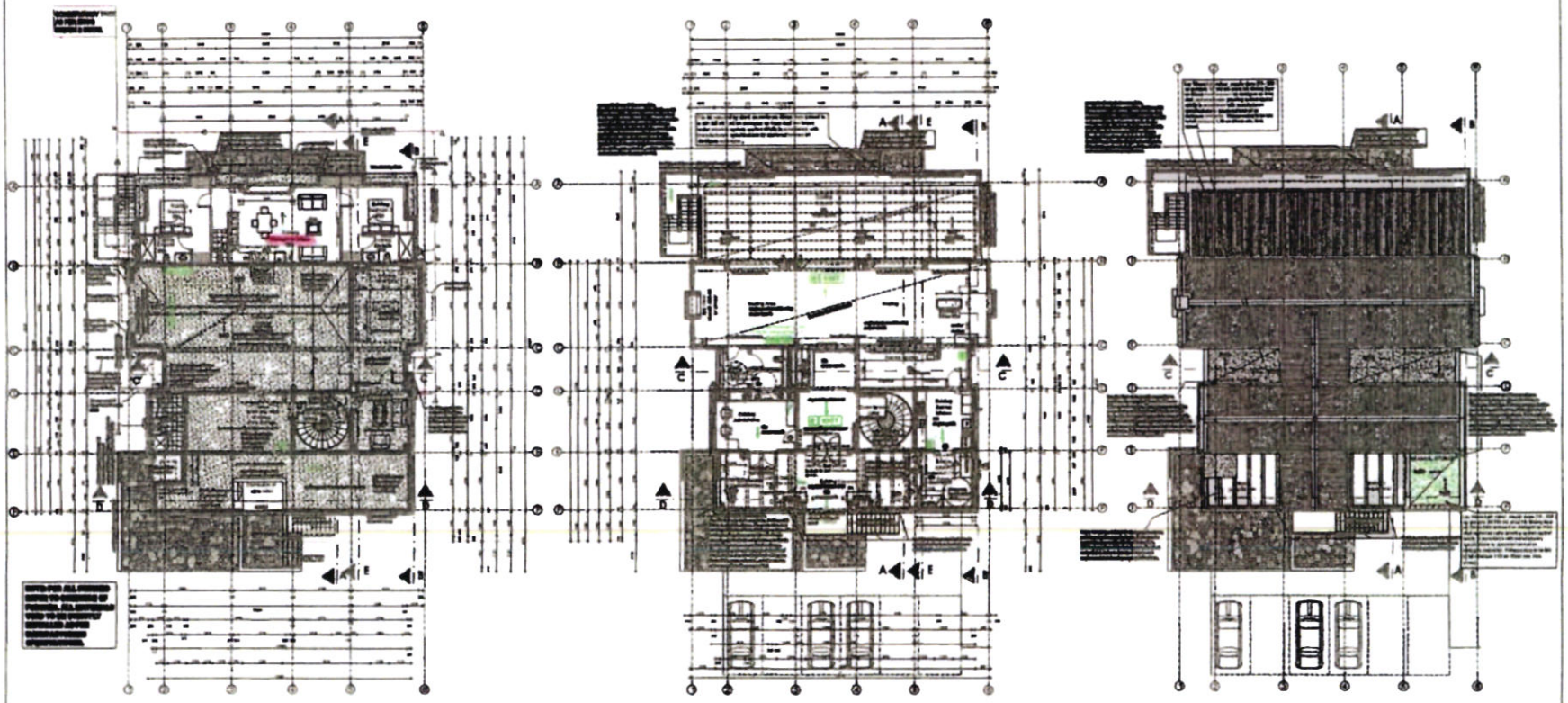
KAP VINO ESTATE
WINE TASTING FACILITY
& MANAGERS COTTAGE
PTN 90 OF FARM 20

UPDATED SITE AND ROOF PLAN
WITH PROPOSED PARKING
LAYOUT FOR RESTAURANT
PLANNING APPLICATION

PROJECT No.	P14/02	SCALE	1:200
DRAWING No.	100	DATE	31.05.2020
REV.	-	DRAWN	RDC
		CHECKED	AMH

FOR PLANNING APPLICATION

This drawing and all the information contained thereon is the property of Dennis Moss Partnership and may not be copied or disclosed to a third party without their written consent.



General Notes:

1. Contractor and Sub-Contractors to check all levels and dimensions on site before any work is commenced and any discrepancies to be reported to the Architect immediately.
2. Figured dimensions to be taken in preference to scaled measurements and large scale details supercede small scale drawings.
3. All work to be done in accordance National Building Regulations SANS 10400 and all requirements of Municipal and Local Authorities concerned are to be adhered to.
4. Natural light and ventilation area of all openings in accordance of floor area and SANS 10400 Part O natural light area; min.10% of floor area and natural ventilation min. 5% of floor area.
5. All glazing to comply with requirements of SABS 0137 - access doors and sidelights to have safety glass. Windows lower than 800mm from floor, windows lower than 1800mm above pitch line of stairs and shop-fronts to have safety glass.
6. All safety glazing panels to be etched with glazing marking and this is to be visible at all times.
7. All cavities below floor level to be filled with concrete and dpc's to be stepped.
8. No part of building is to encroach the build line.
9. All materials to be installed strictly in accordance with manufacturer specifications.

DENNIS MOSS PARTNERSHIP

PIA WATERMEYER

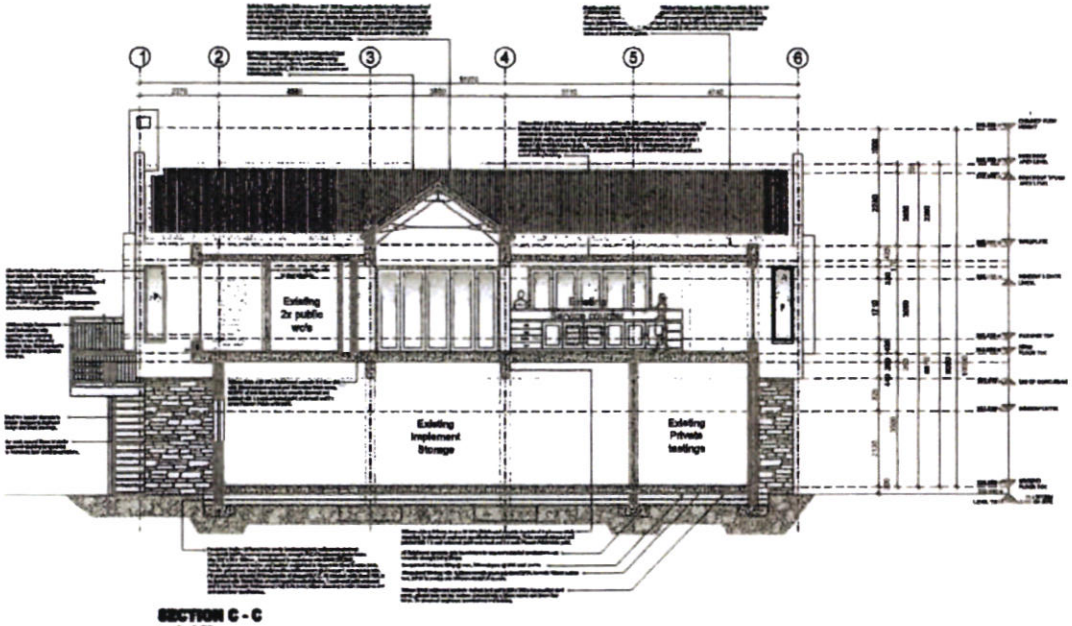
NEW SERVICE KITCHEN EXT TO EXISTING WINE TASTING FACILITY KAP VINO ESTATE
PTN 90 OF FARM 20

FLOOR PLANS
XA CALCULATIONS

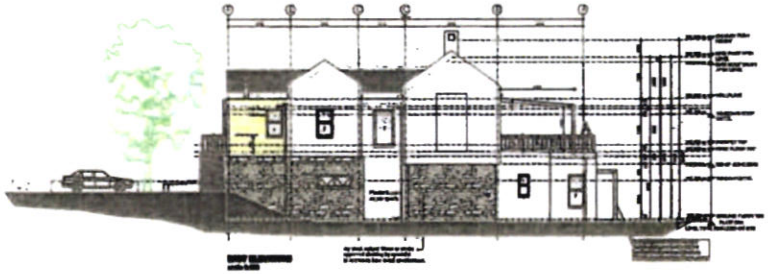
H4020	1:100
200	02.10.2017
-	RDC / ABB

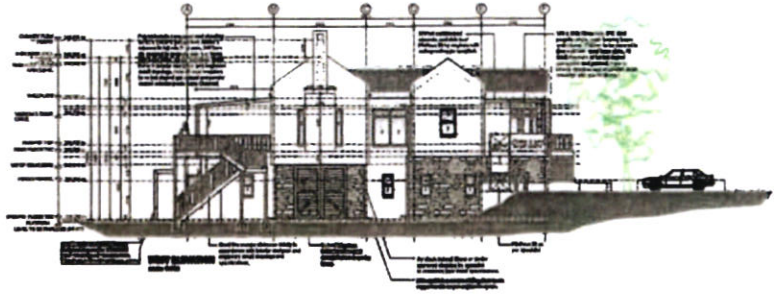
FOR COUNCIL APPROVAL

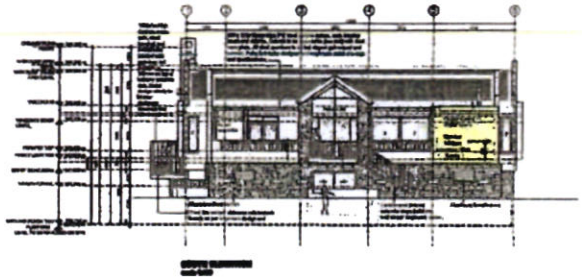
This drawing and all the information contained thereon is the property of Dennis Moss Partnership and may not be copied or disclosed to a third party without their written consent.

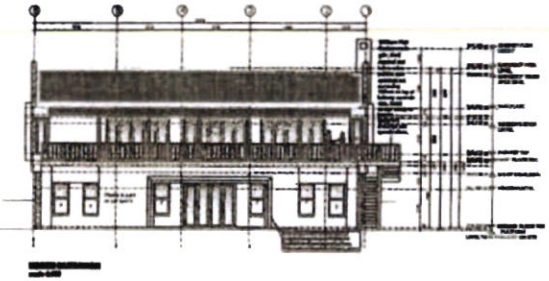


SECTION C - C
scale 1:50









General Notes:

1. Contractor and Sub-Contractors to check all levels and dimensions on site before any work is commenced and any discrepancies to be reported to the Architect immediately.
2. Figured dimensions to be taken in preference to scaled measurements and large scale details supersede small scale drawings.
3. All work to be done in accordance National Building Regulations SANS 10400 and all requirements of Municipal and Local Authorities concerned are to be adhered to.
4. Natural light and ventilation area of all openings in accordance of floor area and SANS 10400 Part O natural light area: min.10% of floor area and natural ventilation: min. 5% of floor area.
5. All glazing to comply with requirements of SANS 0137 – access doors and sidelights to have safety glass. Windows lower than 800mm from floor, windows lower than 1800mm above pitch line of stairs and shop-fronts to have safety glass.
6. All safety glazing panels to be etched with glazing marking and this is to be visible at all times.
7. All cavities below floor level to be filled with concrete and dpc's to be stepped.
8. No part of building is to encroach the build line.
9. All materials to be installed strictly in accordance with manufacturers specifications.

DENNIS MOSS PARTNERSHIP

CLIENT
PIA WATERMEYER

PROJECT TITLE
NEW SERVICE KITCHEN EXT. TO EXISTING WINE TASTING FACILITY KAP VINO ESTATE
PTN 90 OF FARM 20

SHEET TITLE
SECTIONS & ELEVATIONS

PROJECT no. H430	SCALE 1:100
DRAWING No. 201	DATE 02.10.2017
REV. 00	DRAWN RDC / CHECKED ABB

FOR COUNCIL APPROVAL

This drawing and all the information contained thereon is the property of Dennis Moss Partnership and may neither copied or disclosed to a third party without their written consent.

sanas
Calibration Laboratory
148
1302

M AND N ACOUSTIC SERVICES (Pty) Ltd
Co. Reg. No: 2012/123238/07 VAT NO: 4300255876 BEE Status: Level 4
P.O. Box 61713, Pierre van Ryneveld, 0045

No. 15, Mustang Avenue
Pierre van Ryneveld, 0045

Tel: 012 689-2007 (076 920 3070) • Fax: 086 211 4690
E-mail: admin@mnacoustics.co.za
Website: www.mnacoustics.co.za

CERTIFICATE OF CALIBRATION

CERTIFICATE NUMBER	2021-AS-0291
ORGANISATION	DUSTWATCH CC
ORGANISATION ADDRESS	54 DIE TREK, PIKETBERG, 7320
CALIBRATION OF	INTEGRATING SOUND LEVEL METER complete with built-in OCTAVE FILTER and ½" MICROPHONE
MANUFACTURERS	CASELLA
MODEL NUMBERS	63X (632B), 495 and 251
SERIAL NUMBERS	1367936, 003476 and 03388
DATE OF CALIBRATION	11-12 MARCH 2021
RECOMMENDED DUE DATE	MARCH 2022
PAGE NUMBER	PAGE 1 OF 5

This certificate is issued in accordance with the conditions of approval granted by the South African National Accreditation System (SANAS). This Certificate may not be reproduced without the written approval of SANAS and M and N Acoustic Services.

The measurement results recorded in this certificate were correct at the time of calibration. The subsequent accuracy will depend on factors such as care, handling, frequency of use and the number of different users. It is recommended that re-calibration should be performed at an interval, which will ensure that the instrument remains within the desired limits and/or manufacturer's specifications.

The South African National Accreditation System (SANAS) is member of the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA). This arrangement allows for mutual recognition of technical test and calibration data by member accreditation bodies worldwide. For more information on the arrangement please consult www.ilac.org

Calibrated by:	Authorized/Checked by:	Date of Issue:
W.S. SIBANYONI (CALIBRATION TECHNICIAN)	M. NAUDÉ (SANAS TECHNICAL SIGNATORY)	24 MARCH 2021

Gerry Kuhn
P O BOX 198 Piketberg 7320
Tel 022 913 1726
fax 0866171773
Cell 083 308 4764
e-mail address: gerry@dustwatch.com

KUNJANI WINES – STELLENBOSCH DISTRICT, BLUMBERG DRIVE
ENVIRONMENTAL NOISE ASSESSMENT & RECOMMENDATION REPORT
2 APRIL 2023

1.0 INTRODUCTION & OBJECTIVE

This report represents a formal impact assessment report and thus addresses the issues of noise assessment of the impact of normal activities at the premises concerned, on surrounding properties, business undertakings and the community and any determination required to effect control measures. The main aim of the exercise was to establish if the operating conditions meet the legal and other requirements.
The Kunjani Vineyard has an upmarket facility restaurant with accommodation units in a rural setting close to other vineyard with an impressive view over Devonvale and over the Swartland hills. The restaurant building which also incorporates some ground floor accommodation units with the actual restaurant and open balcony on the first floor is a fine architecturally designed building and is acoustically significant.
We note that a neighbour and resident of the property next door has complained of a disturbance when the balcony is full of persons and such conversation can be heard.

2.0 ACTION ON SITE

The client indicated that they are totally aware that there are regulations surrounding the use of any noise.
We note in this regard that while the vineyard is in an area with similar vineyards and even farming operations the district rating is (d) – "Urban districts with some workshops, with business premises and with main roads with a rating level as below per SANS 10103:2008".

DAY/NIGHT 60dBA
DAY TIME 60dBA
NIGHTTIME 50dBA

We further note that in terms of the Provincial Noise Regulations p.n.200 2003 that a "disturbing noise" is only created when the rating noise is exceeded by 7dBA and thus the appropriate limit levels are then:

DAY/NIGHT	67dBA
DAY	67dBA
NIGHTTIME	57dBA

Night levels are acceptable continuous rating levels (L Req – T) for noise. We also note a significant factor is that the residence is then also subject to these conditions and not as many people expect, pristine silence. We also point out that it is not possible to measure day conditions and assume that if these apply at night even with the appropriate reductions. We also point out here that the restaurant only operates daily and does so up to around 18h00 weather permitting. These times are well withing the daily limits which indicate a time for day night and daytime limits between O6H00 and 22H00.

An assessment was carried out in terms of SANS 10103"2008 taking note of the zoning applicable to both the client, Kunjani and the complainant properties. Such an assessment is required in order to determine if there is an infringement of regulations. Night levels are acceptable continuous rating levels (L Req – T) for noise extend from 22H00 to06H00 daily. We also note a significant factor is that the residence is then also subject to these conditions and not as many people expect, pristine conditions or absolute silence. We also point out that it is not possible to measure day conditions and assume that if these apply, then you need levels some 10 dBA lower to meet night-time conditions as there are many conditions to be considered and such an assumption is erroneous.

The determinations do comply with all accepted procedures for accuracy and diligent determinations and these and any deviations are outlined in the report. National Standards (SANS) Code 10103:2008 were followed. The measurement and Rating of Environmental Noise with respect to Land Use, Health, and Annoyance and to Speech Communication but we also review Western Cape Provincial Noise Control Regulations 200:2013. These regulations now apply throughout the Western Cape and are called Western Cape provincial noise regulations 200:2013. City by-laws are also of significance and have been considered. Gauteng has similar regulations. We also note that the Occupational Safety and Health Act and Regulations also apply to any undertaking as well.

3.0 CONDITIONS SURROUNDING THE PREMISES, THE LOCAL ENVIRONMENT AND THE PREMISES IN CONTEXT WITH THE OTHER BUSINESSES WITHIN THE AREA OR LOCALITY

While the area is a as described in SANS 10103:2008 or as mentioned, a busy Urban district the levels should be applicable for night-time at 50 dBA as rating levels with the daytime or day-night ratings at 60dBA.

The restaurant undertaking does not operate during night-time rating which extends from 22H00 until 06H00 each night and therefore nigh-time ratings do not apply.

4.0 WEATHER CONDITIONS PREVAILING

We noted a light breeze from the south at a velocity of 2.3m/s and a temperature (sensible dry bulb) of 22,6°C. The humidity was at 53% with some cloud cover. The road was dry. The main assessments were carried out between 12H00 and 16H00.

5.0 MEASUREMENT CRITERIA AND INSTRUMENTATION

All logged determinations were undertaken using a Casella – Cel430 type 1 integrating noise meter serial number 319294 with a matched microphone. The instrument was tripod mounted for all determinations with the microphone height at 1250mm.

The instrument was calibrated using a Casella calibrator, serial number 1367936, before determinations were undertaken, again during determinations and finally after the determinations were completed. We noted no deterioration between the calibration tests and a new set of batteries were used in both the noise meter and the calibrator and were thus acceptable.

The Casella meter is calibrated and has a calibration certificate dated certificate No 2021-AS-0291. The calibrator certificate is dated and bears no.2021-AS-0292. both are dated March 2021.

In order to determine the residual noise this was only done before and after the get set was started other determinations. Traffic does not play a role in regular noise with or without music present and the traffic is not a significant noise source. Should a vehicle pass however infrequently this does have a marked influence, but most 10-minute periods had no traffic.

All environmental noise determinations were Impulse integrated sound pressure determinations to A-weighting, slow LAeq and were taken over a 10-minute period which was noted as a period suitable for the site conditions as well as the time period specified by the Provincial Regulations 200:2013.

TABLE No. 1 – INSTRUMENT 1367936

CRITERIA	A	A	M	M	O

LAeq	55.7	53.2	45.1	44.8	50.6
LCeq	59.3	60.1	50.8	51.3	60.1
LC-Aeq	3.9	6.9	5.7	6.4	9.5
LAFmax	61.8	65.8	54.8	60.3	55.1
LAFmin	49.3	46.2	40.6	41.6	40.8
LCPeak	67.1	71.8	67.9	70.3	73.1
DURATION 10 MINUTES					
TIME	12H15	12H30	12H45	13H10	13H20
POSITION	A	A	M	M	O

TABLE No. 1 – INSTRUMENT 1367936

CRITERIA	O	*B*	B	M	O	B
LAeq	51.3	53.1	52.9	43.3	48.7	54.4
LCeq	60.1	57.2	58.8	49.4	50.9	61.3
LC-Aeq	8.8	4.1	5.9	6.1	2.2	6.9
LAFmax	55.9	58.2	59.3	50.3	55.3	60.8
LAFmin	42.4	49.2	46.4	42.9	44.6	50.1
LCPeak	63.9	66.1	63.9	64.2	60.3	70.3
DURATION 10 MINUTES						
TIME	13H40	14H00	14H20	14H50	15H05	15H20
POSITION	O	B	B	M	O	B

POSITION OF MONITORING STATION
A – ON STOEP WITH DINING GUESTS
M – AT PIPE AMNIFOLD ON PROPERTY BOUNDARY
O – AT OAK TREE (STOEP IN VIEW)

COMPLIANCE UNDER THE DIFFERENT REGULATIONS

4.1 **PROVINCIAL NOISE REGULATIONS 200:2013**

Under the provisions of the new regulations there is a prohibition of both "disturbing noise "as well as "noise nuisance". This is confirmed by the determinations.

We note that a "disturbing noise" is a noise excluding the unamplified human voice which:

a) Exceeds the rating levels by 7dBA
b) Exceeds the residual noise level where this is higher than the rating noise.
c) Exceeds the residual noise by 3dBA where the residual noise level is lower than the rating level.
d) In the case of a low frequency noise, exceeds the level specified in Annex B of SANS 10103:2008.

The Table 2 schedule of District noise levels (Rating levels) remain of concern as compliance with the levels in most areas of the city is not possible and in very few positions including most if not all residential areas, parks, beaches and not in any

CBD or industrial areas. In fact, the levels cannot even be complied with within nature reserves at night due to insect noise.

We note that a "noise nuisance" is any sound which impairs or may impair the convenience or peace of a reasonable person. The term remains vague and non-specific as does the definition of a reasonable person. The SANS 10103;2008 standards also does not consider the unamplified human voice as constituting a disturbing noise.

The determination of" noise nuisance" can only be made by a judge from all available evidence and affidavits and includes his consideration of the determinations, undertaken by a competent practitioner.

The City by-laws do specify that music should not be clearly discernible outside the premises and this stipulation is not affected by the Provincial Noise Regulations 200:2013 and will remain a main criterion to be considered in any noise assessment but as SANS 10103:2008 will probably dictate all requirements, this option is likely to be exceeded at any time. There is no audibility of any music beyond building even not clearly discernible beyond the stoep.

The new noise regulations of the province now tie in with the SANS 10103:2008 requirements which tend to view more of a planning role than day to day compliance as is the case in rural areas.

6.0 COMPLIANCE – GENERATION OF NO DISTURBING NOISE A – CONDITION

To meet the criteria (a) above no value with music on may exceed 60dBA +7dBA or 67 dBA and we see that all values comply. If corrections are added for tonal quality which we note is not present due to music or other noise source, then levels comply with regulation.

Compliance is achieved in all cases due to the ambient conditions, but the area is compliant with some traffic, and we can only assume the building will be so. The actual values would suggest compliance on average for any weather as well.

COMPLIANCE – GENERATION OF NO DISTURBING NOISE B – CONDITION

To meet criteria (b) above then noise emanating from the venue may not exceed the residual noise level where this is higher than the rating noise. The rating level of 60dBA + 7dBA is not exceeded or proved to be exceeded in both conditions with and without diners.

COMPLIANCE – GENERATION OF NO DISTURBING NOISE C – CONDITIONS

As the residual noise is higher or the same as the rating noise this condition is not applicable except in some isolated conditions where compliance would still be probable

.

COMPLIANCE – GENERATION OF NO DISTURBING NOISE
D – CONDITION
There is no component of low frequency noise or tonal quality which exceeds the Annex B of SANS 10103:2008 and therefore compliance is achieved.

7.0 NOTES AND SUMMARY

From the results noted in paragraph 9.0 we note that: -

- Under criteria (a) – The venue is compliant, and no music is detected or audible although there could be some influence, but all values are within 7dBA of rating.
- Under criteria (b) – the premises is compliant.
- Under criteria (c) this is not applicable in all cases and where applicable the premises are compliant.
- Under criteria (d) compliant as no tonal quality or low frequency disturbing noise
- For these (a) compliant

- Even, if as mentioned, in communication conversation is audible, we do note that the unamplified human voice is not considered in the definition of "disturbing noise".

- If there was an original recommendation that the stoep be fitted with a barrier wall, this conclusion should have only been reached if there was evidence of determinations which meet all requirements of the SANS10103:2008 and were carried out by an accredited and competent practitioner. As the recommendation appeared to have been made without an assessment, we question if it is still relevant.

- The above determinations do not support the original recommendation.

8.0 QUALIFICATION

While all due diligence was taken with all measurements and determinations over the noise monitoring, the values are applicable to the conditions prevailing at the time of the audit or investigation and could differ under differing environmental or weather condition or traffic pattern changes.



Gerry F. Kuhn
SAIOH
FMVSSA
SAIAT
Environmental Engineer
Attachments:
Calibration certificates + certificate
16/04/2023

sanas
Calibration Laboratory
148
1302

M AND N ACOUSTIC SERVICES (Pty) Ltd
Co. Reg. No: 2012/123238/07 VAT NO: 4300255876 BEE Status: Level 4
P.O. Box 61713, Pierre van Ryneveld, 0045

No. 15, Mustang Avenue
Pierre van Ryneveld, 0045

Tel: 012 689-2007 (076 920 3070) • Fax: 086 211 4690
E-mail: admin@mnacoustics.co.za / marianka@mnacoustics.co.za
Website: www.mnacoustics.co.za

CERTIFICATE OF CALIBRATION

CERTIFICATE NUMBER	2022-AS-0429
ORGANISATION	DUSTWATCH
ORGANISATION ADDRESS	54 DIE TREK, PIKETBERG, 7320
CALIBRATION OF	ACOUSTIC CALIBRATOR
MANUFACTURER	CEL
MODEL NUMBER	120/1
SERIAL NUMBER	3864827
DATE OF CALIBRATION	11 APRIL 2022
RECOMMENDED DUE DATE	APRIL 2023
PAGE NUMBER	PAGE 1 OF 3

This certificate is issued in accordance with the conditions of approval granted by the South African National Accreditation System (SANAS). This Certificate may not be reproduced without the written approval of SANAS and M and N Acoustic Services.

The measurement results recorded in this certificate were correct at the time of calibration. The subsequent accuracy will depend on factors such as care, handling, frequency of use and the number of different users. It is recommended that re-calibration should be performed at an interval, which will ensure that the instrument remains within the desired limits and/or manufacturer's specifications.

The South African National Accreditation System (SANAS) is member of the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA). This arrangement allows for mutual recognition of technical test and calibration data by member accreditation bodies worldwide. For more information on the arrangement please consult www.ilac.org

Authorized/Calibrated by:	Checked by:	Date of Issue:
M. NAUDÉ (SANAS TECHNICAL SIGNATORY)	W.S. SIBANYONI (CALIBRATION TECHNICIAN)	12 APRIL 2022